

GENERATOR RENTAL SERVICES LIMITED - TERMS AND CONDITIONS

These terms and conditions apply to all contracts for the hire of equipment and the supply of services by Generator Rental Services Limited ("Owner") to any Customer, as well as to all situations where equipment is or comes into the possession of a customer or their servants or agents, regardless of the means by which that occurs.

1. Interpretation

- 1.1 CGA means the Consumer Guarantees Act 1993.
- 1.2 **Commencement Date** means the date when the Customer takes possession of the Equipment.
- 1.3 **Customer** refers to the person, firm, organisation, partnership, corporation, or other entity (including trust) hiring the Equipment from the Owner.
- 1.4 **Equipment** means any kind of generator equipment including, but not limited to cleaning, cooling and/or heating, entertainment, air and air compression, pumping of fluid and management of the same, flooring, earthmoving, floor care and cleaning, generation and power distribution, ground equipment and shoring, lighting, materials handling, landscaping and gardening, pumps, plumbing, safety equipment, site accommodation, traffic management, signage, vehicles including trucks, vans and trailers, waste management, and without limitation, includes any assets listed under the Schedule.
- 1.5 **Hire Agreement** means these terms and conditions and any ancillary schedule, form, or document.
- 1.6 **Hire Form** annexed to these terms and conditions, recording the key details in respect of the Equipment and Hire Period by the Customer.
- 1.7 **Hire Period** means the period commencing from when the Equipment leaves the Owner's store on the Commencement Date as noted on the Hire Form and ends at the time stated by the Customer on the Hire Form.
- 1.8 **Owner** means Generator Rental Services Limited.

2. Delivery and Removal of Equipment

- 2.1 The Customer authorises the Owner to bring its vehicle onto its property to deliver the Equipment and to collect the same at the end of the Hire Period or at any other time permitted by this agreement.
- 2.2 The Owner shall have no liability whatsoever to the Customer nor third parties for any damage that may be caused by the Owner during delivery or recovery, whether to driveways, or underground services or otherwise howsoever and whether or not the Owner was negligent.
- 2.3 Requests for collection must be made by telephone when the Customer has finished with the Equipment.
- 2.4 All cartage charges are to be paid by the Customer.
- 2.5 The Customer remains fully responsible for the care and custody of the Equipment until it has been collected by the Owner.
- 2.6 The Equipment must be back in the Owner's store after the Hire Period has lapsed, and by the time stipulated on the Hire Form, whether by delivery by the Customer or following collection by the Owner at the Customer's request.

3. Hiring Charges

- 3.1 In the absence of any special arrangements to the contrary Equipment is hired on a daily rate, Saturdays, Sundays, and holidays included for the Hire Period and not according to the actual usage of the Equipment. For the sake of clarity:
 - (a) A day is 12 hours, and one week is 7 days.
 - (b) Rates are charged at standby rates plus hours used or 12 hour running plus extra hours or 24-hour rates

4. Payment

- 4.1 Unless the Customer operates a credit account with the Owner, the Customer must pay a bond before the start of the hire period which exceeds the estimated total charges. The amount of the bond that exceeds the total charges will be refunded to the Customer on return of the Equipment in good order and condition. Should total charges exceed the amount of the bond the Customer shall pay the balance on return of the Equipment.
- 4.2 The Customer accepts these terms and conditions and agrees to pay any costs of collection and all legal fees incurred by the Owner in the event of legal action becoming necessary to enforce any aspect of these terms and conditions.
- 4.3 Where the Customer operates a credit account with the Owner payment must be made in full by the twentieth day of the month after the date of invoice. Where payment is not made by the due date, the Owner reserves the right to charge default interest at the rate of 5% above the Owner's bank overdraft rate from time to time, whether or not that bank account is in overdraft.
- 4.4 Any disputes regarding any invoiced amount must be raised with the Owner within 14 days of the date of the invoice. Disputes raised after that period shall be deemed not valid. The Customer must pay the invoice in full pending resolution of any valid dispute and a credit will be given by the Owner if the dispute is upheld.
- 4.5 The Owner may terminate the Hire Agreement at any time without reason by giving the Customer 48 hours written notice by email sent to the email address specified on the Hire Form. The Owner shall not be liable to the Customer for any loss arising from such termination.

5. Care of Equipment and Breakdowns

- 5.1 The Customer shall take proper care of the Equipment, and risk of damage to the Equipment (other than fair wear and tear occurring in the ordinary use and operation of the Equipment) lies with the Customer during the Hire Period, and any further or extended period under which the Equipment is in the possession or under the control of the Customer.
- 5.2 In the event of the Equipment being damaged, the Customer shall pay to the Owner the cost of making good said damage. In the event of the Equipment being lost or stolen while on hire to the Customer, the Customer shall pay the Owner the replacement value of that Equipment.
- 5.3 The Customer warrants that it is competent and qualified to use the Equipment in the way for which it is designed.
- 5.4 Breakdown resulting from misuse shall not in any circumstances be accepted as a reason for shortening the period of hire or reducing the charges payable.
- 5.5 It is the Customer's responsibility to satisfy itself that the Equipment is suitable for the work intended and that it is used in a way that complies with all statutory requirements.
- 5.6 The Equipment does not purport to be new or equal to new, but all Equipment hired out by the Owner will be in good condition and fit for normal use.
- 5.7 Notwithstanding any other provision of these terms the Owner shall not be liable for any loss, expense or liability suffered or incurred by the Customer as a result of the breakdown of or inability to use the Equipment howsoever caused, including as a result of brownouts, power surges, or intermittent or fluctuating supply of electricity, gas, water, light, steam, air, heating, cooling or telecommunications services.
- 5.8 In the event of breakdown, the Customer must immediately notify the Owner by telephone. If repair is impracticable and if replacement Equipment is not available, the Owner may terminate the hire agreement and will not have any liability whatsoever to the Customer for such termination or any consequences of breakdown.

6. Injury or Damage to Customer or Third Persons or Property

- 6.1 The Owner shall not have any liability to the Customer for loss or damage suffered by the Customer as a result of the Customer's use of the Equipment, failure of the Equipment.
- 6.2 The Customer indemnifies the Owner against any claim by any third party in respect of any loss, injury or liability arising from the hire or from the use of the Equipment hired by the Customer.

7. Insurance

- 7.1 The Customer may elect at its own cost to insure itself, its property, third parties and their property against all risks arising from the presence or operation of the Equipment. The Customer must insure the Equipment against loss, damage or theft of the Equipment to its full replacement value and must provide evidence of such insurance to the Owner on request.
- 7.2 In the event that evidence of insurance is not provided that is satisfactory to the Owner at its sole discretion, the Owner may:
 - (a) Insure the Equipment cost equal to 10% of the hire charge of the Equipment for the Hire Period, and in such case, the Customer shall remain liable for any excess or deductible applying in the case of any claim being made under that policy; or
 - (b) Cancel the hire agreement

7.3 The Customer must upon request provide the Owner with all assistance and information required to enable the Owner to claim under its insurance policies.

7.4 If Equipment is stolen, or involved in any incident resulting in damage, immediate notice in writing must be given to the Owner.

8. Access

- 8.1 The Customer shall forthwith on request by the Owner advise the Owner of the whereabouts of the Equipment and allow the Owner a reasonable opportunity for access to inspect and test the Equipment. For such purposes the Customer irrevocably gives permission for access to the Owner its servants and agents to enter any premises where the Equipment is to be found and to take possession of the same.

9. Privacy

- 9.1 Where the Customer is a natural person, the Customer authorises the Owner to obtain information about the Customer's creditworthiness and authorises third parties to disclose such information to the Owner. The Customer has rights of access to and correction of personal information as provided by the Privacy Act 1993.

10. Limitation and Exclusion of Liability

- 10.1 Notwithstanding any other provision of this agreement, the Owner shall not be liable to the Customer, under the law of contract, tort, equity or otherwise, including any breach of statutory duty or warranty, for any damages arising out of or in connection with this agreement that are indirect (meaning not arising in the ordinary course as a direct or indirect, natural or probable consequence of the act or omission complained of), regardless of the cause of such damages or whether the Customer had been

- advised of the possibility of such damage. For the avoidance of doubt, indirect loss includes loss of profits, loss of savings, loss of revenues, loss of opportunity or loss of data.
- 10.2** Nothing in these terms excludes, limits, restricts, or is intended to derogate from any right or remedy which the Customer may have pursuant to the CGA if you are a consumer as defined in the CGA who requests the Equipment for personal use. However, the guarantees contained in the CGA are expressly excluded where you acquire the Equipment from the Owner for commercial purposes or acquired in trade.
- 10.3** Notwithstanding any of the provisions of the Hire Agreement, the Owner's liability shall be limited to the amount of the hire paid or payable by the Customer.
- 10.4** The Owner makes no warranties or representations as to the state, quality or fitness of the Equipment for any purpose and no such warranty shall be implied by the description of the Equipment on the Hire form. All implied warranties and conditions as to the state, quality or fitness of the Equipment for any purpose are hereby excluded.
- 11. Security Interest**
- 11.1** These Terms constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (the **PPSA**), which provides for a continuing security interest in Owner's favour in respect of any Equipment provided by the Owner to the Customer, and all Customer's present and future rights in relation to such Equipment, to secure the payment by the Customer to the Owner of all amounts owing from time to time.
- 11.2** The Customer will on request promptly do all things (including signing any documents) and provide all information necessary to enable Owner to perfect and maintain the perfection of the security interest under clause 12.1 (including by registration of a financing statement).
- 11.3** The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms; to waive all Customer's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and to waive Customer's rights to receive a copy of the verification statement confirming registration of a financing statement.
- 11.4** The Customer acknowledges that title to hired Equipment remains with the Owner at all times and any Equipment purchased from the Owner remains the property of the Owner until payment is made in full by the Customer.
- 11.5** The Customer must not lease, hire, or give possession ('sub-hire') or create any security interest in the Equipment to any other party, or individual, without first obtaining the express written consent of the Owner.
- 12. Indemnity**
- 12.1** The Customer irrevocably indemnifies the Owner against any claims or liability suffered or incurred as a result of or in connection with:
- (a) any breach of the Hire Agreement by the Customer or its agent.
 - (b) any breach of law or non-compliance with any registration, licence permit, authorisation, regulation or by law relating to the use of the Equipment.
 - (c) any gross negligence, fraud or wilful misconduct by the Customer or its agent with respect to the Equipment.
 - (d) the Owner exercising any of its rights under this Hire Agreement; or
 - (e) the use, operation, control, condition, maintenance, repair or storage of the Equipment.
- 12.2** If the Owner terminates the Hire Agreement, the Customer indemnifies the Owner against, and shall pay to the Owner upon demand, any cost (including legal costs), claims, damages, expenses, or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover any Equipment hired, or money payable, by the Customer.
- 13. Dispute Resolution**
- 13.1** Notice of Dispute: A party claiming that a dispute has arisen in connection with or arising out of this Agreement or its performance must give 14 days' written notice to the other party specifying the nature of the dispute.
- 13.2** Persons to be Nominated: The party or parties representing each side of the dispute will each nominate one person, and the two nominated persons will have authority to settle the dispute and will endeavour in good faith to resolve the dispute promptly and, in any event within 10 business days of their nomination.
- 13.3** Good Faith Discussion First: If any dispute arises between any of the parties in connection with or arising out of this Agreement or its performance, no party may commence any proceedings relating to the unless, in the first instance, each parties Chief Executive Officer and/or Director has first attempted with this clause to resolve a dispute in good faith.
- 13.4** Mediation: If the parties are unable to resolve a dispute as per clause 14.1, the parties must enter into mediation.
- 13.5** Costs: The parties will bear their own costs in the mediation and will equally share the mediator's costs.
- 13.6** Arbitration invoked: If the dispute is not resolved by mediation within a further 20 business days after the appointment of a mediator any party may then invoke the provisions of clause 14.7.
- 13.7** Arbitration: If this clause is invoked, the parties agree that:
- (a) Sole Arbitrator: such dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996.
 - (b) Arbitration in New Zealand: the arbitration will take place in New Zealand.
 - (c) Enforcement of Award: they irrevocably accept and submit to the enforcement of any award, from the time at which the award becomes final in New Zealand, in the court of any country in which any party or any parent or subsidiary company or other related company of any party owns any assets; and
 - (d) Finality of Award: the award in the arbitration will be final and binding on the parties.
- 14. Warranty of Authority**
- 14.1** The person signing this document for and on behalf of the Customer (if not personally the Customer) warrants that they have the authority of the Customer to make this contract on the Customer's behalf and that they are empowered by the Customer to bind the Customer to this agreement.
- 15. No Assignment of Hire Agreement**
- 15.1** This agreement is personal to the Customer and cannot be assigned. The Customer shall not sublet the Equipment to any other person.
- 16. Force Majeure**
- 16.1** Where a Specified Event occurs which either prevents the Owner from commencing, continuing with, or any obligation to supply the Equipment or any personnel under any Hire Agreement, or makes it impracticable for the Owner to do so, then the Owner may by notice in writing to the Customer advise of the Specified Event and either:
- (a) Cancel that Hire Agreement; or
 - (b) Suspend performance of its obligations under that Hire Agreement for the Specified Period; or
 - (c) Amend performance of its obligations to such of them as the Owner, acting reasonably, remains at its discretion able to perform during the Specified Period.
- 16.2** In the event of cancellation, neither party shall have the right of any claim against the other, provided that the Customer must still pay for any hire charges under a Hire Agreement for any Hire Period that had begun prior to the commencement of the Specified Event.
- 16.3** In the event of suspension or amendment:
- (a) The parties shall negotiate in good faith any required changes to the Hire Period or Equipment (including any stipulated timeframes) and in the event, they cannot so agree, such disagreement shall be deemed to be a dispute and the provisions of clause 13 shall apply; and
 - (b) The Customer shall have no obligation to make any payment to the Owner under any affected Hire Agreement other than:
 - (i) In respect of any invoice issued for a Hire Period beginning prior to the start of the Specified Period; and
 - (ii) In respect of any invoice for Equipment actually provided to the Customer under any affected Hire Agreement during the Specified Period.
- 16.4** In this clause the following terms have the meanings given to them below:
- (a) "**Covid-19 Period**" means any period in which either:
 - (i) The Owner cannot comply with its obligations under any Hire Agreement in their specified location; or
 - (ii) The provision of services of a similar kind and nature to those provided by the Owner under this Agreement could not be performed in any geographical location where the Owner has an office or branch because of any regulation or order made under the COVID-19 Public Health Response Act 2020, or under any similar or superseding law.
 - (b) "**Specified Event**" means any act of war; acts of Government; monetary or economic developments; epidemic, pandemic, or other medical emergency; natural disaster; accident; fire; lockout, strike or other labour dispute; riot or civil commotion; or any other factor or factors beyond the reasonable control of the Owner (whether similar or not); and includes a Covid-19 Period.
 - (c) "**Specified Period**" means the period commencing on the date notice is given by the Owner under clause 16.1, and ending on the later of:
 - (i) The date the Specified Event ends; and
 - (ii) The date by which the Owner is, acting reasonably, practically and logistically able to re-commence complying with its obligations under this Agreement.
- 17. Governing Law**
- 17.1** Any hire agreement entered into by the Owner and the Customer shall be governed by and interpreted according to the laws of New Zealand and each party irrevocably submits itself to the exclusive jurisdiction of the New Zealand courts in respect of any proceedings arising out of or relating to this Agreement or any Hire Agreement governed by it.

