

**FG Wilson 品牌发电机组、零部件和服务
经销协议
附件C**

**Terms and Conditions of Sale
销售条款和条件**

In these terms and conditions "Seller" means Caterpillar (NI) Limited, a Northern Ireland corporation located in the United Kingdom with principal offices in Larne, Northern Ireland ("Seller") and "Buyer" means the person, firm or company who buys or agrees to buy goods from the Seller.

在本条款和条件项下“**卖方**”是指Caterpillar (NI) Limited, 一家位于英国的北爱尔兰公司, 其主要办公地点位于北爱尔兰拉恩镇 (“**卖方**”), “**买方**”是指向**卖方**购买或者同意向**卖方**购买货物的个人、商行或者公司。

AGREEMENT OF SALE: Acceptance of any order of Buyer is conditional on Buyer's acceptance of the terms and conditions contained herein, on any pages attached hereto, and in the Seller's quotation or in the Seller's acknowledgement of Buyer's order, if any. Any terms and conditions of Buyer's order which are inconsistent with these terms and conditions are rejected, will not be binding on Seller, or applicable to the sale and/or Delivery of the products, parts or services referred to herein. These conditions shall apply to the exclusion of any other terms and conditions howsoever referenced by the Buyer. This Agreement shall not create or give rise to nor shall it be intended to create or give rise to any third party rights except to the extent expressly stated herein. The application of any legislation, including but not limited to the Contracts (Rights of Third Parties) Act 1999, giving to or conferring on third parties contractual or other rights in connection with this Agreement shall be excluded. No waiver, alteration, or modification of the provisions hereof shall be binding on Seller unless agreed to in writing by a duly authorised representative of Seller. The waiver by either party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement. Seller, in its sole discretion, may assign or partially assign its rights and/or delegate or partially delegate performance of its duties with respect to this Agreement and/or any order placed by Buyer under this Agreement. In the event of such assignment and/or delegation to an affiliate of Seller, such affiliate's terms and conditions of sale may apply where necessary to the extent they are inconsistent with, or in addition to, the terms and conditions of sale stated in this Agreement.

销售协议: **卖方**接受**买方**订单以**买方**接受本销售条款和条件、所附任何页面以及**卖方**报价单或**卖方**对**买方**订单确认中的条款和条件(如有)为前提。**卖方**拒绝**买方**订单中的任何与本销售条款和条件不一致的条款和条件, 该等条款和条件对**卖方**不具有约束力, 且不适用于本协议项下产品、零部件或服务的销售和/或交付。本条件的适用将排除**买方**以任何方式所引用的任何其他条款和条件。除本协议明确约定, 本协议未创造或引起、也未试图创造或引起任何第三方的权利。任何引起或赋予第三方与本协议有关的合同或其他权利的法律适用, 包括但不限于**1999年合同(第三方权利)法案**, 应当予以排除。除非经**卖方**正式授权的代表书面同意, 任何对于本条款和条件之规定的放弃、变更或者修改对于**卖方**均不具有约束力。任何一方放弃追究违反本协议的任何情形不应被视为或者被解释为放弃追究任何其他违反本协议的情形, 无论其他违约发生在该等放弃之前、之后或与该等放弃同时发生。就本协议和/或任何**买方**依据本协议所下订单, **卖方**可自行决定转让或部分转让其权利和/或委托或部分委托其义务的履行。若向**卖方**的某一关联方转让和/或委托, 且该等关联方的条款和条件与本协议中销售条款和条件不一致或本协议中销售条款和条件无相关规定, 则可以在必要时适用该等关联方的条款和条件。

PRODUCTS COVERED BY AGREEMENT: This Agreement concerns the purchase and sale of the parts, products and/or services shown in Sellers acknowledgement of order.
协议涵盖的产品：本协议有关卖方订单确认中所列的零部件、产品和/或服务的购买和销售。

PRICES AND PAYMENTS: Prices shall be Seller's list price for the goods less any discount as notified in writing by Seller, plus Seller's charges for Delivery, insurance, consular fees, banking charges, etc., all as in effect on the date of shipment of the goods and any costs resulting from Buyer-caused delays. Seller may invoice Buyer on or at any time after delivery for any amounts still due (see Delivery) and Buyer shall pay within thirty (30) days of the date of invoice. Buyer shall not apply any set-off to the price of Seller's products without prior written agreement by the Seller. Buyer shall pay to Seller, on demand, a late payment charge equal to the lesser of Seller's then-current standard late payment charge (Prime Interest Rate + 3%/annum plus expenses) or the highest charge allowed by law on any amount unpaid on the due date.

价格以及支付：价格应为货物发运日有效的卖方目录价格减去卖方书面通知的任何折扣、加上卖方收取的运费、保险费、领事签证费、银行手续费等以及因买方原因导致延迟而产生的任何费用。卖方可以在交货时或交货后的任何时间向买方开具任何金额应付款项的发票（见交货条款）并且买方应自发票日起三十（30）日内付款。未经卖方事先书面同意，买方不得主张抵销任何应付的卖方产品价款。一经要求，买方即应向卖方支付逾期付款金，该等金额应为就到期日任何未付金额卖方届时现行有效的标准逾期付款金（基准利率+每年3%的附加费用）或法律所允许的最高金额（以较少者为准）。

TAXES: Seller's prices do not include any sales, use, excise or other taxes which Seller may be required to pay in connection with filling any of Buyer's orders. Buyer shall pay the amount of any applicable present or future tax as an additional charge or, in lieu thereof, Buyer shall provide Seller with a tax exemption certificate as applicable and acceptable to taxing authorities. For those products sold Ex-Works ("EXW") on which value added tax has not been charged on the invoice ("VAT Free Invoice"), proof of export documents ("Proof of Export") as required by the Seller must be provided to the Seller within such time as Seller specifies. If such Proof of Export is not provided within this period, Seller will invoice Buyer an additional amount to cover Seller's value added tax liability.

税项：卖方的价格不包括可能须就履行任何买方的订单而缴纳的任何销售税、使用税、消费税或其他税款。任何适用的目前的或未来的该等税款的金额应由买方作为附加的费用予以支付，或者，如不支付，买方应向卖方提供适用的且为税务部门所接受的免税证明。对于采用工厂交货（“EXW”）术语出售的未在发票中收取增值税（“未含增值税发票”）的产品，卖方要求的出口的证明文件（“出口证明”）必须在卖方指定的时间内提供给卖方。若该等出口证明未能在这段时间内提供，卖方将向买方开具额外金额的发票以补偿卖方增值税纳税义务。

PATENTS: Seller undertakes and agrees to defend at Seller's own expense all suits, actions or proceedings brought against Buyer, or any of Buyer's customers, for actual or alleged infringement of any letters patent brought solely because of or on account of the use or sale of such products sold by Seller as are constructed and used according to the manufacturer's standard commercial designs or specifications. Seller further agrees to pay and discharge any and all judgements or decrees which may be rendered against the defendants therein, provided notice within fifteen (15) days of any such suit, action or proceeding is given Seller, and provided further, Seller is given complete charge and control of the defence of such suit, action or proceeding. Buyer undertakes and agrees to defend at Buyer's own expense all suits, actions or proceedings brought against Seller or Seller's source of supply for actual or alleged infringement of any letters patent because of or on account of any feature, construction or design (other than manufacturer's standard commercial feature, construction or design) incorporated at Buyer's request in the products sold to Buyer or incorporated by Seller to adapt such products to Buyer's particular use, or for any additions to, changes or adaptations made by Buyer or any of Buyer's customers subsequent to the delivery of the

products. Buyer further agrees to pay and discharge any and all judgements or decrees which may be rendered against the defendants therein, provided immediate notice of any such suit, action or proceeding is given Buyer, and provided further, Buyer is given complete charge and control of the defence of such suit, action or proceeding.

专利：卖方承诺并同意，自费用为完全因为或由于使用或销售依据制造商标准商业设计或规格而构造及使用的卖方出售的该等产品而导致的针对买方或任何买方客户提起的实际或声称侵犯专利特许证书的一切诉讼、行动或程序进行辩护。卖方进一步同意，支付和履行在任何该等诉讼、行动或程序中作出的针对被告方的任何及一切判决或裁定，前提是应在十五天内将任何该等诉讼、行动或程序通知卖方，并且允许卖方完全负责并控制该等诉讼、行动或程序的辩护。买方承诺并同意，自担费用为因为或由于应买方的要求纳入销售给买方的任何产品或者由卖方为使该等产品适合卖方的特定用途而纳入的任何功能、构造或设计（生产者的标准商业功能、构造或设计除外），或者因买方或其任何客户在产品交付后对产品做出的任何增添、变更或调整而导致的针对卖方或卖方的供货源提起的关于实际或声称侵犯任何专利特许证书的一切诉讼、行动或程序进行辩护。买方进一步同意，支付和履行在任何该等诉讼、行动或程序中作出的针对被告方的任何及一切判决或裁定，前提是应将任何该等诉讼、行动或程序立即通知买方，并且允许买方完全负责并控制该等诉讼、行动或程序的辩护。

WARRANTY: Products sold by Seller are warranted as provided in Seller's applicable standard Warranty World certificate in effect on the date of Delivery and available upon request for a period of 1 year from commissioning or 18 months from delivery by Seller, whichever is sooner. Buyer agrees that if the products are purchased for resale, Buyer shall make available to its customer at the time of resale a copy of such warranty and agrees to impose a similar obligation on customers purchasing such products for resale. The goods or products must be used in the manner represented to Seller in writing prior to Seller issuing an acknowledgement of order. If no representation is made, generator sets will be deemed to be used in a stand-by mode and configuration. SUCH WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. REMEDIES UNDER SUCH WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED THEREIN. **SELLER IS NOT RESPONSIBLE FOR INDIRECT OR CONSEQUENTIAL LOSSES AND DAMAGES.**

质量保证：卖方出售的产品应按照适用的卖方全球质保书享受质保，质保自交付日起生效并在买方要求时予以提供。质保期为自试车之日起1年或自卖方交付之日起18个月（以先到者为准）。买方同意如果购买的产品是用于转售，买方应当在转售时向其客户提供一份该等质保书并且同意向购买该等产品用于转售的客户施加相似的义务。货物或产品的使用必须依照在卖方签发订单确认之前买方以书面形式向卖方说明的方式进行。若卖买方未作说明，发电机组将被视为应在待机模式和配置下使用。此质量证明明确代替其他明示或默示的保证，包括任何适用性或适用于某一特定用途的保证。此保证项下的救济方法仅限于按其中的规定提供材料和服务。卖方不就间接的或继发的损失或损害承担责任。

TITLE AND RISK OF LOSS: Unless Seller specifically agrees otherwise in writing, delivery of products sold by Seller shall be Ex-Works (EXW), Seller's designated facility and risk of loss and damage to such products shall pass to Buyer at such EXW place, provided, however, that if the products are ready to ship EXW and the products have not been collected within 5 (five) business days of Seller's "ready-to-ship" date, Seller at its option and at Buyer's expense, shall be entitled to ship the products Free Carrier (FCA), Buyer's designated "ship to" address approved by Seller, and risk of loss to products shall pass at such FCA place. All delivery terms referred to are INCOTERMS 2010. For the purposes of the forgoing, Seller may, but shall not be obligated to, obtain export clearance for FCA shipments. Notwithstanding delivery and the passing of risk in the products, title shall not pass to Buyer until Seller has received payment in full for the products and all other goods or services agreed to be sold by Seller to Buyer for which payment is then due. Until such time

as title passes, Buyer shall hold the products as Seller's fiduciary agent and shall keep them separate from Buyer's other goods. Prior to title passing Buyer shall be entitled to resell or use the products in the ordinary course of business and shall account to the Seller for the proceeds of sale. If the Buyer fails to comply with a demand from the Seller to return products to which title has not passed, Seller may forthwith enter any premises where the products are stored and repossess them.

所有权和受损风险：除非**卖方**另行以书面方式明确同意，**卖方**所售产品将按照工厂交货

(EXW) 术语在**卖方**指定的工厂进行交付，该等产品毁损灭失的风险应在该工厂交货地转移至**买方**。若产品按照EXW术语已经准备就绪发运，但**买方**未在**卖方**发运就绪日起5（五）个工作日内提货，**卖方**应有权选择按照货交承运人（FCA）术语，将产品运送至经**卖方**批准的**买方**指定的运送地址，费用由**买方**承担，产品遭受损失的风险应在该等FCA地点转移至**买方**。本协议所涉的交货术语均适用《2010年国际贸易术语解释通则》。为上述内容之目的，**卖方**可以但无义务负责取得FCA术语下发运所需的出口通关手续。尽管产品已交付并且产品风险已经转移，但直至**卖方**全额收到产品价款以及所有其他**卖方**同意向**买方**销售的货物或服务的已届支付期的款项，产品的所有权方转移至**买方**。**买方**应以**卖方**的受托代理人身份持有该等产品并且将该产品与**买方**的其他货物分开放置，直至该产品的所有权转移至**买方**。在所有权转移之前，**买方**有权在通常业务范围之内转售或使用产品并应就收益向**卖方**报账。如果**买方**没有按照**卖方**的要求返还所有权尚未转移的产品，**卖方**可以立即进入任何存放产品的场所并收回产品。

LIABILITY AND CLAIMS: Seller's liability for any claim of any kind, including claims for negligence, or for any loss or damage arising out of or connected with, or resulting from any order accepted by Seller, or from the manufacture, sale, delivery, resale, repair or use of any products covered by or furnished under such an order shall in no case exceed the price allocable to the product or part thereof which gives rise to the claim except as provided above under "PATENTS". In no event shall Seller be liable for special, indirect or consequential damages. Save that nothing in these conditions shall have the effect of excluding or limiting Seller's liability for death or personal injury resulting from Seller's negligence. Any claims against Seller for shortages by it in making Delivery shall be made in writing to Seller within fifteen (15) days after receipt of Delivery.

The fulfillment of any order accepted by Seller is subject to strikes, labour disputes, lockouts, accidents, fires, delays in manufacture or in transportation or delivery of materials, floods, severe weather or other acts of God, embargoes, governmental actions, or any other cause beyond the reasonable control of Seller, whether similar to, or different from, the causes above enumerated, whether affecting Seller or Seller's supplier(s), and any such causes shall absolve Seller from any liability to Buyer.

责任以及索赔：除上述“专利”条款另有规定外，**卖方**就任何性质的索赔所承担的责任，包括就过失或因**卖方**接受的订单所引起的、导致的或与之相关的损失或损害或该等订单所涵盖的或依该等订单所提供的任何产品的制造、销售、交货、转售、维修或使用所引起的索赔，在任何情况下均不超过引起该索赔的产品或零部件的相应的价格。在任何情况下**卖方**都不应当对特别的、间接的或继发的损害承担责任。但本条件中的任何内容均不排除或限制**卖方**就因其过失而导致的死亡或人身伤害应承担的责任。针对**卖方**交货数量短缺的任何索赔应当在收到货物之后十五（15）天内以书面形式向**卖方**提出。

卖方对其接受的订单的履行受罢工、劳动争议、停工、意外事故、火灾，生产制造或运输或材料交付的延迟、洪水、恶劣天气或其他不可抗力、禁运、政府行为或超出**卖方**合理控制的任何其他原因（无论与上述原因类似或是不同，亦无论影响**卖方**或是影响**卖方**的供应商）的影响，且任何该等原因都应使**卖方**免于向**买方**承担责任。

CHANGES: Seller may, at any time, without notice, make changes to the specification or design of products where such change is required to ensure that the products conform with any applicable safety or other statutory requirements or where such changes do not materially affect their quality or performance. Delivery of such modified products shall constitute proper performance of the contract by Seller.

变更：若产品规格或设计被要求变更以确保产品符合任何适用的安全或其他法律要求，或该等变更不会实质性影响产品的质量或性能，则**卖方**可随时不经通知而变更该等规格或设计。交付该等变更后的产品应构成**卖方**对合同的适当履行。

DELIVERY: Delivery dates are approximate. Delivery of products under an order accepted by Seller shall be subject to the approval by Seller of Buyer's financial condition at the time of Delivery. Whether or not credit terms are specified elsewhere, Seller may, at its option, condition Delivery under any order accepted by Seller upon receipt of satisfactory security or of cash before Delivery. If, at Buyer's request, Delivery of products on an order accepted by Seller is delayed beyond the date products are ready for Delivery, Seller may require immediate payment in full and/or assess additional charges for storage and other expenses incident to such delay.

交付：交付日期为估计的大约日期。对**卖方**所接受的订单项下的产品的交付应当以**卖方**认可在交付时**买方**的财务状况为前提。无论是否另行规定了贷记条款，**卖方**均可按其选择，将**卖方**在交付前收到另**卖方**满意的担保或收到现款作为**卖方**所接受的任何订单项下产品的交付条件。若**卖方**已接受的某一订单项下的产品交付依**买方**要求被推迟至产品交付准备就绪之日后，**卖方**可要求**买方**立即全额支付该产品的价款，和/或**卖方**所评估的因该等延迟所产生的额外仓储费用与其他费用。

CANCELLATION AND DELAYS TO DELIVERY: In the absence of other written agreement between Buyer and Seller governing cancellation, an order accepted by Seller may be cancelled by Buyer only upon written notice to Seller and payment of Seller's cancellation charges. At Buyer's request, Seller will furnish a statement of such charges prior to cancellation. Buyer shall not return or refuse Delivery of products without prior written approval and direction from Seller, and Buyer shall pay for freight, storage, extra costs for handling and other expenses that may be incurred thereby.

取消和迟延交货：若**买方**和**卖方**之间不存在其他调整取消事宜的书面协议，**买方**只有在书面通知**卖方**并向**卖方**支付订单取消费用后方可取消**卖方**已接受的某一订单。若**买方**要求，**卖方**将在取消之前提供关于该等费用的说明。未经**卖方**事先书面批准及指示，**买方**不得退回或拒绝接收交付的产品，且**买方**应支付处理相关事宜所支出的运费、仓储费、额外成本以及可能由此产生的其他费用。

GOVERNING LAW: These terms and conditions shall be governed by and construed under the laws of Northern Ireland under the jurisdiction of the United Kingdom. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law or equity.

适用法律：本条款和条件应由北爱尔兰法律管辖、依其进行解释，并受英国司法管辖。本条款和条件中规定的救济方法不应被视为排除法律或衡平法所允许的任何其他救济。

INTERPRETATION: Section headings contained herein are for ease of reference only and shall not be given substantive effect.

解释：本条款和条件中的条款标题仅为引用方便而设置，并不具有实质性效力。

RIGHT TO TERMINATE: Seller shall be entitled to cancel forthwith on written notice to and without any liability to Buyer any order for products presented to or accepted by Seller, if Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation or a receiver is appointed over any property or assets of the Buyer or the Buyer ceases or threatens to cease carrying on business or is unable in the Seller's reasonable opinion to meet its debts as they fall due.

解除权：若**买方**与其债权人达成自愿偿债安排或者受制于行政管理命令或者破产或进行清算或者**买方**的任何财产或资产被指定了接管人或者**买方**停止或威胁停止继续营业或者被**卖方**合理地认定为不能清偿到期债务，则**卖方**有权通过向**买方**发送书面通知立即解除递交给**卖方**的或**卖方**所接受的任何产品订单，且无需向**买方**承担任何责任。

RELATIONSHIP OF THE PARTIES: Nothing herein contained shall be deemed to create an agency, joint venture, partnership or fiduciary relationship between the parties hereto or, except as otherwise herein specifically provided, to confer upon either party any right or license to use the patents, trade names, trademarks or service marks of the other party.

双方关系: 除非本条款和条件另行明确规定, 本条款和条件中的任何内容均不得视为在双方间创建某种代理、合资、合伙或信托关系, 或授予任何一方使用对方专利、商号、商标或服务商标的任何权利或许可。