

## **GENERAL TERMS AND CONDITIONS OF SALE (“Terms”)**

DEUTZ AUSTRALIA PTY LTD A.B.N. 99 004 299 290 its successors and assigns (“DEUTZ”) and the customer (“you”) agree that, unless expressly amended in writing by DEUTZ, these Terms comprise the sole terms and conditions of the contract between DEUTZ and you (“contract”), irrespective of anything that may be implied or expressed to the contrary on your enquiries or orders.

These Terms supersede all other terms, conditions and agreements and apply to all future transactions between DEUTZ and you.

In these Terms, “Goods” means all engines, generators, attachments, parts, accessories and any other goods and or services supplied to you by DEUTZ; “Services” means all reconditioning, rebuilding, repair and maintenance or installation and commissioning works performed by or on behalf of DEUTZ with respect to the Goods at your request and includes any technical advice, support and supervision; “you” means DEUTZ’ customer including Original Equipment Manufacturers and DEUTZ authorised dealers. If you are more than one, these Terms bind each of you jointly and severally.

### **1. QUOTATIONS**

A quotation by DEUTZ is an invitation to you to do business with DEUTZ. A quotation does not constitute an offer. Unless it states otherwise, a quotation will remain valid for thirty (30) days from its date, after which time it may be subject to alteration or withdrawal by DEUTZ without notice. Any alteration to a quotation is effective only if altered in writing by DEUTZ or persons authorised by it.

### **2. ACCEPTANCE**

Your order(s) will be accepted by DEUTZ either when DEUTZ communicates its acceptance to you, or when DEUTZ takes steps to fill your order, irrespective of whether those steps are communicated to you. DEUTZ’ acceptance of monies, however paid to it, will not constitute an acceptance of your offer.

### **3. DESIGN AND SPECIFICATIONS**

- (a) DEUTZ may amend the design, data, illustrations, drawings, specifications of weight, dimensions, performance, consumption, lifetime, efficiency, construction or technical information (“designs and specifications”) in respect of any of the Goods and or Services at its discretion from time to time.
- (b) You will accept the Goods with any design and specification amendments unless those amendments constitute material alterations that change the characteristics of the Goods so that they are no longer suitable for your purposes.
- (c) Designs and specifications provided by DEUTZ in any quotation or offer are estimates only unless otherwise expressed in writing.
- (d) Designs and specifications made available to you by DEUTZ are to be treated as confidential information unless they can be proven to have been available to you before you received

them from DEUTZ and must be used by you for the purpose only for which they were provided.

#### **4. PRICES**

- (a) The price for the Goods will be in accordance with DEUTZ' published price list, quotation or other relevant correspondence from DEUTZ from time to time and does not include the costs of delivery, packing, loading and any Services.
- (b) Subject to clause 1, the price charged to you shall be the price ruling as at the date of DEUTZ' acceptance of your order. All prices are subject to alteration by DEUTZ to reflect the price ruling as at the date of DEUTZ' acceptance of your order.
- (c) If any statutory tax, duty, tariff or charge ("charge") is levied on the Goods and or Services and this charge has not been allowed for by DEUTZ in calculating the price, then you must pay the charge as well as the price for the Goods and or Services, and the contract price for the Goods and or Services will be increased accordingly.
- (d) DEUTZ may change the price for the Goods and or Services at any time.

#### **5. DELIVERY OF THE GOODS**

- (a) You must pay all costs of and incidental to delivery of the Goods.
- (b) Delivery of the Goods will be affected when they are delivered to the address stipulated in the contract, even if the delivery address is occupied by DEUTZ, or when the Goods are collected by the carrier, whichever the earlier.
- (c) If you do not stipulate an address for delivery, DEUTZ will deliver the Goods to the address that DEUTZ considers appropriate. If you do not take delivery of the Goods when DEUTZ notifies you to do so, you must pay for all costs incurred by DEUTZ for storage, freight, or other costs.
- (d) If you resell the Goods, the date of delivery to your customer will be deemed the date that the Goods were commissioned, if commissioning is a prerequisite of your sale agreement with your customer.
- (e) Any lead time stipulated for delivery of the Goods will not run until: -
  - (i) you have provided to DEUTZ all documents, permits, approvals and any other information required by DEUTZ;
  - (ii) you have provided to DEUTZ the security (if any) requested by DEUTZ; and
  - (iii) DEUTZ has received from you in cleared funds any payment(s) that DEUTZ has required.
- (f) Subject to clause 7, you must extend the time for delivery for a reasonable period if delivery is delayed. DEUTZ will notify you as soon as is practicable of any anticipated delays in delivery.
- (g) You must accept delivery of the Goods in partial shipments.

## 6. RISK AND INSURANCE

- (a) Subject to clause 6(b), all risk in the Goods shall pass to you as soon as the Goods are delivered to you by DEUTZ, even though you may not have signed a receipt for them, or, if you have arranged your own freight, from the time that the Goods are collected by your carrier.
- (b) Your assumption of risk in the Goods delivered is not to be taken as inconsistent with the retention of DEUTZ' title in those Goods as set out in clause 9.
- (c) If you make a claim on your insurance policy for indemnity in respect of the Goods and at the time of that claim you have not paid DEUTZ all of the money that you owe it, you assign to DEUTZ all of your entitlements in respect of your indemnity for the Goods and DEUTZ may receive directly from your insurer that part of the claim attributable to the Goods if you have not paid for them in full.

## 7. DELAYS & CANCELLATIONS

- (a) You acknowledge that most of the Goods you buy from DEUTZ are made overseas.
- (b) DEUTZ will do all things reasonably practicable to procure that the Goods are delivered, or the Services are provided to you by the date specified in the contract, but it will not be liable to you for any loss or damage that you suffer if delivery of the Goods and or Services is late and you release DEUTZ from all such loss and damage.
- (c) If DEUTZ is unable to deliver the Goods and or Services (or any part thereof) as a result of acts of god, wars, insurrection or internal disturbances, fire, floods, accidents, breakdowns of plant or machinery, unavailability of or delays in shipping, transport strikes, lock-outs of workmen, shortages or embargoes by suppliers of fuel, power or raw materials, priority for supplies claimed by the Federal or State Governments of the Commonwealth of Australia, or any other overseas government, industrial espionage, cyber-attack or any other event beyond the control of DEUTZ ("force majeure"), then:-
  - (i) any delay in delivery of the Goods and or Services as a result will not entitle you to any cause of action against DEUTZ;
  - (ii) DEUTZ will not be liable to you for any loss or damage you suffer as a result;
  - (iii) if the delay continues for more than 90 days, DEUTZ and you will each have the option to cancel all outstanding obligations under the contract provided that written notice is given to the other by the party exercising its option to cancel;

If the contract is cancelled:

- A. you must pay for all Goods and or Services appropriated to the contract by DEUTZ at the time of cancellation and you must accept those Goods and or Services when they are delivered or provided by DEUTZ; and
- B. you must pay for all Goods already delivered or Services already provided to you; and

C. you must pay for all Goods marked “not returnable” or imported by DEUTZ specifically for your order; and

D. DEUTZ may either: -

- credit your account with the invoice value of the Goods and or Services cancelled; or
- return any monies that you have paid in respect of the Goods provided that those monies were not designated as non-refundable; or
- return any reconditioned Goods, provided that you first reimburse DEUTZ for the costs of any reconditioning works undertaken in respect of those Goods;
- if not yet sold, return any Goods you traded in at the time that you placed your relevant order, provided that you first reimburse DEUTZ for the costs of any reconditioning works effected in respect of those Goods; or
- if your traded in Goods have been sold, credit your account with the sale price of your trade-in less the value of any reconditioning works on the Goods and other costs of and incidental to the sale.

(d) DEUTZ may in its discretion cancel the contract if: -

- (i) you do not take delivery of the Goods for one month after you are notified that they are available for collection;
- (ii) you fail to pay for the Goods after receipt of notice in writing giving you 7 days to remedy your failure to pay;
- (iii) an administrator is appointed, an application to wind you up is filed, notice of an intention to pass a resolution to wind up is given, a receiver and/or manager and or administrator is appointed over any or all of your assets or undertaking, you commit an act of bankruptcy or appoint a controlling trustee;
- (iv) you become an insolvent under administration pursuant to the provisions of the *Corporations Act* or the *Bankruptcy Act*;

(e) If DEUTZ cancels the contract pursuant to clause 7(d) above: -

- (i) You will forfeit any monies paid in respect of the Goods and or Services;
- (ii) DEUTZ may resell the Goods and or Services.
- (iii) If the resale price of the Goods and or Services plus your forfeited monies is less than the value that the Goods and or Services were invoiced to you, DEUTZ may recover from you the difference, as well as any costs it incurs in the resale process, including interest and legal costs payable on the basis set out in subclause 8(d).

(iv) If the resale price of the Goods and or Services plus your forfeited monies is more than the value that the Goods and or Services were invoiced to you, DEUTZ will reimburse to you any surplus after satisfaction of the said interest and legal costs, provided always that any reimbursement must not exceed the amounts that you have paid to DEUTZ.

(f) You may not cancel the contract for any other reason.

## 8. PAYMENT

(a) Subject always to clauses 8(b) and 8(f), you must pay for all Goods and or Services you receive from DEUTZ so that DEUTZ receives your money in cleared funds 30 days from the end of the month in which you are invoiced. Time is the essence of this contract.

(b) DEUTZ' express or implied approval of any credit facility on your behalf may be revoked by DEUTZ at any time.

(c) If you become an insolvent under any regime recognized by the *Corporations Act* or the *Bankruptcy Act*, commit an act of bankruptcy or enter into any arrangement with your creditors, all amounts you owe to DEUTZ will become immediately due and payable.

(d) If you are a customer to which sub-clause 8(a) applies, and you do not pay the amounts you owe by the due date(s) then, without prejudice to any of DEUTZ' other rights and remedies under the contract: -

(i) You must pay interest on all the amounts due and payable to DEUTZ at the rate specified from time to time by the National Australia Bank Limited as its current overdraft rate plus 2%. Such interest will be calculated from the date that each amount you owe DEUTZ becomes due and payable and will continue to accrue until all the monies you owe are received in cleared funds by DEUTZ;

(ii) You must indemnify DEUTZ for all loss and damage it incurs because of your failure to pay all amounts due to it by the due date(s);

(iii) You must pay interest on all loss or damage suffered by DEUTZ at the rate set out in sub-clause 8(d)(i) above;

(iv) You must indemnify DEUTZ for all costs, charges and expenses ("costs") incurred by DEUTZ in enforcing or attempting to enforce any of its rights under the contract (including recovering any loss or damage, taking possession of the Goods or part of them, or seeking to recover unpaid amounts) including all legal costs DEUTZ incurs with its lawyers, which costs you must pay on an indemnity basis; and

(v) You must deliver up the Goods to DEUTZ immediately upon receipt of a demand in writing to do so from DEUTZ. If you do not comply with the demand within one (1) business day of receipt of DEUTZ' demand, you authorize DEUTZ and its representatives to enter upon your premises at any time to do all things necessary to take possession of the Goods. You must pay for all costs of and incidental to DEUTZ' exercise of its rights under this clause.

- (e) All payments you make will be applied by DEUTZ first against any interest or other costs accruing on your account. You authorize DEUTZ to apply any funds received from you to satisfy unsecured obligations first and in such case, you must accept DEUTZ' account reconciliation as accurate.
- (f) DEUTZ may require you to pay the price for the Goods at any time prior to delivery.
- (g) No set off  
If you are involved in any dispute with DEUTZ, you must still pay all amounts due to DEUTZ. You must not withhold payment of any amounts because of any claims (warranty or otherwise) that you may allege against DEUTZ. You must not set off the monies that you owe DEUTZ against any other amounts that you allege are owing to you by DEUTZ, whether for pending or approved warranty works or otherwise.

## 9. RETENTION OF TITLE

- (a) Subject to clauses 9(b) to 9(f) inclusive and clause 14, DEUTZ authorizes you to on sell, apply or install the Goods if it is the ordinary course of your business to do so.
- (b) Until DEUTZ receives full payment in cleared funds for all Goods it has ever sold to you and all Services it has ever provided to you: -
  - (i) Title and property in the Goods remains vested in DEUTZ and does not pass to you;
  - (ii) You must hold the Goods as custodian for and in trust for DEUTZ; and
  - (iii) You must keep all Goods supplied and delivered to you by DEUTZ separate from your other property and in a manner that makes it easy for DEUTZ to identify them.
- (c) If you sell, dispose of, use or apply the Goods before you pay DEUTZ for them in cleared funds, you must hold all monies resulting from your sale, disposal, use or application of the Goods on trust for DEUTZ. You must keep those monies in a separate bank account, and you must not mix these monies with your or any other party's monies.
- (d) DEUTZ may trace all monies you receive on its behalf.
- (e) If you insert, install, affix or incorporate the Goods with other goods belonging to any other person (including the Goods) before you pay DEUTZ in cleared funds for all monies that you owe to it, so that DEUTZ' Goods become part of another's goods, you authorize DEUTZ to dismantle and remove its Goods from the other goods, if this is possible without causing irreparable damage to the other person's goods.
- (f) You grant to DEUTZ a lien on all of your goods in DEUTZ' possession. The value secured by that lien is the amount that you owe DEUTZ from time to time.

## 10. ASSIGNMENT

You must not assign any of your rights, title or interest in the contract without the prior written consent of DEUTZ.

## 11. ASSIGNMENT OF DEBT

- (a) If you on sell the Goods, then in consideration of DEUTZ' agreement to supply the Goods and or Services to you on these Terms, DEUTZ' undertaking to reimburse to you any mark up and any other service or delivery fee charged to your customers in respect of the Goods and or Services including any insurance proceeds payable to you in respect of those Goods and or Services, you assign to DEUTZ the whole of the sale price of the Goods, including any insurance proceeds payable to you in respect of those Goods, immediately after you sell the Goods to your customers, or they are damaged or destroyed, whichever the case may be ("the assigned debt").
- (b) DEUTZ will always be entitled to bring an action against you for the price of the Goods and or Services if you do not pay by the due date(s), or for any interest, loss or damage DEUTZ suffers and which is caused by your conduct.
- (c) If any part of the assigned debt is paid to or received by you on or after the day that you sell the Goods to your customers, you must receive and hold those monies on trust for DEUTZ. You must not deal with or treat these monies as part of your own money and must pay it to DEUTZ immediately. DEUTZ shall have the right to trace monies paid to you by your customers.
- (d) You promise DEUTZ that, when requested by DEUTZ and at your expense, you will sign any further documents and do all further acts as DEUTZ may reasonably require to more perfectly assure the assigned debt to DEUTZ.
- (e) Upon DEUTZ' request, you must deliver to DEUTZ possession and control of any documents relating to or proving the assigned debt. DEUTZ jointly with you will be responsible for the control, management and collection of the assigned debt on and from the assignment date.
- (f) Immediately upon effecting each and every sale of the Goods to your customers, you must do all things necessary to inform your customers of the form and substance of this assignment and you must do whatever is necessary to enable DEUTZ to collect the assigned debt from your customers if so requested by DEUTZ.

## 12. CLAIMS AND RETURNS

### (a) Non-compliance with the contract

You must inspect the Goods immediately upon receipt of delivery. You must inspect the Services immediately upon their completion. You must give notice in writing to DEUTZ of anything that suggests that the Goods delivered or Services provided do not comply with the terms of this contract within ten (10) business days of receipt of delivery of the Goods and or the rendering of the Services and within the relevant warranty period, or you must accept and pay for the Goods and or Services.

You may not make a claim in respect of the Goods delivered or Services provided unless at the time of your claim: -

- (i) all of the Goods which are the subject of your claim are intact and still in your possession; or

- (ii) in the case of Services, no other party has conducted or has attempted to conduct any works to those Goods.

You will grant to DEUTZ full and free access to your premises to enable DEUTZ to investigate your claim. An investigation of your claim by DEUTZ does not constitute an admission of liability.

(b) Claims in respect of Goods

Unless DEUTZ has delivered to you the wrong Goods, it is not obliged to accept the return of any Goods.

Goods marked “not returnable” and Goods imported by DEUTZ specifically for your order may not be returned.

You may not return any Goods after the expiration of the warranty period applicable to those Goods.

DEUTZ may, after being given the written notice referred to in sub-clause 12(a)(i), accept the return of Goods. All returns: -

- (i) must occur within 30 days of the date of delivery. Invoice and delivery note numbers must be supplied to DEUTZ at the point of return; and
- (ii) must be “as new” and clearly marked with the engine, serial or part number and must be in the original packaging; and
- (iii) will be inspected and tested by DEUTZ before a credit note is issued. A credit note will not be issued unless DEUTZ is satisfied that the Goods are in the same condition that they were in when they were delivered to you; and
- (iv) will incur a restocking fee calculated at 15% of invoice value on all Goods that DEUTZ agrees you may return to it, unless DEUTZ has delivered to you the wrong Goods in which case the restocking fee will be waived.

(c) Cost of Return Delivery

If DEUTZ has delivered the wrong Goods, you must return them using a carrier of DEUTZ’ choice and DEUTZ will pay for the return delivery costs. Otherwise, you must pay for all costs of and incidental to freight charges incurred when returning any Goods to DEUTZ.

(d) Claims in respect of Services

- (i) You may not make a claim in respect of Services after the expiration of the warranty period applicable to the Goods on which the Services were conducted.
- (ii) Claims in respect of Services provided by DEUTZ must be received by it within 30 days of the date that it provided the service.

(e) DEUTZ will not consider your claim in respect of the Goods or the Services if: -

- (i) you do not give the written notice referred to in sub-clause 12(a)(i); or
- (ii) you have not complied with your obligations in this contract, in particular clause 23; or
- (iii) you do not supply to DEUTZ copies of the relevant invoice(s) at the point that you make your claim; or
- (iv) you do not permit an expert nominated by DEUTZ to inspect and test the Goods, whether Services were conducted on those Goods or not, so that the expert may prepare a report on the Goods, or the nature and quality of the Services performed on those Goods, and provide an opinion as to the cause of your claim; or
- (v) the Goods, or the Goods the subject of the Services, have been worked on by any person other than DEUTZ.

### **13. LIMITATION OF LIABILITY AND INDEMNITY**

- (a) Any representation made by DEUTZ in relation to the Goods and or Services, their use, suitability for your purpose, performance, care, maintenance or application is given in good faith and is believed by DEUTZ to be reliable, but it is provided with a disclaimer for any liability or responsibility on the part of DEUTZ. You acknowledge that DEUTZ may not be aware of your intended end use of the Goods.
- (b) Subject only to the extent permissible at law, DEUTZ shall not be liable to you for, and you expressly release and discharge DEUTZ from any consequential loss, economic loss or any other loss or damage ("loss") that you incur as a direct or indirect result of: -
  - (i) your purchase, sale, use, installation or application of the Goods or the Services; and
  - (ii) any changes DEUTZ makes from time to time to the design or specifications of the Goods or to the prices of the Goods and or Services; and
  - (iii) any delay or cancellation of the contract pursuant to clause 7.
- (c) You accept all risk and responsibility for consequences arising from the improper use of the Goods.
- (d) All representations other than those expressly stated in the contract, whether implied by statute, common law, custom of the trade or otherwise, are to the extent that the law permits, expressly excluded.
- (e) You acknowledge that any liability to you will be limited in the case of defective Goods only to: -
  - (i) replacement by DEUTZ of the Goods; or
  - (ii) the issue of a credit note for the invoice value of the Goods; or
  - (iii) the return of any monies that you have paid in respect of the Goods, provided that those monies are not designated as non-refundable; or

- (iv) the return of the Goods, provided that you first reimburse DEUTZ for the costs of any reconditioning works effected in respect of those Goods; or
- (v) if not yet sold, the return of any Goods you traded in at the time that you placed your relevant order, provided that you first reimburse DEUTZ for the cost of any reconditioning works effected on your trade-in; or
- (vi) if your traded in Goods have been sold, the issue of a credit note for the sale price of your trade-in less the cost of any reconditioning works and other costs of and incidental to the sale; or
- (vii) DEUTZ' assignment to you of the benefit of any warranties from DEUTZ' suppliers,

whichever DEUTZ in its absolute discretion considers appropriate.

- (f) You acknowledge that any liability by DEUTZ to you will be limited in the case of defective Services only to: -
  - (i) the performance by DEUTZ at its expense of all works necessary to complete, correct or perfect the Services; or
  - (ii) the issue of a credit note for the invoice value of the Services; or
  - (iii) the return of any monies that you have paid in respect of the Services, provided that those monies are not designated as non-refundable; or
  - (iv) DEUTZ' assignment to you of the benefit of any warranties from DEUTZ' suppliers,

whichever DEUTZ in its absolute discretion considers appropriate.

- (g) You will indemnify DEUTZ for all and any loss and damage incurred by DEUTZ, whether as a direct or indirect result of your failure to observe these Terms, your failure to discharge your duties under the common law or your failure to discharge your duties under statute or otherwise.
- (h) Trade-in price

You expressly release and discharge DEUTZ from any liability relating to the manner in which or price for which it sells your trade-in.

#### **14. CREATION OF SECURITY INTEREST**

- (a) You grant to DEUTZ a purchase money security interest, as defined in the *Personal Property Securities Act 2009* (PPSA) in the Goods and any proceeds of sale of the Goods, to secure the price of the Goods.
- (b) The costs of registering and removing a financing statement will be paid by DEUTZ.

- (c) You will not do or permit anything to be done that may result in the security interest in the Goods and any proceeds of sale of the Goods granted to DEUTZ ranking in priority behind any other security interest in the Goods and any proceeds of sale of the Goods.
- (d) You will take such further steps, including obtaining and providing consents, supplying information or signing documents which may be required by DEUTZ to further improve its security under the PPSA in respect of the Goods and the proceeds of sale of the Goods and to maintain the effectiveness and priority of that security interest under the PPSA.

## **15. CONTRACTING OUT OF THE PPSA**

- (a) You and any guarantor agree that nothing in sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA shall apply to these Terms or the security created by these Terms. To the extent permitted by the PPSA, you agree to and hereby waive and contract out of Your rights to receive any notice or statement under the following section of the PPSA:
  - (i) 95 (notice of removal of an accession);
  - (ii) 115(7) and 116(2) (contracting out of enforcement provisions) but only to the extent that this section imposes obligations on DEUTZ;
  - (iii) 118 (notice of decision to enforce security interest under land law);
  - (iv) 121(4) (enforcement of liquid assets – notice to grantor);
  - (v) 123 (notice of seizure of collateral);
  - (vi) 130 (notice of disposal of collateral);
  - (vii) 132(3)(d) (statement of account following a disposal showing the amounts paid to other secured parties);
  - (viii) 132(4) (statement of account if there is no disposal);
  - (ix) 135 (notice of retention of collateral); and
  - (x) 157 (notice in relation to registration events).
- (b) Neither You, the guarantor nor DEUTZ will disclose information of the kind mentioned in s275(1) of the PPSA unless required by law.

## **16. NOTICES**

Notices to be given by these Terms will be effectively served if they are posted, faxed or emailed to the relevant party at its last known postal address, fax number or email address.

Notices will be effective from the date or time that they are deemed to be given by the sender and received by the addressee:

- (a) if delivered in person, when delivered to the addressee; or

- (b) if posted, 5 Business Days (or 8, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
- (c) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
- (d) if by email, four hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that one or more of the intended recipients is “out of the office”, or that the email has not been delivered to one or more of the intended recipients, in which case the notice is deemed not to have been delivered,

but if the delivery or receipt is on a day which is not a business day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next business day.

You must notify DEUTZ as soon as reasonably practical of any change to your postal, facsimile or email address.

#### **17. MISTAKE**

Any mistaken fact on any quotation, order, invoice, delivery docket or other document issued by DEUTZ in relation to the contract shall not be binding on DEUTZ and DEUTZ may in its discretion issue such amended document as is required to rectify such mistake. You must comply with DEUTZ' amended document.

#### **18. ACCESS**

You irrevocably grant to DEUTZ authority to enter into, forcibly or otherwise, all of the premises that you own or occupy and permit DEUTZ to inspect or remove the Goods for the purposes of clauses 8(d)(v) and 12.

#### **19. APPLICABLE LAW & JURISDICTION**

This contract is to be interpreted according to the laws of the state of Victoria, Australia.

You agree that the courts in the state of Victoria, Australia will have exclusive jurisdiction to hear and determine all disputes arising from these Terms and this contract and you irrevocably submit to the jurisdiction of the Victorian Courts for adjudication on any dispute with DEUTZ.

#### **20. WAIVER**

The fact that DEUTZ may not enforce strict compliance with these Terms will not be deemed to be a waiver of DEUTZ' rights under these Terms, nor will it prevent DEUTZ from subsequently enforcing these Terms.

**21. WARRANTY PERIODS**

- (a) Unless otherwise stated, the Goods sold will be supported by the terms of the relevant DEUTZ warranties applicable from time to time.
- (b) The warranty periods for: -
  - (i) new engines and new generators for prime power under variable loads is 12 months from the date of delivery and installation;
  - (ii) new generators for limited time running power is 24 months, limited to 1500 hours run time from the date of delivery and installation;
  - (iii) new parts is 12 months from the date of DEUTZ' invoice to you;
  - (iv) rebuilt and reconditioned engines is 24 months from the date of DEUTZ' invoice to you;
  - (v) service exchange engines (i.e. new engines for exchange purposes) is 24 months from the date of delivery and installation.

For the purpose of clause 21(b)(i), "prime power" means the power that a generator can supply in continuous service at a variable load for an unlimited number of hours per year while respecting the maintenance intervals established in the environmental conditions stated by the manufacturer according to ISO8528-1. The average power supplied over time and any applicable overload must be less than the percentages stated by the manufacturer.

For the purpose of clause 21(b)(ii), "limited time running power" means the maximum power that a generator can supply for a limited time respecting the maintenance intervals established in the environmental conditions stated by the manufacturer according to ISO8528-1. The number of hours per year is stated by the manufacturer. Overload is not permitted.

**22. EXCEPTIONS TO WARRANTY**

- (a) DEUTZ' warranties from time to time do not include the costs of: -
  - (i) disassembling or removing the Goods from the vehicle, vessel or plant where the Goods may be installed;
  - (ii) reinstalling the Goods;
  - (iii) travel, accommodation and living of DEUTZ' representatives; or
  - (iv) after hours labour.
- (b) DEUTZ may in its discretion decline to honour its warranties if you breach any of your representations in clause 23 below.

**23. YOUR REPRESENTATIONS**

You represent that: -

- (a) the Goods will be installed and commissioned by DEUTZ or an accredited DEUTZ dealer only;
- (b) the Goods will be cleaned and cared for, serviced and maintained in the manner, process and with the frequency recommended in information distributed to you by DEUTZ;
- (c) the Goods will be used for their proper purpose;
- (d) the Goods will be properly handled and used with the appropriate utilities;
- (e) you will avoid using the Goods on environments of unsuitable or unstable foundations, excessive vibration, flexibility or with chemical, electro-chemical or electrical influences;
- (f) you will not use spare parts in respect of the Goods other than genuine DEUTZ spare parts;
- (g) in the event of a breakdown, you will refrain from repairing or purporting to repair the Goods without the prior written consent of DEUTZ;
- (h) you will give DEUTZ a reasonable time and opportunity within which to conduct any Services in respect of the Goods;
- (i) the Goods the subject of any proposed claim have not continued to be used by you:-
  - (i) after you have become aware that the Goods do not operate normally or are damaged or defective in any way; or
  - (ii) after you have given written notice of the defects to DEUTZ;
- (j) you will not make any warranty claims on account of damages arising out of the normal wear and tear of the Goods; and
- (k) you will report any defects to DEUTZ in accordance with clause 12 hereof and issue DEUTZ with a purchase order in respect of that defect immediately.

**21. SEVERANCE**

If the whole or any part of these Terms is invalid or unenforceable for any reason, the invalid or unenforceable clauses will be severed from these Terms and the validity of the remaining clauses will be preserved.