

# Conditions générales - v4

powerkick

28-09-2019

Powerkick Generator General Terms and Conditions. These terms and conditions apply to all (sales) transactions of Powerkick Generators

## 1. GENERAL

1.1. These terms and conditions apply to and form part of all quotations from Powerkick and all (sales) transactions with Powerkick,

with the express exclusion of the general (purchase) conditions of the Buyer, unless agreed otherwise in writing between Powerkick and the Buyer. These terms and conditions always have priority over the (general) terms and conditions of sale and delivery of the Buyer, subject to prior written confirmation from Powerkick.

1.2. In this Agreement, the following terms have the meanings stated below, unless the context otherwise indicates:

"Business Day" means a day (except Saturdays, Sundays and national holidays) on which banks in the country of Powerkick are normally open for the execution of normal bank transactions;

"Buyer": a person who has accepted a Quotation from Powerkick for the sale of Products, or whose Order of Products has been accepted by Powerkick;

"Conditions": the sales conditions described in this document, including (unless the context otherwise indicates) any special conditions to be agreed in writing between the Buyer and Powerkick;

"Agreement": the agreement of purchase and sale of Products;

"Products": the products to be supplied by Powerkick in accordance with these Terms and Conditions (including partial deliveries or product parts);

"Minimum order": the minimum number of Products per order to be determined by Powerkick at any time;

"Order": a quotation from Powerkick accepted by the Buyer, containing an order to Powerkick to deliver the Products to the Buyer or to prepare the Products at the location of Powerkick or at a location to be agreed upon later, where the Buyer will deliver the Products picks up;

## 2. PRINCIPLES FOR SALE

2.1. Powerkick sells the Products, just as the Purchaser purchases them, in accordance with the present Terms and Conditions, which apply to the Agreement to the exclusion of all other terms and conditions on the basis of which the Purchaser has (or believes to have) accepted or has an Order (or believes) to have done).

2.2. These Conditions can only be legally deviated from if this is in writing between the authorized representatives of Buyer and Powerkick have been agreed.

2.3. The employees and representatives of Powerkick are not authorized to make commitments regarding the Products, except in writing confirmation from Powerkick. By entering into the Agreement, the Buyer acknowledges that it has not based itself on unconfirmed commitments, and also waives any claims in the event that those commitments are not honored.

2.4. In the event that the Buyer follows advice or recommendations from Powerkick or its employees or representatives or on the basis thereof the Buyer does so entirely at its own risk if those opinions or recommendations have not been confirmed in writing by Powerkick. 2.5. Typing errors, administrative errors or other errors or omissions in sales documentation, quotations, price lists, the acceptance of a quotation, Invoices or other documents or data supplied by Powerkick can be corrected without Powerkick being held liable for this.

2.6. Equipment, drawings, models, samples, descriptions, images and the like, as well as any attachments and documents are part of the quotations from Powerkick. The aforementioned items, as well as aids made by Powerkick, remain the property of Powerkick, must be returned to Powerkick at its request and may not be copied and / or made available to third parties without explicit written approval from Powerkick. Powerkick reserves all possible existing intellectual and industrial property rights in this regard.

## 3. ORDERS AND SPECIFICATIONS

3.1. The Buyer is responsible to Powerkick for ensuring that the content of the Order made by the Buyer (including, where applicable, of applicable specifications) is correct and that Powerkick receives all necessary data with regard to the Products in time, so that Powerkick can execute the Agreement in accordance with the provisions therein.

3.2. In the event that there is no prior written acceptance of an Order by Powerkick, for example because the sale takes place directly from the location of Powerkick, the Order is valid at the moment that Powerkick has delivered the ordered Products (in whole or in part) or Powerkick has sent the Purchaser the invoice for the relevant Products upon request.

3.3. The quantity, quality and description of the Products are stated in the quotation from Powerkick (if accepted by the Buyer) then in the Order of the Buyer (if so has been accepted by Powerkick).

3.4. Powerkick reserves the right to make changes to the specifications of the Products whenever necessary to meet the

to comply with applicable safety regulations or other regulations based on laws or regulations, or if - in the event that the Products are supplied in accordance with the specifications of Powerkick - these changes do not materially affect the quality and functioning of the Products.

3.5. Orders accepted by Powerkick cannot be canceled by the Purchaser, unless written permission from Powerkick has been received

which case Buyer must fully indemnify Powerkick against all damages, losses, costs and expenses of Powerkick as a result of that cancellation.

#### 4. PRICE OF THE PRODUCTS

4.1. The price for the Products is the price quoted by Powerkick or if no price is specified (or the quoted price is no longer quoted).

is valid), the price stated in the price list published by Powerkick as valid on the date of acceptance of the Order. All offered prices are only valid for 30 days, unless otherwise stated in the offer or the earlier acceptance by the Buyer, after which period these prices can be changed by Powerkick without notifying the Buyer.

4.2. Powerkick reserves the right to change the price by notifying the Buyer prior to delivery of the Products increase when Powerkick has to incur more costs as a result of changes in the delivery dates, quantities or specifications of the Products required by the Buyer, as a result of delays arising from instructions given by the Buyer, or as a result of the Buyer not supplying sufficient data or directions to Powerkick.

4.3. The price for the Products only includes the standard packaging and transport costs, unless otherwise indicated in writing by Powerkick.

4.4. The price is exclusive of assembly costs, operational costs, import and export duties, stamp duty, clearance costs, VAT and / or other statutory levies, which will be charged separately to the Purchaser insofar as it is due.

#### 5. PAYMENT CONDITIONS

5.1. Taking into account any special conditions agreed in writing between the Buyer and Powerkick, Powerkick is entitled to the price

of the Products at or at any time after delivery of the Products to the Buyer, unless the Products are collected by the Buyer or the Buyer has wrongly not received the Products, in which case Powerkick is entitled at all times to charge the Buyer a price after Powerkick has informed the Buyer that the Products are ready for receipt, or after Powerkick has offered the Products for delivery.

5.2. Buyer must pay the price for the Products (after deduction of any discount to which Buyer is entitled, but without other discounts) at the time of delivery of the Products, even if no delivery has taken place and the ownership of the Products is not on Buyer has been transferred or the Buyer relies on defects. Payment terms apply as a deadline for the application of the Agreement. Proof of payment is only provided on request. Settlement is not permitted.

5.3. If the Buyer has not paid the amount due on the due date, Powerkick will have the full rights and rights vested in it

legal remedies the right to:

- 5.3.1. terminate the Agreement or suspend further deliveries to the Buyer;

- 5.3.2. designate payments made by the Buyer as payments in respect of one or more Products (or of one or more Products that

delivered pursuant to another agreement between the Buyer and Powerkick), such at the discretion of Powerkick (regardless of the payment description stated by the Buyer); as well

- 5.3.3. charge interest on the unpaid amount to the Buyer (both before and after a court decision) against the Euribor rate plus 4 percent per year until the due amount is paid in full (for the calculation of interest, every part of a month counts as a full month).

#### 6. DELIVERY

6.1. Delivery of the Products takes place by Powerkick on working days at a location to be agreed between Powerkick and the Buyer

delivery. The method of transport is determined by Powerkick. Powerkick is not obliged to choose a different mode of transport if obstacles or problems arise with the mode of transport that it chooses. Powerkick is not liable in the event of cancellation of the means of transport.

6.2. The dates specified for the delivery of the Products are only target dates. Powerkick is not liable for late delivery of the Products, regardless of the cause thereof. Delivery time mines do not count as deadlines. The Products can also be delivered by Powerkick before the specified date or target date. The buyer will be notified of this in advance within a reasonable period.

6.3. If the Products are delivered in parts, each delivery is considered a separate agreement and the Buyer is not entitled to the

Terminate the agreement as a whole if Powerkick has failed to comply with one or more partial deliveries in accordance with these Terms and Conditions, or if the Buyer has a claim for one or more partial deliveries.

6.4. If the Products have not been received by the Buyer, or the Buyer does not have sufficient delivery instructions to Powerkick on time

given before the time of delivery (unless this is the result of circumstances that are reasonably outside the control of the Buyer or can be attributed to Powerkick), without prejudice to all other rights and remedies that may accrue to it, Powerkick has the right to:

- 6.4.1. store the Products until they can actually be delivered, as well as Buyer the reasonable costs of storage (including insurance); then yes
- 6.4.2. to sell the Products at the highest possible price at that time and in the event that that price exceeds the price agreed in the Agreement, the excess (after deduction of all storage and selling costs) to be paid to the Buyer, or a possible shortfall with regard to to charge the Buyer of the contract price.

#### 7. RISK AND (EXTENDED) PROPERTY (RESERVATION)

7.1. The risk of the Products is transferred to the Buyer:

- 7.1.1. in case delivery of the Products takes place at the location of Powerkick: at the moment that Powerkick informs the Buyer that the Products are ready to receive; then yes

- 7.1.2. if delivery of the Products does not take place at the location of Powerkick: at the time of delivery, or in the event that the Buyer deems the

Wrongly did not receive Products, the time at which Powerkick offered the Products for delivery.

7.2. The Products delivered to the Buyer now and in the future remain the property of Powerkick until the Buyer has all claims that Powerkick has on the Buyer has paid, for whatever reason.

7.3. Until ownership of the Products has passed to the Buyer, the Buyer holds the Products for and on behalf of Powerkick and serves the Buyer

to keep the Products clearly identifiable as Powerkick property separate from the property of the Buyer and third parties and to store, protect and insure them appropriately. Until that time, the Purchaser has the right to resell or use the Products in the normal course of his business, but the Purchaser must account to Powerkick for the material or immaterial proceeds from the sale or disposal of the Products. , including insurance payments, and the Buyer must keep all these proceeds separate from the property and assets of the Buyer and third parties and, in the event of a material proceeds, to store, protect and insure them appropriately.

7.4. Powerkick is entitled until the moment that the Products have become the property of the Buyer to demand delivery of the Products, as well

if the Buyer does not immediately comply with this request, to enter the location of the Buyer or third parties where the Products are stored and to take them back.

7.5. The Buyer is not permitted to pledge the Products delivered under retention of title or to encumber them as security

for the fulfillment of its obligations. If the Buyer does so, all amounts owed by the Buyer to Powerkick are immediately due and payable (without prejudice to all other rights and remedies accruing to Powerkick).

#### 8. WARRANTIES AND LIABILITY

8.1. With due observance of the provisions below, Powerkick guarantees that the Products meet the specifications at the time of delivery.

Powerkick guarantees that the Products are free from defects in material or performance for 12 months after delivery, unless a different guarantee has been issued by the manufacturer of a Product / Products. In that case, this (factory) warranty will prevail over the Powerkick warranty referred to in this article.

8.2. Powerkick provides the aforementioned guarantee under the following conditions:

- 8.2.1. Powerkick is not liable for defects in the Products resulting from a drawing, design or other specification that is due to

Buyer has been supplied;

- 8.2.2. Powerkick is not liable for defects arising from the fact that the Products do not conform to the instructions of Powerkick or are stored in an unsuitable or humid location, or for defects resulting from normal wear and tear, intentional damage, negligence, abnormal working conditions, non-compliance with the (oral or written) instructions. n of Powerkick, incorrect use of oil and gasoline, or modification or repair of the Products without approval from Powerkick;

- 8.2.3. Powerkick cannot be held liable on the basis of this guarantee (or on the basis of another guarantee or provision) when the price

for the Products have not been paid in full on the relevant expiry date.

8.3. With due observance of the express provisions in these Terms and Conditions, all implied guarantees and other tacit provisions

arising from written or unwritten law as far as possible to the extent permitted by law. BUYER IS DETERMINED IN PARTICULAR OF THE PROVISIONS OF THIS ARTICLE 8.3.

8.4. Unless otherwise specified in writing, complaints must be made about defective quality or condition of the Products or about non-compliance

meet the specifications to be reported to Powerkick by the Buyer within 30 days of the date of delivery (irrespective of whether the delivery has been refused by the Buyer or not), or within 15 days of the date of delivery to the Buyer of the Buyer in the event of defect or non-conformity has not become visible during a reasonable inspection, depending on which date is earlier. If the delivery is not refused and the Buyer has not complained accordingly to Powerkick, the Buyer may not refuse the Products, Powerkick is not liable for such defects or non-conformity and the

Buyer must pay the price as if the Products had been delivered in accordance with the Agreement. Complaints about delivered, used Products will not be processed and Powerkick is in no way responsible for these Products, unless agreed in writing.

8.5. Under penalty of forfeiture of rights, the Buyer must, in deviation from the provisions of Article 8.4 of these Terms and Conditions, submit complaints about the goods delivered

To report products in number, size, weight, packaging and / or damage to Powerkick in writing within 5 Working Days after the moment of transfer of risk as referred to in Article 7.1.1 or 7.1.2 of these Terms and Conditions.

8.6. If a valid complaint has been submitted to Powerkick in accordance with these Terms and Conditions regarding the defective quality or condition of the Products or the non-compliance with the specifications, Powerkick may replace the Products (or the relevant part) free of charge or the price of the Products (or a proportional part thereof) to the Buyer, all this at the sole discretion of Powerkick, but Powerkick is furthermore not liable towards the Buyer.

8.7. Except in the event of injury or death as a result of negligence on the part of Powerkick, Powerkick vis-à-vis the Buyer is not based on commitments,

tacit guarantees or provisions, obligations based on unwritten law or explicitly defined in these Terms and Conditions for consequential damage (including loss of profit, etc.), costs, expenses and other indirect claims for damages of any kind (regardless of whether the damage is the result of negligence) of Powerkick, its employees or representatives or any other cause) arising from or related to the delivery of the Products or the use or resale thereof by the Buyer, unless explicitly stated otherwise in these Terms and Conditions.

8.8. In the event of non-compliance or late fulfillment of one or more obligations of Powerkick in connection with the Products, Powerkick is liable to

The buyer is not liable and Powerkick is not deemed to be culpably in breach of the Agreement if the non-performance or late performance is the result of a natural disaster, riots, strikes, exclusion, trade disputes or labor unrest, an accident, disruptions in machinery or equipment, fire, flood, difficulties in recruiting workers, obtaining material or arranging transport, or as a result of other circumstances that are reasonably beyond Powerkick's control.

8.9. Regardless of the above, Powerkick is never liable for indirect damage suffered by the Buyer, including but not limited to

special or consequential damage, or for damage in any way whatsoever arising from an omission or an attributable failure to comply with these Terms and Conditions or from the Products delivered to the Buyer. The total liability of Powerkick for a claim for damages (from agreement, tort or otherwise, for clarity including liability for the Products) is at all times limited to the purchase price of the Products.

## 9. INSOLVENTION BUYER

9.1. Without prejudice to all other rights vested in it, Powerkick has the right to terminate the Agreement or further deliveries

to suspend the Purchaser on the basis of the Agreement, without liability towards the Purchaser, as well as when the Products delivered but not yet paid, the right to demand immediate payment, irrespective of any previously made, different agreements or agreements, in case:

- 9.1.1. Buyer concludes a voluntary agreement with his creditors, the Buyer is granted a deferment of payment, is declared bankrupt (as a natural or legal person) or (as a legal person) is dissolved (except for a merger or reorganization); then yes

- 9.1.2. Goods or assets of the Buyer are extracted by the holder of a security right, or in respect of goods or Buyer's assets are appointed; then yes

- 9.1.3. Buyer ceases or threatens to cease its business activities; then yes

- 9.1.4. Powerkick reasonably expects that an event as referred to above will occur with regard to the Buyer and this to the Buyer

communicates.

## 10. INSURANCE

10.1. The buyer must take out adequate insurance for its own account and keep it insured against liability (including general, product and employer liability as well as against consequential damage).

## 11. OTHER PROVISIONS

11.1. All notifications between parties under these Terms must be made in writing to the registered address or the the head office of the other party or at any other time by the other party in accordance with the provisions of this article.

11.2. If Powerkick waives its rights in the event of an attributable shortcoming in the performance of the Agreement on the part of the Buyer,

this does not mean that Powerkick thereby waives its rights in the event that the relevant provision or another provision is subsequently (again) infringed.

11.3. If a provision in these Terms and Conditions is deemed by a competent authority to be wholly or partially invalid or unenforceable, let

this does not affect the validity of the other provisions in these Terms and Conditions and the remaining part of that provision.

11.4. The law of the country of Powerkick applies to the Agreement. All disputes between parties must be settled

exclusively

submitted to the competent court in the place where Powerkick has its registered office, unless the Buyer and Powerkick agree that the dispute must be settled through arbitration. The applicability of the Vienna Sales Convention is expressly excluded