



RENTAL TERMS & CONDITIONS

1. TERMINOLOGY

In these conditions:

- 1.1 The "Owner" is Total Rentals Pty Ltd. as Trustee for the ANP Unit Trust trading as Total Generators
- 1.2 The "Customer" is the person, firm or corporation renting Equipment from the Owner.
- 1.3 The "Equipment" means all plant, equipment, vehicles and machinery, including tools, accessories and parts supplied to the customer.
- 1.4 "Insurer" meaning a person, firm or corporation insuring the Equipment and any authorised officer or employee.

2. RENTAL TERM

- 2.1 The rental rate has been structured upon a standard 12 hours working period unless a quoted Standby Rental applies. If the Equipment is used outside of this standard, then the rental rate will be quoted and adjusted accordingly.
- 2.2 Subject to clause 2.1, the term of the rental commences on the date on which the Equipment leaves the Owners depot and will terminate on the date the equipment returns to the Owner's depot or as otherwise agreed.
- 2.3 The minimum rental period is one day.
- 2.4 Any Customer failing to return the Equipment to the Owner's depot within the period of rental quoted/ordered may incur additional charges.

3. RETURN OF EQUIPMENT

If the Customer does not return the equipment, the Customer must pay to the Owner on demand the replacement cost of the equipment and all rental charges along with ancillary costs, until the replacement cost is paid.

4. LOADING & UNLOADING EQUIPMENT

The Customer shall at its cost unload the equipment upon delivery & load the equipment for return to the Owner.

5. SERVICE OF EQUIPMENT

- 5.1 Subject to clauses 5.2 to 5.6, the Owner will at its cost service & repair the equipment.
- 5.2 If the Equipment requires repairs:
 - 5.2.1 For minor faults, rectification will be effected at the Customers site if possible, and
 - 5.2.2 For major breakdowns, the Owner will replace the Equipment if possible.
- 5.3 The Customer must:
 - 5.3.1 give written notice to the Owner immediately after the Equipment has operated for 250 hrs past the date of the immediately preceding service or the commencement date of the rental term which ever is the later; and
 - 5.3.2 Fax a copy of the 'Daily Record Sheet' for the Equipment to the Owner each Monday morning; and
 - 5.3.3 Seek prior written approval from the Owner before moving any Equipment to a different site.
- 5.4 The Owner will give written notice to the Customer, that it will service the Equipment within 1 week of the notice.
- 5.5 If the Customer does not comply with clauses 5.3.1 & 5.3.2 or the Owner is unable to access the Equipment to carry out the service during normal business hours within the period set out in clause 5.4, then the Customer must pay to the Owner on demand:
 - 5.5.1 Compensation for any wear, tear and damage to the Equipment as well as the costs of repairs to the Equipment caused by the failure to service.
 - 5.5.2 Overtime costs incurred by the Owner or its authorised service agents and the costs of the next service.
- 5.6 If the Customer does not comply with clause 5.3.3, and the Owner's service mechanic attends the site only to find the Equipment has been moved to another site, then the Customer must pay the costs of the Owner for the service call on demand.

6. ACKNOWLEDGEMENT BY OWNER

The Owner shall:

- 6.1 Make the Equipment available to the Customer at the Owner's premises, or if so required, deliver the Equipment to a site nominated by the Customer providing the Customer has an established credit rating with the Owner.
- 6.2 The Owner shall not be liable to the Customer or the Customer's servants or agents for any damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from representations, warranties, terms and conditions, expressed or implied (except in so far as statutory conditions and representations, warranties cannot be excluded under the Trade Practices Act or any other relevant legislation), use, maintenance, transport, operation of the Equipment or otherwise and whether resulting from the negligence of the Owner, its servants, agents or otherwise.
- 6.3 The owner shall not be obligated to consider any claim for a credit against any invoice, unless such claim is lodged within 7 days of the date shown on the Invoice.

7. ACKNOWLEDGEMENT BY CUSTOMER

The Customer shall:

- 7.1 Determine the condition and suitability of the Equipment for the purpose required.
- 7.2 Use the Equipment in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
- 7.3 Ensure that a suitably certified operator operates the Equipment.
- 7.4 Complete daily service checks on belts, tyres and all fluid levels & sign log book. Top up fluids only with approved materials.
- 7.5 At its own expense, clean, fuel, lubricate and maintain the Equipment in good condition (reasonable wear and tear excepted unless caused by negligence or misuse on the part of or attributable to the Customer) except for pre-arranged major servicing, which will be carried out by the Owner during normal working hours.
- 7.6 Accept full responsibility for flat and or damaged tyres.
- 7.7 Comply with any acts, regulations, ordinances, and bylaws enacted by any government or semi government authority including occupational health and safety legislation.
- 7.8 Permit access to the Equipment without notice for the purpose of inspection.
- 7.9 Clean the Equipment upon completion of the rental period or accept a cleaning fee by the Owner for any cleaning required as a result of the rental operating environment conditions.
- 7.10 Indemnify and keep indemnified and save harmless the Owner and the Owner's servants and agents from all damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from the use, maintenance, transport, operation of the Equipment or otherwise and whether resulting from negligence of the Owner, its servants or agents or otherwise.
- 7.11 Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the rental period however arising, whether from negligence of the Customer or Owner or otherwise.
- 7.12 Not be entitled to a lien over the Equipment, nor without the Owner's prior written consent part with possession of the Equipment or assign the benefit of the Agreement, nor remove the Equipment or allow it to be moved from the agreed rental site.
- 7.13 Not alter, make any additions to deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- 7.14 Subject to clause 12, pay the full replacement or reinstatement cost (whichever is applicable) for any loss, theft of damage to the Owner's Equipment.
- 7.15 Accept that waiver charges are automatically added to the Owner's rental charges, unless the Owner receives from the Customer written advice prior to the delivery of the Equipment together with proof of acceptable insurance cover held.
- 7.16 Pay to the Owner all rental charges and other costs.
- 7.17 Pay to the Owner all costs/commissions, fees and other expenses including the Owner's legal fees associated with any default by the customer under the terms and conditions of the customer's credit account with the owner, including without limitation, the collection of any outstanding moneys owed by the customer to the owner.
- 7.18 Pay to the Owner interest at the rate of 1.5% per month on any charges due by the customer to the owner that remain unpaid over 30 days.

8. IDENTIFICATION & INSTRUCTION MARKS

The Owner may affix or cause to be affixed on the Equipment or any part thereof, such plates or marks as the Owner may think fit.

RENTALS TERMS & CONDITIONS continued

9. TERMINATION ON DEFAULT

- 9.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of rental specified, the Owner may terminate the Rental:
- 9.1.1 If the rent is not paid 7 days after the date appointed for payment (whether or not formally demanded) or
- 9.1.2 without notice, if the Customer shall commit any breach of these terms & conditions or have a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
- 9.2 Upon termination of the Rental as aforesaid, the Owner shall be entitled to take possession of the Equipment and for this purpose the Customer irrevocably appoints the Owner its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Customer, upon which the Equipment is then situated, and agrees to indemnify the Owner in respect of any claims, damages or expenses arising out of any action taken under this condition.

10. WARRANTIES EXCLUDED

Any warranty, condition, description or representation whether express or implied, as to the state, quality or fitness of the Equipment for the purpose for which the same is let on rental is excluded. The Owner shall not be responsible or liable to the Customer, whether on the ground of breach of a contractual duty or on the ground of negligence, for any loss or damage, directly or indirectly suffered or sustained by the Customer and arising from defects in or malfunctions, breakdown or failure or performance of the Equipment or otherwise and the Customer exonerates and releases the Owner from all claims and demands in respect thereof.

11. RENT

The rental charges are exclusive of:

- 11.1 Government charges including but not limited to taxes, levies, GST, duties and excise payable in respect of the Rental. These will be charged as additional on all rental transactions.
- 11.2 Damage Waiver charges, lifting and transport charges, fuel and oils & an Environmental Levy for each item of equipment.
- 11.3 Costs not covered by the quotation but incurred by the Owner caused by changes, errors or omissions in the specification provided by the Customer.

12. WAIVER

Where waiver charges may have been charged to the Customer, the Owner agrees upon prompt submission of a written police report 'in the case of theft' or a written report by the Customer 'in the case of damage', to waive its right to claim for loss or damage to the Equipment caused by fire, storm, collision, accident, theft or burglary provided:

- 12.1 Adequate precautions have been taken to safeguard the Equipment, and
- 12.2 Such waiving of rights is subject to payment by the Customer of an excess of:
- 12.2.1 In the event of loss or theft of the Equipment, \$500 per item or 10% of the replacement cost of the Equipment (whichever is the greater), and
- 12.2.2 In the event of damage to the Equipment, \$500 per item or 10% of the cost of the repairs to the Equipment (whichever is the greater).
- 12.3 Expressly excluded from the above waiver is loss or damage as defined below:
- 12.3.1 Damage due to misuse, abuse or overloading of the Equipment;
- 12.3.2 Loss or damage in contravention of these terms & conditions;
- 12.3.3 Loss or damage from use in violation of any statutory laws and regulations;
- 12.3.4 Loss or damage to accessories, hoses, electric cable and cable covers, distribution boards, electric tools, lights and other similar accessories;
- 12.3.5 Loss or damage caused to tyres, tubes and batteries;
- 12.3.6 Loss or damage relating to lack of lubrication or other routine servicing of the Equipment by Customer;
- 12.3.7 Loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridge or vessels of any kind;
- 12.3.8 Loss or damage to equipment caused by overloading or exceeding rated capacity, including use of underrated leads;
- 12.3.9 Loss or damage caused by mysterious disappearance or wrongful conversion of the Equipment;
- 12.3.10 loss or damage during transport, except where transported by the Owner;
- 12.3.11 loss or damage to items on which the waiver premium is not charged;
- 12.3.12 loss or damage caused by theft or burglary at a site location where the Equipment is not placed in a secured building or enclosure with adequate security provided or where a report prepared by any insurer of the Equipment states that the customer contributed or failed to provide adequately secured premises at the site location.

13. FORCE MAJEURE

- 13.1 The Customer will not be entitled to give notice to the Owner to terminate the rental or to terminate an order if the Owner does not perform any of its obligations due to Force Majeure.
- 13.2 Force Majeure includes but is not limited to a breakdown of plant & machinery, war or terrorist attack, strike or other industrial dispute, government interference, transport delay, act of god including flood, an accident, a non delivery or shortage of supplies and any other cause not under the control of the Owner.

14. NOTICES

- 14.1 Any notice, demand or other similar communication to the Owner or the Customer made under these terms & conditions must be in writing signed by a duly authorised officer and delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender.
- 14.2 Such notices will be taken to have been given or made:
- 14.2.1 In the case of delivery by post, three days after the day of posting.
- 14.2.2 in the case of delivery by hand, when delivered and
- 14.2.3 in the case of delivery by fax, on receipt by the sender of a transmission control report

15. GENERAL

- 15.1 To the extent that Conditions 6.2 and 7.10 hereof are inconsistent with any other clauses in the quotation, these rental terms and conditions are to override such conditions and are to be of paramount force.
- 15.2 In these terms & conditions, unless repugnant to the context, words importing the singular number shall include the plural and words importing the plural only shall include the singular number and words importing the masculine gender shall include the feminine and, if applicable, a corporation.
- 15.3 These terms & conditions are governed by and interpreted in accordance with the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction and any appeal courts from them.
- 15.4 The Owner may assign all of its rights, benefits and interests under these terms & conditions to any other entity. The assignment will not affect the rights, claims or interests of the customer or the owner, which are present prior to the date of assignment.
- 15.5 The Customer must not assign, transfer or novate its rights and obligations under these terms & conditions without the prior written consent of the Owner.
- 15.6 If any provisions of these terms & conditions are, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.
- 15.7 Either failure to exercise, nor any delay in exercising, any right power or remedy by the Owner operates as a waiver. A single or partial exercise by the Owner of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the owner unless in writing. The Owners rights, powers and remedies under these terms & conditions are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by any other agreement or instrument.
- 15.8 These terms & conditions apply to and bind the Customer's employees, contractors, agents and licensees.
- 15.9 Where the Owner's consent or approval is required that consent or approval may be withheld or granted in the sole and absolute discretion of the Owner.
- 15.10 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of those terms & conditions.

16. GENERAL CONDITIONS OF SALE

- 16.01 Where the owners quotation and the Customers Order applies to an 'Equipment Sale or Equipment Maintenance Contract', then the Total Generators 'Terms & Conditions of Sale' shall replace these 'Rental Terms & Conditions'.



TERMS & CONDITIONS OF SALE

1. DEFINITIONS

In these terms & conditions:

- 1.1 The "Seller" is Total Rentals Pty Ltd as Trustee for the ANP Unit Trust ABN 79 047 904 519 trading as **Total Generators**
- 1.2 The "Customer" is the person, firm or corporation purchasing the Goods or the Service from the Seller
- 1.3 The "Goods" means all plant, equipment and machinery, including tools, accessories and parts supplied to the Customer.
- 1.4 The "Service(s)" means all maintenance work carried out either by casual order or contract, work associated with the installation or removal of goods supplied or traded-in or equipment testing and reporting.

2. VALIDITY:

- 2.1 The offer to supply Goods or a Service is open for consideration and is valid for thirty (30) days from the date of quotation unless otherwise stated. It is not binding on the Seller until accepted in writing by a duly authorised officer of the Seller.
- 2.2 Unless otherwise stated in writing, prices are subject to any variations in currency exchange rates, ocean freight rates or marine insurance charges occurring to the time of delivery. Any other variations that may be applicable, such as labour and materials, etc, will be nominated in writing as part of the quotation.
- 2.3 The prices given are based on current pricing schedules and/or exchange rates as may be stated in the quotation.
- 2.4 Prices are subject to the Customer's order being for the whole amount mentioned in the quotation.

3. GOVERNMENT TAXES & CHARGES:

Goods and Services Tax (GST) has not been included in the price/s unless stated otherwise and would be applicable additional on the Invoice.

4. DELIVERY:

- 4.1 The Seller gives no warranty in respect to delivery times.
- 4.2 No liability will be accepted by the Seller in respect of any claims through or in connection with the delivery of Goods or Services.
- 4.3 If at any time before delivery by reason of any cause whatsoever beyond the control of the Seller, the Seller is prevented from making delivery and/or commissioning at the time stipulated, then the Seller shall be entitled to determine the contract and the Customer shall not in consequence have any claim for damages but without prejudice to the rights of the Seller to recover all sums owing to it in respect of deliveries made or services performed prior to the date of such determination or to recover all payments made or expenses incurred by the Seller in connection with the contract.
- 4.4 The Seller will not accept any liability for delays due to strikes, shipping, transport, or due to any other cause beyond the control of the Seller, except as provided for in these terms & conditions.

5. CONTRACT LIABILITY

- 5.1 After the Seller has accepted an order for supply, such order shall not be subject to cancellation by the Customer without the written consent of the Seller.
- 5.2 The liability of the Seller for any alleged breach of contract shall be limited to these terms and conditions and the Seller shall not be responsible for any special or consequential damages suffered by the Customer.
- 5.3 In cases where the Seller accepts responsibility for delivery to the customer's site by rail, ship, aircraft or other transport method, the Customer will be responsible for the immediate examination of goods upon arrival at the destination and in the event of any goods arriving in a damaged condition, the Customer must report the matter in writing to the Seller within three (3) days following their arrival. The Seller will not entertain any claim for goods damaged in transit unless the Customer makes a claim within the specified time.
- 5.4 Unless specified to the contrary in the contract, the responsibility of the Seller ceases upon delivery of the goods to the ordered destination.
- 5.5 Should the Seller carry out work of any kind on the Customer's site or any other site nominated by the Customer, the Seller shall not be liable for any loss or damage occasioned by the Customer arising from any cause connected in any way with such work.

6. UNLOADING GOODS

The Customer shall at its cost unload the plant/equipment/machinery detailed in the order upon delivery at the ordered destination unless it is specified separately in the order.

7. RETURN OF GOODS

The Seller may in its sole discretion accept the return of Goods from the Customer subject to a 10% handling charge and the cost of return transport being born by the Customer. Damaged or used Goods will not be accepted.

8. TERMS OF PAYMENT:

The Customer shall:

- 8.1 Unless otherwise stated in writing, pay for all Plant, Equipment and Machinery Goods, net cash ex works prior to delivery or collection.
- 8.2 Pay to the Seller for all parts, tools, accessories and Services net cash ex works prior to delivery or collection as the case maybe, except for where approved credit facilities are offered to the Customer.
- 8.2 Pay to the Seller all costs/commissions, fees and other expenses including the Seller's legal fees associated with any default by the Customer under the terms and conditions of the customer's credit account with the Seller, including without limitation, the collection of any outstanding monies owed by the Customer to the Seller.
- 8.3 Pay to the Seller interest at the rate of 1.5% per month on any charges due by the Customer to the Seller that remain unpaid over 30 days.

9. TRADE-IN GOODS:

If trade-in goods are applicable under the contract, the value of such trade-in is valid for 30 days from date of appraisal providing the condition of the trade-in when received is similar to that when originally appraised. The Seller reserves the right to re-assess the amount offered for the trade-in in the event of these conditions not being met.

10. ITEM PERFORMANCE:

Recommendations concerning performance, dimensional information, operating costs and applications contained in an "Offer to supply" or any other communication prepared by the Seller or their Suppliers, are intended as guidelines only. Owing to the many variables peculiar to specific applications, neither the Seller nor their Suppliers, expressly or implicitly warrant that plant/equipment/machinery will perform as estimated.

TERMS & CONDITIONS OF SALE continued

11. TITLE:

11.1 As long as the Customer owes the Seller any part of the purchase price of the goods supplied at any time, the Seller shall retain the legal title to all goods supplied and not yet used or resold in the ordinary course of business. When such goods are used the legal title remains vested in the Seller.

11.2 Such goods, whether used or unused may only be on-sold by the Customer for market value in the ordinary course of business as bailee for the Seller and the proceeds of such sale, shall be received by the Customer as agents of the Seller on their account and shall be kept separate and on Trust from other monies of the Customer.

11.3 If goods are in the possession of a Customer to which the title has not passed,

- a) the Customer is under an obligation to retain them in a good and merchantable condition and to ensure that they are stored separately and otherwise kept the same in such manner, which clearly identifies them as the goods of the Seller.
- b) the Seller shall have a right of inspection and a right of repossession of such goods as well as a right of entry on to the Customer's premises to give effect to these rights.
- c) the Customer must on request disclose to the Seller all information regarding the goods and any sub sale by the Customer.

11.4 Notwithstanding that the title to such goods has not yet passed to the Customer, the party who has possession of such goods shall accept all liability for damages to the goods as well as any liability to person or property.

12. INSURANCE:

12.1 Upon delivery of goods, the risk of any loss or damage to or any deterioration in the goods from whatever causes arising shall pass to the Customer and be born by him immediately upon delivery into the hands of the Customer, his agent or employee.

12.2 Until delivery of title, the Seller shall insure the goods and shall receive any and all benefit from any proceeds paid pursuant to a claim upon such insurance.

13. WARRANTY:

The equipment offered to the Customer is subject to the relevant Manufactures Warranty Statements, which are available upon request and issued with all new equipment sold by the Seller. This warranty is given to the exclusion of all other warranties, conditions or liabilities expressed or implied by statute, common law or otherwise, but is given subject to the Trade Practises Act 1974 (as amended 1985). Equipment options, attachments and auxiliary equipment not manufactured by the manufacturer of the principal equipment offered may be covered by the individual manufacturer's warranties but are not covered in any way separately by the Seller.

14. NOTICES

Any notices, demand or similar communication to the Seller or to the Customer made under these terms and conditions must be in writing signed by a duly authorised officer and delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender. Such notices will be taken to have been given or made:

14.1 in the case of delivery by post, three days after the date of posting

14.2 in the case of delivery by hand, when delivered and

14.3 in the case of delivery by fax, on receipt by the sender of a transmission control report

15. JURISDICTION:

The legal jurisdiction of any dispute in relation to these terms and conditions shall be the State of Queensland in the Commonwealth of Australia and the Seller may institute and prosecute legal proceedings in this jurisdiction, which shall be accepted as the proper jurisdiction by the Customer.

16. TERMINATION

The Seller shall have the right forthwith to terminate the contract by notice to the Customer without prejudice to any claim or right the Seller may otherwise have, make or exercise against the Customer or otherwise in respect to the contract; if

16.1 the Customer makes default or commits a breach of contract; or

16.2 any distress or execution is levied upon the Customer's property or assets; or

16.3 the Customer makes or offers to make any arrangement or composition with creditors or commits an act of bankruptcy, or if any petition or order in bankruptcy is presented or made against him; or

16.4 where the Customer is limited company and any resolution or petition to wind up the companies business (other than for the purpose of reconstruction) is passed or presented; or

16.5 a receiver or any provisional liquidator or official manager of such company's undertaking's, property or assets or any part thereof is appointed.

17. GENERAL

17.1 The Seller may assign all of its rights, benefits and interests under these terms & conditions to any other entity. The assignment will not affect the rights, claims or interests of the Customer or the Seller, which are present prior to the date of assignment.

17.2 The Customer must not assign, transfer or novate it's rights and obligations under these terms & conditions without the prior written consent of the Seller.

17.3 If any provisions of these terms & conditions are, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.

17.4 Failure to neither exercise, nor any delay in exercising, any right power or remedy by the Seller operates as a waiver. A single or partial exercise by the Seller of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Seller unless in writing. The Seller's rights, powers and remedies under these terms & conditions are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by any other agreement or instrument.

17.5 These terms & conditions apply to and bind the Customer's employees, contractors, agents and licensees.

17.6 Where the Seller's consent or approval is required that consent or approval may be withheld or granted in the sole and absolute discretion of the Seller.

17.7 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of those terms & conditions.

18. RENTAL:

Where the Seller's quotation and the Customers Order apply to an Equipment Rental, then the Total Generators "Rental Terms & Conditions" shall replace these "Terms & Conditions of Sale" and apply.