

Engine & Generator Warrantee Terms & Conditions

1. All Goods and Services are supplied subject to our standard terms of Trade as defined under Earthquip Group Limited Terms of Trade. To the extent they are inconsistent with these terms and conditions these terms and conditions shall prevail.
2. Terms of Agreement. Any Goods or Services supplied to you shall be subject to these terms unless the Earthquip Group Limited agrees in writing to change or modify them. If you accept delivery of Goods from any member of the Earthquip Group or deliver Goods to any member of the Earthquip Group for repairs or servicing, you will be deemed to have accepted these terms, and to the extent inconsistent with anything that may be stated in writing to the contrary in your enquiries or your order these terms and conditions shall prevail. These terms do not apply to any Goods sold to you on hire purchase or leased to you by any member of the Earthquip Group which are governed by their own separate terms and conditions.
3. Price. Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price quoted. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods to you, or before completion of repairs or Services by the Supplier, and you shall be liable to pay the new price quoted for the Goods. Earthquip Group Limited may withdraw any quotation before it receives notice of acceptance or at anytime should the Goods be out of stock, unavailable or for any reason whatsoever, and, in any event, any quotation will lapse without notice 30 days after it is given. GST will be payable by you as an additional amount on all prices and charges. The price for Goods and Services will be either as quoted to you in writing plus GST or, if no written quote is provided, pursuant to Earthquip Group Limited set charges or charges notified to you as applying at the time of payment.
4. Other costs. Freight, delivery and travel charges are additional to the price of the Goods/ Services supplied unless otherwise stated in writing prior to delivery of the Goods or Service all goods services including Reconditioned Engines transmissions and drivelines shall be effective Ex Earthquip Group Limited's Nominated Facility, If No facility is nominated it shall be effective Earthquip Group Limited's Office or Repair Centre.
5. Pickup and delivery of Remanufactured Engines Transmissions or Drivelines and return of Engines Transmissions and drivelines. It is the responsibility of the purchaser to pick up the Remanufactured Goods from the nominated Earthquip Group Facility and deliver back to the nominated facility at the sole cost of the purchaser all engines transmissions or driveline for warrantee work. If in the event the purchaser gives an instruction to Earthquip Group Limited to pick up repair or rework an engine from the purchasers address then the cost thereof will fall to the purchaser or be deducted from the deposit held By Earthquip Group Limited at cost plus a 10% administration fee.
6. Ownership and Security Interest Ownership and security interest ownership of the Goods shall not pass upon delivery but shall remain with Earthquip Group Limited until full payment for all monies owing by you to Earthquip Group Limited of any sort has been made. You grant a security interest in all your present and after acquired property (including the Goods

supplied by Earthquip to you or any collateral owned by you that is in the possession of Earthquip) with the intent that to the extent possible a Purchase Money Security Interest (PMSI) is created in the Goods and to the extent that it is not that a security interest in all your present and after acquired property (including but not limited to those Goods provided to Earthquip) is perfected. You will take all steps to protect and perfect the security interest in the collateral consisting of your present and after acquired property. In addition until all monies owing by you to Earthquip Group Limited have been paid:

- a) You hold the Goods supplied as fiduciary for the Supplier and will deal with them as agent for and on behalf of the Supplier (but will not hold yourself out as agent of the Supplier to any third parties);
 - b) You shall store the Goods separately consistent with the Goods being the Supplier's property, and ensure such Goods are able to be separately identified;
 - c) If you resell the Goods supplied, the proceeds of any resale will belong to the Supplier and you will pay the same into a separate account for which separate records are kept and all claims which you hold against third parties will be handed over to the Supplier;
 - d) You irrevocably give the Supplier and its agents the right to enter your premises to remove any of the Goods supplied and resell them;
 - e) If any of the Goods become part of a product or mass (through or by whatever process) you agree that the security interest continues in such product or mass or in the event they become an accession in that accession and you will ensure that all steps are taken to preserve and perfect the security interest in such product, mass or accession.
7. Warranties. Details of any Manufacturers warranties available, if any, will be provided upon request but are subject to clauses 8 and 9 below. Earthquip Group Limited shall have no liability nor obligation under such warranty provisions and shall be under no obligation to pass on the manufacturers warranties.
8. Except to the extent of written warranties given by the Earthquip Group Limited to you, all warranties and representations in respect of Goods sold or Services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clause 9, the provisions of clause 9 shall prevail. It is acknowledged for the purposes of the Consumer Guarantees Act that
9. The basis of the warrantee is a back to base warrantee where if a warrantee claim is made the purchaser shall be liable for all costs incurred getting the Engine Transmission Driveline good or Service back to the Earthquip Group Limited nominated facility, and the return thereof to the purchasers nominated address given in writing, If no address is given then the Parts Goods Services will be sent to the purchasers address at the time of initial sale. Earthquip Group Limited takes no responsibility whatsoever for Goods Parts or Service damaged in transit by it or any other entity be it supplied by Earthquip Group Limited or the purchasers nominated carrier Subject to clause 10.3, the Supplier's total liability in connection with

defective or damaged Goods supplied by it or in relation to the provision of Services is limited at Earthquip Group Limited's sole option to:

- a) Replacing or repairing the defective or damaged Goods; or
- b) Re-performing the defective Service; or
- c) Refunding the price paid by you for the defective or damaged Goods or provision of Service; or
- d) If Earthquip Group limited did not charge for the defective or damaged Goods or the relevant Service, paying you your recoverable direct loss up to a maximum of \$2,000.

10. Terms of Trade

10.1 Where, in relation to any Goods, the manufacturer's warranty provides a greater warranty entitlement than provided for in this clause 9, Earthquip Group will pass through the benefit of that warranty if and within a reasonable time after it is received from the manufacturer.

10. Exclusion of liability The Earthquip Group nor shall not be liable whether in contract (including under any warranty), tort (including negligence), and equity or otherwise howsoever arising:

- a) Where you have altered or modified the Goods, misapplied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
- b) For loss caused by any factors beyond the Earthquip Group's control;
- c) For loss of revenue, loss of profits, loss of production, loss of use, loss of contract, loss of business or loss of opportunity, whether arising directly or indirectly, or for any indirect or consequential loss of any kind;
- d) in relation to any second hand Goods supplied;
- e) Where the terms of any written warranty have not been complied with or any manufacturer's handbook provided to you has not been complied with;
- f) For any loss except for any loss covered under the warrantee provided by Earthquip Group or to the extent that the law implies a warranty that is unable to be contracted out of by the parties and to the extent a warranty is implied by law that can be contracted out of it is agreed that the parties have agreed to contract out of such warranty.

10.3 Except as set out in clauses 10.1 to 10.3, neither the Supplier nor any other member of the Earthquip Group will be liable to you in contract (including under any warranty), tort (including negligence), equity or otherwise howsoever arising for any loss or damage of any nature under these Terms or in relation to any Goods or Services provided to you.

10.4 Time limit for bringing any claim In the event of a short delivery or errors in dispatch which would be apparent by inspection on delivery, the Supplier will accept no liability unless notified by you in writing within three days of delivery.

10.5 You may not make or pursue any claim against any Earthquip Group member in relation to the provision of any Goods or Services unless you have given the Supplier written notice of the claim (including full particulars of the grounds on which the claim is based) within:

- a) 1 year of the relevant good or Service being supplied; or
- b) If the claim relates to a breach of a written warranty expressed for a defined period, that defined period.

10.6 Return of Parts If permitted under the Supplier's Parts return policy, Goods may be returned to the Supplier. These must be freight paid. Where the Supplier elects to repair defective Goods, the Supplier will use all reasonable endeavours to repair the Goods as soon as possible but will not be liable for any delay in completing the repairs.

10.7 Exclusions from warrantee

- a) In the event that a head gasket leaks the purchaser shall be liable for the re-torque of the head if determined by Earthquip Group Limited that this is necessary. In the event that the head does not seal after this work being done by a competent Engine Repair facility approved by Earthquip group limited the Engine shall be returned to Earthquip Group Limited's nominated repair facility at the customer's expense.
- b) Top Tune and first service is at the Purchasers expense and is not covered by warrantee. This shall be carried out within 10,000 Km or 250 Engine Hours whichever is the greater. This work shall be carried out by a facility nominated by Earthquip Group Limited if the Vehicle / unit are unable to be returned to Earthquip Group Limited's nominated facility. The Customer shall be liable for all labour materials and consumables for this work.
- c) Any part that was part of the core supplied by the purchaser and reused by Earthquip Group Limited is excluded from warrantee
- d) Any and all parts at the sole discretion of the company that has been used outside its design limitations or in the opinion of Earthquip group Limited has been mistreated or maliciously damaged.
- e) What is not covered This limited warrantee does not cover for engines transmissions or driveline,
 - I. Normal wear parts (parts and the items that normally wear out from use) including without limitation spark plugs, glow plugs, bulbs, filters, lubricants, coolant, starter cords ,belts ,blades, adapters or tensioners nor is damage due to normal wear and tear or that have come into contact with any foreign matter.
 - II. Operator negligence or abuse misuse or neglect, alteration, use of unauthorised or incorrectly attached, Improper storage, lack of lubrication or incorrect lubrication or engine failure due to the use of oils that do not meet the manufacturers specifications, pressure cleaning or steam cleaning of the unit engine, salt water, moisture, corrosion, rust, varnish or insulation breakdown however so caused.

- III. Failure to perform regular servicing at the nominated service interval which for Diesel engines and alternators is every 250 operating hours determined by the hour meter or in the event the hour meter has failed or is not attached no longer period than 6 calendar months by Earthquip Group Limited's nominated service provider. A list of which will be provided by Earthquip Group Limited's parts or service department in writing prior to scheduled maintenance being carried out.
- IV. In the event that the engine is being used in road transport the service interval shall be no more than 10,000 km between service intervals by Earthquip Group Limited's nominated service provider. A list of which will be provided by Earthquip Group Limited's parts or service department in writing prior to scheduled maintenance being carried out.
- V. Damage of failure due to incorrect setup, incorrect service or repair by anyone other than the companies authorised service repair agent, In the event there is no agent nominated in writing then the unit engine shall be returned to the companies nominated workshop for service or repair at the customers expense
- VI. In the event that the customer elects to have the warrantee claim or repair conducted at their premise then they shall be liable for all expenses incurred by Earthquip group limited
- VII. Air Fares Air Fares including all transfers paid in advance to the destination of works in Premium Economy Class or if this is not available then the client will be required to upgrade the ticket to business class air transport.
- VIII. Rental Car The Client shall provide a rental car suitable to the company employee for their purpose, this vehicle should be a late model Toyota Corolla of no older than 5 years or equivalent thereof in the event this is not available then the client shall be responsible at their expense to provide an upgraded solution at the sole discretion of the Employee.
- IX. Accommodation. The client shall be responsible for providing 4 Star Accommodation to the satisfaction of the employee and this will be no less than 2km from the closest city to where the work is to be undertaken. In the event that suitable 4 star accommodations are not available then the client shall be responsible for upgrading the employee to 5 star accommodations.
- X. Meals and other personal expenses The Client shall be responsible for providing 3 substantial meals including the employee's beverage of choice per day to the satisfaction of the employee however unless otherwise stated shall be limited to the following
- XI. Breakfast 30.00 Lunch 50.00 Dinner 100.00 All in New Zealand Dollars
- XII. Definition of work and payment thereof The Company shall charge the client the sum of 1000.00 NZD per Day whether or not the employee is working or not working while away which is inclusive of all times from 8am to 4pm

Monday to Friday. No work outside of these times will be undertaken by the company unless otherwise agreed prior to departure

- XIII. In the event the employee must fly on a Saturday, Sunday or public Holiday this will determined as a working day and the client shall be responsible for all costs incurred plus the sum of 1000.00 USD regardless of the length or time of flight.
- XIV. The client shall be required to provide all and any necessary labour outside of the employee that is required to facilitate the works as directed by the employee of the company.
- XV. The employee is there for the purpose of consultation identification of the fault that is required to be remedied however is not responsible for the physical labour required to achieve the works required but will supervise as necessary to have the works achieved.
- XVI. Tooling. The client shall be responsible for providing all tools required to facilitate the work other than specialist tooling that shall be agreed prior to departure
- XVII. Delays. The company shall not be responsible for any delays however so accrued in the repair of the equipment including but not limited to the procurement of parts, Inclement Weather, or any other matter however so arising.
- XVIII. Warrantee work overseas shall be conducted pursuant of our overseas work terms and conditions as published in the company's website.
- XIX. Force of majeure these terms exempts the contracting parties from fulfilling their contractual obligations for causes that could not be anticipated and/or are beyond their control. Including act of God, act of man, act of parliament, and other impersonal events or occurrences. Superior force. Also called irresistible force. Act of war or any other natural disaster.

11. PPSA

11.1 Security You acknowledge and agree that: (a) by assenting to these Terms, you grant a security interest (by virtue of the provisions in clause 5 of these Terms) to the Supplier in all your present and after acquired property, including all Goods previously supplied by the Supplier to you (if any) and all after acquired Goods supplied by the Supplier to you (or for your account); and (b) these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.

11.2 Financing Statement: You undertake to: (a) sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which a member of the Earthquip Group may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register; (b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without the Earthquip Group's prior written consent; (c) give the Earthquip Group not less than 14 days prior written notice of any proposed change in your name

and/or any other change in your details including, but not limited to, changes in your address, facsimile number, trading name or business practice; and (d) agree to take all steps to perfect the security interest or PMSI created by these terms and conditions.

11.3 Waiver and contracting out (a) Unless otherwise agreed to in writing by the Earthquip Group, you waive your right to receive a verification statement in respect of any Earthquip Group Limited Core Exchange Policy financing statement or financing change statement relating to the security interest. (b) To the maximum extent permitted by law, you waive your rights and, with the Earthquip Group's agreement, contract out of your rights under the sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA (c) You agree that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to these Terms and, with the Earthquip Group's agreement, contract out of such sections. (d) You and each member of the Earthquip Group agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the member of the Earthquip Group is not the secured party with priority over all other secured parties in respect of those Goods.

12. General Terms

12.1 Mediation If a dispute arises and the Supplier considers the dispute is one which is suitable for mediation, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators should be agreed upon by the parties, but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of LEADR.

12.2 Cancellation you may not cancel any order for Goods or part of it without the Supplier's written consent. If you do so, in addition to any other rights the Supplier may have, the Supplier may retain any deposit paid. The Supplier shall have the right to cancel any orders for Goods which it has accepted, if due to circumstances beyond the Supplier's control it would be impractical or unreasonable to fill the order, if any information supplied by you is materially incorrect or, if in the Supplier's opinion, a satisfactory servicing or repair cannot be achieved.

12.3 Waiver or variation Waiver or variation of these Terms by any member of the Earthquip Group will only be effective if given in writing by an authorised person. If any member of the Earthquip Group waives any of these Terms the waiver will not affect that member's rights under these Terms at any future time or the rights of any other member of the Earthquip Group at any time.

12.4 Changes to this Terms We may change these terms of trade at any time by changing or removing existing terms or adding new ones. Any change applies from the time it is published on our web site at earthquip.co.nz.

12.5 Governing law These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have exclusive jurisdiction in respect of all matters between you and the Earthquip Group.

12.6 The Privacy Act You and any guarantor (if relevant) authorise each member of the Earthquip Group to collect and hold personal information from any source it considers appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and

product information, for debt collection purposes or for any other related purpose. You further authorise each member of the Earthquip Group to disclose personal information, held by it for the purposes set out above, to each other and to any other parties. You understand that you have a right of access and may request correction of personal information held by the Earthquip Group about you. You consent to the disclosure of all or any personal information to debt collectors or other agencies and for Earthquip Group Limited to disseminate any information to third parties in conjunction with its business activities.

12.7 Consumer Guarantees Act (CGA) If the CGA applies, these terms and conditions shall be read subject to your rights under the CGA, provided that where you are acquiring Goods or Services for business purposes the CGA shall not apply. You acknowledge that the Goods are acquired for business purposes unless you notify the Supplier in writing that the purposes are not commercial purposes.

12.8 Electronic Messages you and any guarantor (if relevant) consent to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from any member of the Earthquip Group from time to time.

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