

## MARINE / RAIL TERMS AND CONDITIONS

**NOTE:** These General Terms for Trade (**Terms**) apply to and will be incorporated into all contracts relating to the supply of Equipment and/or Services by Generator Rental Services Limited (**Owner**) irrespective of how such Equipment and/or Services are ordered by Hirer, except where Owner has expressly agreed otherwise in writing. No verbal agreement between Hirer and Owner or any employee, servant or agent of Owner will be binding on Owner.

Owner may amend these Terms from time to time by providing written notice to Hirer.

### 1. DEFINITIONS

**Charges** means the amount payable by Hirer to Owner, including the rental charges and/or service fees together with any fuel consumption costs, delivery/removal charges, duties or imposts, charges for parts and labour, excess use charges, charges for damage to or loss of the Equipment, cleaning charges, default interest charges for late payment and all other charges, costs and expenses that are specified as being payable by Hirer.

**Hirer** means any person or entity hiring or otherwise acquiring Equipment and/or Services from Owner.

**Event of Default** occurs if Hirer:

- (a) becomes, or is deemed to be, insolvent or bankrupt;
- (b) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors (other than Owner);
- (c) goes into receivership or has a receiver, administrator, trustee or manager (including a statutory manager) appointed in respect of Hirer and/or all or any of Hirer's property;
- (d) has:
  - (i) breached a provision of these Terms that is incapable of remedy; or
  - (ii) failed to remedy any breach of these Terms that is capable of remedy within 3 days of notice having been given.

**Equipment** means the Equipment to be supplied by Owner, as agreed in writing between Hirer and Owner.

**First Class Condition** means in good condition for equipment of its year of manufacture with all maintenance carried out in accordance with the manufacturer's specifications and no unrepaired accident damage, fair wear and tear excepted.

**Guarantor** means any person named in an account application as a guarantor of Hirer's obligations under these Terms.

**Services** means the delivery, installation, servicing, repair, support and/or other services to be provided by Owner, as agreed in writing between Hirer and Owner.

### 2. HIRE PERIOD AND RISK

- 2.1 Unless otherwise agreed by the parties in writing, the hire period (**Hire Period**) begins at the time the Equipment leaves Owner's premises and runs until the Equipment is returned to Owner's premises, whether through delivery by the Hirer or after collection by the Owner.
- 2.2 Risk in the Equipment will pass to and remain with Hirer for the duration of the Hire Period.
- 2.3 Without prejudice to any of Owner's rights or remedies under these Terms, at law or otherwise, Owner may terminate the Hire Period:
  - (a) by giving Hirer 7 days' prior written notice; or
  - (b) immediately by written notice to Hirer, if an Event of Default occurs.
- 2.4 Upon termination of the Hire Period, Hirer will return the Equipment and pay any Charges to Owner calculated to the expiry of the Hire Period. Owner may retain all or part of any bond paid by Hirer to cover any Charges owing and/or as compensation for the early termination of the Hire Period.
- 2.5 Upon the return or recovery of the Equipment, Owner will inspect the Equipment to determine whether it is, in Owner's opinion, suitably clean and in First Class Condition. If, in Owner's opinion, the Equipment requires cleaning or is not in First Class Condition, Hirer will pay to Owner upon demand, the costs to clean the Equipment and for all repairs or other work required to restore the Equipment to that condition.

### 3. TITLE AND ACCESSORIES

- 3.1 Owner is, the legal and beneficial owner of the Equipment. Hirer's interest in the Equipment is as lessee only with no other right or interest being conferred.
- 3.2 All operating systems (including any intellectual property), accessories, products, replacement parts or other items which are supplied with, installed in, or affixed to, the Equipment or that Owner or Hirer (whether or not with Owner's consent) installs in, or affixes to, the Equipment, will be deemed to be part of the Equipment and will belong to Owner.
- 3.3 All operating systems, accessories, products, replacement parts or other items supplied with, installed in, or affixed to the Equipment which are removed by Hirer will remain the property of Owner no matter where they are located.

### 4. CHARGES AND PAYMENT

- 4.1 Hirer will pay Owner the Charges in full within seven days of the date invoiced or otherwise on the dates and in the instalments specified and/or required by Owner from time to time.
- 4.2 Owner may require Hirer to pay a bond in respect of any Equipment.
- 4.3 Hirer's obligations to pay Charges will continue despite any mechanical defect in or breakdown of, theft of, or accident or damage to the Equipment.
- 4.4 Hirer is not entitled to a refund or reduced Charges if Hirer chooses to return the Equipment to Owner before the end of an agreed Hire Period.
- 4.5 Hirer will on demand pay all Owner's costs and expenses (including legal costs and expenses incurred on a solicitor/own client basis) incurred by Owner in the enforcement of its rights and remedies under these Terms and at law.
- 4.6 Without prejudice to any other rights it may have, Owner may, if any Charges are not paid in full on or before the due date, charge interest at Owner's then current bank's commercial overdraft rate plus 5% per annum on any amount outstanding, calculated on a daily basis from the due date for payment until the date full payment is received by Owner.

- 4.7 All Charges exclude goods and services tax (**GST**). Hirer must pay the amount of any GST charged on any taxable supply.

### 5. DELIVERY AND REMOVAL

- 5.1 Owner will make available the Equipment at its premises for Hirer to collect or will deliver the Equipment to Hirer at the delivery address. Owner may deliver and install the Equipment by instalments.
- 5.2 Notwithstanding clause 5.1 and to the maximum extent permitted by law, Hirer acknowledges that:
  - (a) unless otherwise agreed in writing, any delivery date specified is approximate only and time is not of the essence; and
  - (b) under no circumstances will Owner be liable for any costs incurred by Hirer as a result of any delay in delivery.
- 5.3 On expiry and/or termination of the Hire Period, Hirer will ensure that all Equipment is packed up and in First Class Condition and either:
  - (a) deliver the Equipment to the place specified by Owner; or
  - (b) arrange for the Equipment to be removed by Owner and provide such reasonable assistance as may be required for the Equipment to be accessed, loaded and removed.
- 5.4 All delivery and removal charges will be paid by Hirer on demand.
- 5.5 Hirer grants to Owner (and its authorised agents), or will procure that Owner is granted, an irrevocable right and authority to enter, and for Owner to bring Owner's (or its authorised agent's) vehicle at any time onto, the place where the Equipment is to be used or is located to inspect the Equipment, provide Services and/or remove the Equipment for the provision of Services or on the expiry or termination of the Hire Period or if Owner believes the Equipment is at risk. Owner will not be liable for costs, damages or expenses or any other losses whatsoever incurred by Hirer or a third party as a result of this action, even if Owner of its agent were negligent.

### 6. CARE AND OPERATION OF EQUIPMENT

- 6.1 During the Hire Period, Hirer will:
  - (a) immediately notify Owner by telephone and email of any defect, damage or fault in or to, or loss or theft of the Equipment;
  - (b) at its own cost, ensure that the Equipment is kept in First Class Condition and is properly maintained and operated;
  - (c) ensure that all servicing and repair of the Equipment is provided by Owner or by such other person or company as may be approved by Owner, in either case at Hirer's cost;
  - (d) at all times comply with all policies and procedures from time to time provided by Owner, including all terms of any manual, and with all reasonable directions of Owner;
  - (e) ensure the Equipment is only used by suitably qualified personnel for the purposes for which it is designed and manufactured and in accordance with Owner's instructions;
  - (f) not remove, deface or obscure identification, ownership or registration marks on the Equipment; and
  - (g) not allow any person to use the Equipment in a way that breaches the law or the terms of any insurance or these Terms or otherwise in a dangerous, reckless or negligent manner.
- 6.2 Hirer will be solely responsible for and will pay, on demand all cost to repair any damage to the Equipment occurring during the Hire Period.

### 7. IMPROVEMENTS

- 7.1 Any improvements or upgrades to the Equipment (**Improvement**) must be approved by Owner in writing.
- 7.2 When an Improvement is requested by Hirer, Owner will inform Hirer of the feasibility and specific details of the Improvement and any additional Charges or impacts, including upon the operation and performance of the Equipment and/or the Services and the timeframe to implement such Improvement.
- 7.3 Any Improvement and associated costs shall be to Hirer's account and the parties acknowledge and agree that the Charges may be amended to reflect any Improvement.

### 8. INSURANCE

- 8.1 Without in any way limiting Hirer's obligations under these Terms, Hirer will at its own cost keep the Equipment insured for its full replacement value with a reputable insurer for loss, theft, damage or destruction occurring during the Hire Period. Owner shall be noted in the insurance as an interested party.
- 8.2 Owner will be entitled to receive all monies payable under Hirer's insurance. If such monies are received by Hirer, Hirer will hold the same on trust for Owner and will forthwith transfer the full amount to Owner. Hirer will be responsible for payment of the policy excess.
- 8.3 Any insurance proceeds received by Owner may be applied towards the repair or replacement of the Equipment. If the cost of such repair or replacement exceeds the amount of the insurance proceeds, Hirer will pay the balance of the costs to Owner upon demand.
- 8.4 Notwithstanding anything in this clause 8, Hirer agrees that it leases the Equipment at its own risk and indemnifies Owner against any and all loss (including any economic or consequential loss) arising from the loss of or damage to the Equipment.

### 9. SECURITY INTEREST

- 9.1 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 favor in respect of any Equipment provided by Owner to Hirer, and all Hirer's present and future rights in relation to such Equipment, to secure the payment by Hirer to Owner of all amounts owing from time to time.
- 9.2 Hirer 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 9.1 (including by registration of a financing statement).
- 9.3 Hirer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms; to waive all Hirer's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and to waive Hirer's rights to receive a copy of the verification statement confirming registration of a financing statement.

**10. WARRANTIES**

10.1 Hirer warrants to Owner that:

- (a) it has inspected the Equipment and made its own assessment as to the performance, condition and safety of the Equipment and has satisfied itself that the Equipment is fit and suitable for Hirer's intended use;
- (b) it has not relied, nor will it rely, on any representation, statement or warranty made by Owner about the performance, condition or safety of the Equipment or the fitness or suitability of the Equipment for Hirer's intended use;
- (c) it is able to enter into, and comply with, Hirer's obligations under these Terms;
- (d) all information provided by Hirer to Owner is true, accurate and not misleading in any way; and
- (e) it is in trade for the purposes of the Consumer Guarantees Act 1993.

10.2 All warranties, conditions, descriptions or representations made by Owner about the Equipment are expressly excluded to the maximum extent permitted by law.

10.3 In particular but without limiting the generality of clause 10.2, Hirer agrees that the Equipment is being supplied by Owner and hired by Hirer in trade and that, pursuant to section 43 of the Consumer Guarantees Act 1993, the provisions of that Act are expressly excluded and it is fair and reasonable to do so.

10.4 If the Equipment is used, either on its own or in conjunction with any other equipment, on any ship, Hirer warrants that it will take all possible steps to ensure that the Equipment does not become subject to any maritime lien. Hirer shall indemnify Owner against all losses of whatever nature arising from Hirer's failure to ensure that no maritime lien is created over the Equipment.

**11. LIABILITY**

11.1 Subject to clause 11.2 and notwithstanding any other provision of these Terms, to the maximum extent permitted by law, Owner's liability arising out of, or in connection with, these Terms in respect of any claim (or series of related claims) whether under contract, tort (for negligence or otherwise) or on any other basis, is limited to the lesser of:

- (a) cost to repair or replace any faulty Equipment; or
- (b) the total Charges paid by Hirer to Owner under these Terms; or
- (c) the aggregate of three month's rental charge instalments payable by Hirer to Owner under these Terms.

11.2 Owner is not liable for any indirect or consequential losses or expenses suffered by Hirer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, to the maximum extent permitted by law.

11.3 Notwithstanding any other provision of these terms the Owner shall not be liable for any loss, expense or liability suffered or incurred by the Hirer 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. Neither shall the Owner be liable for Owner's failure to supply equipment or delay in the supply of equipment.

11.4 For the avoidance of doubt, clause 11.1 applies to clauses 11.2 and 11.3.

**12. INDEMNITY**

12.1 To the maximum extent permitted by law, Hirer will indemnify and keep indemnified Owner and its employees, agents and contractors, and hold all of them harmless from and against:

- (a) all loss, costs, claims, damages, expenses (including indirect, economic and consequential loss and all legal costs and expenses incurred on a solicitor/own client basis) incurred by Owner, or any of its employees, agents or contractors; and

- (b) all actions, suits, claims, demands and any other proceedings whatsoever made or brought against Owner or any of its employees, agents or contractors; caused by any breach of these Terms, or by any representation made, or any, act or omission, or negligence committed, by Hirer or by any of Hirer's employees, agents, contractors or Hirers, including (without limitation) any act, omission or negligence arising out of the use of the Equipment.
- (c) Any costs or expenses incurred by Owner in retrieving Equipment from any place at which it may be located, whether in New Zealand or otherwise.

**13. GUARANTEE**

13.1 In consideration of Owner agreeing to provide the Equipment and/or Services to Hirer, at the Guarantor's request, each Guarantor jointly and severally:

- (a) guarantees the due, punctual and full performance by Hirer of its obligations and warranties under these Terms and at law; and
- (b) indemnifies Owner from and against any action, suit, claim demand, cost or expense (including all legal costs and expenses incurred on a solicitor/own client basis) arising directly or indirectly as a result of any act or omission by Hirer in breach of any obligation or warranty under these terms or any law, or as a result of any act, omission, or negligence committed, by Hirer or by any of Hirer's employees, agents, contractors or Hirers.

13.2 The liability of each Guarantor under this Agreement is a principal obligation of each Guarantor and shall not be relieved or in any way affected in a manner prejudicial to Owner by any granting of time, waiver or forbearance to sue by Owner. The guarantee provided by each Guarantor is a continuing guarantee and shall remain in full force and effect until Owner executes a written release.

**14. GENERAL**

14.1 Owner may subcontract, assign or transfer all or any part of its rights or obligations under these Terms, without Hirer's consent. Hirer may not subcontract, assign or transfer all or any part of its rights or obligations under these Terms without Owner's prior written consent. If Hirer is a company, any change in the legal or beneficial control of Hirer will be deemed an assignment for the purposes of this clause and will require Owner's prior written consent.

14.2 To the maximum extent permitted by law, these Terms constitute the entire understanding and agreement of the parties relating to the matters contemplated by these Terms and supersede and extinguish all prior agreements, arrangements, understandings or representations between the parties relating to such matters. Hirer acknowledges and agrees that the Equipment is being supplied by Owner and hired by Hirer in trade and that, pursuant to section 5D of the Fair Trading Act 1986, sections 9, 12(a) and 13 of that Act are expressly excluded and it is fair and reasonable to do so.

14.3 No failure, neglect, forbearance or delay on the part of Owner to exercise or enforce any right or remedy available to it under these Terms will be construed as a waiver of such right or remedy. No single or partial exercise of any right or remedy under these Terms will preclude the exercise or any other right or remedy or preclude the further exercise of any right or remedy.

14.4 Hirer will execute and do all documents, deeds, acts and things as may reasonably be required by Owner to carry out and give effect to the terms and intentions of these Terms.

14.5 Hirer warrants it has had the opportunity to obtain independent legal advice about its obligations under these Terms.

14.6 Hirer's obligations under clauses 2.4, 3, 4, 9, 10, 11 and 12 and Guarantor's obligations under clause 13 will survive the expiry or termination of the Hire Period and/or these Terms.

14.7 These Terms are governed by the laws of New Zealand and each party submits to the exclusive jurisdiction of the Courts of New Zealand.