

DEPOSIT AGREEMENT

between

PALMTREE POWER (PROPRIETARY) LIMITED

and

THE PARTY IDENTIFIED IN ANNEXURE A



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FORM



DEPOSIT AGREEMENT

between

PALMTREE POWER (PROPRIETARY) LIMITED
(hereinafter referred to as the "seller")

and

THE PARTY IDENTIFIED IN ANNEXURE A
(hereinafter referred to as the "depositor")

1 INTERPRETATION

In this agreement -

- 1.1 clause headings are for convenience only and shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention -
 - 1.2.1 an expression which denotes -
 - 1.2.1.1 any gender includes the other genders;
 - 1.2.1.2 a natural person includes an artificial person and vice versa;
 - 1.2.1.3 the singular includes the plural and vice versa;
 - 1.2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -
 - 1.2.2.1 "the/this agreement" – this document together with all of its annexures;



- 1.2.2.2 "business day" – any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.2.2.3 "depositor" - the party identified in annexure A;
- 1.2.2.4 "parties" – the seller and the depositor;
- 1.2.2.5 "products" – the wind turbines manufactured by the seller and which are more fully described in annexure B;
- 1.2.2.6 "purchase agreement" – the seller's standard purchase agreement in respect of the products from time to time;
- 1.2.2.7 "quote" – the quote issued to the depositor by the seller in respect of one or more products, a copy of which is attached as annexure B;
- 1.2.2.8 "seller" – Palmtree Power (Proprietary) Limited, a private company duly incorporated in accordance with the company laws of the Republic of South Africa, with registration number 2007/009652/07;
- 1.2.2.9 "signature date" – date of signature of this agreement by the signatory which signs it last;
- 1.2.2.10 "Werksmans" – Werksmans Incorporated trading as Werksmans Attorneys, of 155 5th Street, Sandton, being the seller's attorneys;
- 1.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this agreement;
- 1.4 where any term is defined within a particular clause other than this 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement;
- 1.5 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on



the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day;

- 1.6 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.7 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.8 The terms of this agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this agreement.

2 INTRODUCTION

It is recorded that -

- 2.1 the seller carries on the business, inter alia, of manufacturing and distributing the products;
- 2.2 the depositor has expressed an interest in purchasing the products;
- 2.3 the seller requires a deposit to be held in Werksmans' trust account (pending the execution of a purchase agreement in respect of the products) in accordance with the terms and conditions of this agreement; and
- 2.4 the depositor acknowledges that –
 - 2.4.1 this agreement does not constitute a purchase agreement in relation to the products and does not establish any rights or obligations of either party with respect thereto;
 - 2.4.2 the deposit is merely a show of good faith on the part of the depositor to secure the depositor's name in the seller's production line queue and any



sale of the products to the depositor shall be subject to the execution of a separate purchase agreement between the parties;

- 2.4.3 the seller shall have the right to offer the products for sale to any third party but any such party that concludes a similar deposit agreement, after the depositor has concluded this agreement and paid the deposit referred to in 3, shall be ranked behind the depositor in respect of deliveries of products.

3 DEPOSIT

- 3.1 By no later than 2 business days after the signature date, the depositor shall deposit an amount calculated (at the spot rate quoted by Nedbank Limited on the date of payment) as the South African Rand equivalent of US\$15,000.00 per product ("the deposit") into the Werksmans trust account described in 3.2 below and shall send proof of such deposit to Werksmans (by fax (011) 535-8600) and by e-mail (dwalker@werksmans.com) and to the seller (by fax 0866-037-022 and by e-mail (j.wilkes@venture-sa.co.za)).

- 3.2 Werksmans' trust account banking details are as follows –

Account holder:	Werksmans Attorneys Trust Account
Bank:	The Standard Bank of South Africa Limited
Branch:	Sandton
Branch Code:	01 92 05
Account no.:	02 268 7882
Swift no.:	SBZAZAJJ

- 3.3 The depositor acknowledges that the deposit in respect of each product is non-refundable and shall be held in trust by Werksmans (in the name of the seller with a reference to the depositor) until the termination of this agreement, at which time the deposit in respect of each product and any interest thereon (less the reasonable administration fees of Werksmans, calculated per annexure C) will either –

- 3.3.1 subject to 4.3 below, be forfeited to the seller; or

- 3.3.2 if a purchase agreement is duly executed by the parties, then Werksmans shall be directed by the seller to pay the deposit to the seller and such



deposit shall constitute an advance payment in respect of the purchase price payable by the depositor in terms of such purchase agreement.

4 TERMINATION

4.1 This agreement shall commence on the signature date and shall continue thereafter until the deposit is forfeited to the seller in terms of 3.3.1 or the execution of a definitive purchase agreement and the implementation of 3.3.2, whichever is the earlier.

4.2 The seller shall be entitled to terminate this agreement at any time after the signature date by giving written notice to the depositor to that effect if the depositor fails to conclude a purchase agreement for the products within one (1) month after the signature date for any reason other than –

4.2.1 a price increase in the selling price per product of greater than 10% between the date of the quote and the date on which the seller provides the depositor with a purchase agreement for signature; and/or

4.2.2 if the purchase agreement proposed by the seller provides for a projected delivery date which is more than six (6) months later than the projected delivery date specified by the seller in the quote.

4.3 If terminated by either party for any reason other than those mentioned in 4.1 or 4.2 above, the deposit and any interest thereon shall be forfeited to the seller.

5 BREACH

Should either the seller or the depositor commit a breach of any material provision of this agreement and fail to remedy such breach within seven (7) days after receiving written notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled, without prejudice to its other rights in law, to cancel this agreement or to claim immediate specific performance of all of the defaulting parties' obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the aggrieved parties' right to claim damages.



- 7.2 Any party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) and to vary its facsimile domicilium to any other facsimile number.
- 7.3 Any notice given or payment made by a party to the other ("addressee") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery.
- 7.4 Any notice given by a party to another which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.
- 7.5 This 7 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 7.
- 7.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

8 GENERAL

- 8.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. No party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.
- 8.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.



8.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

8.4 Without prejudice to any other provision of this agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this agreement.

8.5 The signature by any party of a counterpart of this agreement shall be as effective as if that party had signed the same document as the other party.

9 COSTS

Each party shall bear and pay the costs incurred by it in respect of the negotiation, drafting, preparation and execution of this agreement.

Signed at _____ on _____ 2008
for Palmtree Power (Proprietary) Limited

who warrants that he is duly
authorised hereto

Signed at _____ on _____ 2008
for The party identified in annexure A

who warrants that he is duly
authorised hereto



ANNEXURE A – DEPOSITOR DETAILS

Full Names	
Registration Number	
Physical Address	
Postal address	
Telephone Number	
Telefax Number	
Contact person	
Number of Products Required	
Ex works Selling Price (VAT exclusive)	
Expected Delivery Schedules (per product)	
Total deposit payable based on number of products	



ANNEXURE B – QUOTE



ANNEXURE C – WERKSMANS' CORPORATE SAVER TRUST ACCOUNT AUTHORITY FORM