



# WILSON & PROCTOR

ON - HIGHWAY | MARINE | POWER GENERATION

808 Devonshire Road, Victoria, BC, V9A 4T4 | 250-385-3481 | www.wilpro.ca

## TERMS AND CONDITIONS

These Terms and Conditions, together with the estimate/quote (the "Estimate") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Estimate and/or Invoice and Wilson & Proctor Ltd. (hereinafter referred to as "WP") unless a previous written agreement with respect to the Goods and/or Services (as hereinafter defined) has been entered between the parties, in which event, such previous written agreement shall prevail. In the event of any inconsistency between this Agreement and any purchase order, terms and conditions or other document produced or delivered by Customer, the terms and conditions of this Agreement shall prevail.

**1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** WP shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) ("Goods") and/or perform the maintenance and/or repair ("Services") on the equipment identified in the Quote and/or Invoice ("Equipment"), if applicable, in accordance with the specifications in the Quote and/or Invoice. No additional services or materials are included in this Agreement unless agreed upon by the parties in writing or otherwise, as applicable.

**2. CUSTOMER OBLIGATIONS.** If necessary, Customer shall provide WP safe and free access to Customer's site and arrange for all related services and utilities necessary for WP to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.

**3. INVOICING AND PAYMENT.** Unless otherwise agreed to by the parties in writing and subject to credit approval by WP, payments are due thirty (30) days from the date of the Invoice. If Customer does not have approved credit with WP, as solely determined by WP, payments are due in advance or at the time of supply of the Goods and/or Services. If payment is not received when due, in addition to any rights WP may have at law, WP may charge Customer twenty four (24%) interest annually on late payments, or the maximum amount allowed by law, whichever is lesser. Customer agrees to pay all WP's costs and expenses (including all reasonable attorneys' fees) related to WP's enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by WP.

**4. TAXES; EXEMPTIONS.** If stated on the Quote/Invoice, the applicable General Sales Tax (GST), Provincial Sales Tax (PST), sales, use, or other similar taxes, which WP is required by applicable laws to collect from Customer under this Agreement, are included. Customer must provide a valid exemption number prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.

**5. DELIVERY; TITLE AND RISK OF LOSS.** Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered to the WP facility. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment, which has not yet been reported to WP. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as WP deems appropriate. All shipments are made within normal business hours, Monday through Friday. Title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by WP to freight carrier or to Customer directly.

**6. DELAYS.** Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. WP shall use best efforts to meet estimated dates, but shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond WP's control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, or labour disputes.

### 7. LIMITED WARRANTIES.

**a. New Goods:** New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.

**b. Exchange Components Warranties, ReCon and Other Exchange Components:** WP will administer the warranties of other manufacturers' exchange components or ReCon components which are sold by WP. In the event of defects in such items, only manufacturers' warranties will apply.

**c. General Service Work:** All Services shall be free from defects in workmanship (i) for power generation equipment, for a period of ninety (90) days after completion of Services in the event of a warrantable defect in workmanship of Services supplied under this Agreement ("Warrantable Defect"), WP's obligation shall be solely limited to correcting the Warrantable Defect. WP shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) WP receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) WP has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.

**d. Used Goods:** Used Goods are sold "as is, where is" unless exception is made in writing between WP and Customer. Customer agrees to inspect all used goods before completing the purchase.

**e. THE REMEDIES PROVIDED IN THE LIMITED WARRANTIES AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY WP TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE LIMITED WARRANTIES AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, WP EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE OR NON-INFRINGEMENT AND ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE, SUITABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, DURABILITY, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.**

**8. INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless WP from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by WP related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by WP to its insurance carrier unless WP directs that the defense will be handled by WP's legal counsel at Customer's expense.

**9. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL WP AND/OR THEIR DIRECT OR INDIRECT SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY GENERAL, PECUNIARY, NON-PECUNIARY, INDIRECT, ECONOMIC, SPECIAL, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, LOSS OF OPPORTUNITY, AND/OR DAMAGES CAUSED BY DELAYS OR A FAILURE TO REALIZE EXPECTED SAVINGS) IN ANY WAY RELATED TO OR ARISING FROM WP'S SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. CUSTOMER WAIVES AND RELEASES WP OF AND FROM ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, EXPENSE OR INJURY, INCLUDING DEATH, WHICH CUSTOMER OR ANY THIRD PARTY MAY SUFFER IN ANY WAY RELATED TO OR ARISING FROM SERVICES PERFORMED OR GOODS SUPPLIED BY WP UNDER THIS AGREEMENT DUE TO ANY CAUSE WHATSOEVER, INCLUDING ANY ACT, OMISSION, FAULT, NEGLIGENCE, BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE OWED BY WP. IN NO EVENT SHALL WP'S LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY, THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED, AS APPLICABLE TO ANY CLAIM, THE TOTAL COST OF SERVICES SUPPLIED BY WP UNDER THIS AGREEMENT OR THE TOTAL COST OF THE GOODS SUPPLIED UNDER THIS AGREEMENT.

**10. GOVERNING LAW AND JURISDICTION.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the Province of British Columbia. With respect to any dispute, claim or controversy in any way related to or arising from this Agreement, including any dispute, claim or controversy in any way relating to or arising from the Goods or Services supplied under this Agreement, the parties irrevocably attach to the sole and exclusive jurisdiction of the courts of the Province of British Columbia.

**11. ENUREMENT AND ASSIGNMENT.** This Agreement shall ensure to the benefit of WP and its direct and indirect subsidiaries, affiliates and distributors and their directors, officers and employees. This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of WP.

**12. CANCELLATION.** Orders placed with and accepted by WP may not be cancelled except with WP's prior written consent.

**13. REFUNDS/CREDITS.** Goods ordered and delivered by WP under this Agreement are not returnable unless agreed by WP. WP may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original invoice. Credits for returns will be subject to up to a 20% handling/restocking charge and are limited to eligible items purchased from WP.

**14. INTELLECTUAL PROPERTY.** Any intellectual property rights created by WP in the course of the performance of this Agreement or otherwise shall remain WP's property. Nothing in this Agreement shall be deemed to have given Customer a licence or any other rights to use any of the intellectual property rights of WP.

**15. COMPLIANCE WITH LAWS.** Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, any and all applicable national, provincial, and local anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of WP to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures.

