



## TERMS & CONDITIONS OF RENTAL

### 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.
- 1.5 "PPSA" means the Personal Properties Securities Act 2009 (Cth) and any subordinate legislation made pursuant to that Act.
- 1.6 "PPSR" means the Personal Properties Securities Register established under the PPSA.

### 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 off hire or return the Equipment to the Owner's depot within the period of rental quoted/ordered will continue to accrue additional rental charges for each day (or part of a day) that the Equipment is not confirmed as off hired or returned.

### 3. RETURN OF EQUIPMENT

If the Customer does not return the equipment to the Owner's depot within the period of rental quoted/ordered, the Customer is in default of these Rental Terms and Conditions and clause 9 applies.

### 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 enter into any arrangement which has the effect of creating a security interest (as defined in the PPSA) in the Equipment with anyone other than the Owner, nor is it entitled to any 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 60 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.

### 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.

## TERMS & CONDITIONS OF RENTAL continued

### 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.
- 15.11 If otherwise agreed by both parties then the ATO Fuel Tax Credit is claimed by Total Generators

### 16. GENERAL CONDITIONS OF SALE

- 16.1 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'.

### 17. PERSONAL PROPERTIES SECURITIES ACT

To the extent that these Rental Terms and Conditions give rise to a security interest under the PPSA:

- 17.1 The Customer acknowledges that the Owner may register that security interest on the PPSR or otherwise perfect that security interest under the PPSA.
- 17.2 The Customer acknowledges that it must not enter into any arrangement which has the effect of creating a security interest in the Equipment with anyone other than the Owner, nor is the Customer entitled to charge, mortgage or otherwise encumber the Equipment.
- 17.2 The Customer will sign any document and/or provide any further information which the Owner may reasonably require to enable registration of the security interest, or a financing statement, a financing change statement or discharge financing statement in relation to the Equipment or otherwise considered necessary or desirable by the Owner in order to perfect, create, discharge or enforce any rights of the Owner under the PPSA in relation to the Equipment.
- 17.3 The Customer waives the right to receive a verification statement under section 157 of the PPSA.
- 17.4 The parties agree that to the fullest extent permitted by law, any rights the Customer may have in relation to enforcement of the security interests that are contained in any section of the PPSA that is referred to in section 115(1) of the PPSA are waived and do not form part of these Rental Terms and Conditions.