

1. Definitions

In these conditions:

“*Aggreko*” means Aggreko Generator Rentals Pty Ltd ACN 001 991 457;

“*Conditions*” means these General Conditions of Hire;

“*GST*” means any goods or services or value added tax, including GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* or any amending legislation (“*GST Act*”);

“*Damage Waiver*” means the cover provided by Aggreko for damage to the Plant under clause 11, if paid by the Hirer;

“*Hire Contract*” means any contract for the hire of Plant by Aggreko to the Hirer on the Conditions;

“*Hire Period*” means the time from when the Plant leaves Aggreko's depot or place where last issued until received back at Aggreko's depot or other place named by Aggreko;

“*Hirer*” means a person, firm or corporation, jointly and severally if there is more than one, hiring Plant from Aggreko;

“*Plant*” means all plant, equipment, cable, cable drums, trailers, fuel tanks, batteries, machinery and accessories of whatever nature supplied by Aggreko to the Hirer; and

“*Site*” means any site to which the Plant is or is to be delivered and including without limitation any ship, truck or other vehicle upon which the Plant is intended to be used by the Hirer.

2. Basis of Contract

2.1 The Terms & Conditions apply exclusively to every contract for the hire of Plant by the Hirer from Aggreko and cannot be varied or supplanted by any other terms without the prior written consent of Aggreko.

2.2 Any written quotation provided by Aggreko to the Hirer concerning the proposed supply of Plant is valid for 60 days and is an invitation only to the Customer to place an order based upon that quotation. Any terms in Aggreko's quotation form part of the Conditions and if inconsistent will prevail.

2.3 The Hirer is responsible for care of the Plant pursuant to the Conditions for the Hire Period and remains bound by any continuing provisions, after return of the Plant.

3. Credit Limit

3.1 At the time of opening an account, Aggreko will set a limit on the total amount permitted to be outstanding at any time. Aggreko reserves the right to remove or disable any equipment on hire by the customer in the event of the Credit Limit being exceeded. It will be the duty of the Customer to ensure the hire of the equipment is operated within the Credit Limit. Aggreko is not under a duty to the Customer to limit the Hire to the Credit Limit and if (at Aggreko's absolute discretion) Aggreko should continue to provide equipment over and above the Credit Limit, the full amount due to Aggreko shall be payable by the Customer notwithstanding that the Credit Limit may have been exceeded.

4. Variation and Cancellation

4.1 Changes, errors or omissions in the specifications provided by Hirer which results in extra cost to or work by Aggreko will be charged to Hirer at Aggreko's standard rates for such work.

4.2 If through circumstances beyond the control of Aggreko, Aggreko is unable to provide Plant, then Aggreko may cancel any order (even if it has already been accepted) or Hire Contract by notice in writing.

4.3 No purported cancellation or suspension of an order or any part of it by the Hirer is binding on Aggreko after that order has been accepted by Aggreko.

4.4 Aggreko reserves the right to alter any specifications of the Plant and to make changes to the Plant or its specifications provided that the end performance is not prejudiced.

5. Price and Price Variation

5.1 Prices quoted are net Ex-Works prices at date of quotation.

5.2 Prices for the hire of Plant and supply of services by Aggreko exclude:

- (i) sales tax, GST, and any other taxes, duties or imposts imposed on or in relation to the Plant or services; and
- (ii) the cost of freight, insurance and other charges arising from the point of despatch of the Plant to the Site and return.

5.3 In addition to the amount payable, the Hirer must pay to Aggreko, any amount specified in clause 4.2 required to be paid by Aggreko.

5.4 Where there is any change in the costs incurred by Aggreko in relation to the provision of the Plant, Aggreko may vary its price to take account of any such changes.

5.5 Where the Hire Contract is not for a specified period, then, on 5 days written notice:

- (i) Aggreko may terminate the Hire Contract;
- (ii) provided that the Plant has not been lost or damaged and that the Hirer is not otherwise in breach of the Conditions, the Hirer may terminate the Hire Contract;
- (iii) Aggreko may increase the previously agreed hire charge not more than every 6 months during the Hire Period;

and in the event of termination of the Hire Contract all Aggreko's rights under the Conditions remain until fulfilled by the Hirer.

6. Invoicing and payment

6.1 If credit is provided by Aggreko, payment for Plant hired must be made within 30 days from the date of Aggreko's invoice.

6.2 If credit is not provided by Aggreko, payment for Plant hired must be made before the Plant is despatched or collected.

6.3 Payment by cheque will only be accepted on receipt of funds.

6.4 The Hirer must promptly approve Aggreko's invoices for payment, or give details to the Aggreko in writing for each item of the invoice that is not approved and the reason for withholding approval within 7 working days.

7. Delivery and transport

7.1 The Hirer must pay the cost and, if required by Aggreko, arrange transport of the Plant from the place specified by Aggreko to the Site and return to a place specified by Aggreko at the end of the Hire Period.

7.2 If the Plant requires transportation for repair or replacement then cost of transport is born by Aggreko unless the repair or replacement is due to damage or breakdown of the Plant caused by the Hirer.

7.3 The Hirer must recoil any cable on the drums supplied.

8. Operation of Plant

8.1 **Loading and Unloading:** The Hirer is responsible for loading and unloading the Plant on Site. Any Aggreko personnel supplied for loading and unloading will do so as agents of the Hirer.

8.2 **Care of Plant:** The Hirer is responsible for the following:

- (i) safekeeping of the Plant during the Hire Period;
- (ii) maintenance of the Plant in good working condition;
- (iii) operating the Plant for any intervals specified by Aggreko and seeking Aggreko's consent before an interval is exceeded;
- (iv) checking lubrication and cooling levels of the Plant daily and changing the lubricating oil and coolant in strict accordance with Aggreko's instructions;
- (v) using only fuel, oil, coolant, lubricants specified by Aggreko;
- (vi) use of the Plant in strict conformity with Aggreko's specifications and any other relevant laws or regulations;
- (vii) ensuring that the Plant is not operated for any purpose beyond its rated capacity or in a manner likely to result in undue wear;
- (viii) inspecting the Plant and ensuring that it is not to operate if it has become defective, damaged or in a dangerous state;
- (ix) ensuring that the Plant is not moved from the Site, unless in an emergency and Aggreko is advised immediately afterwards;
- (x) complying with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the Plant;
- (xi) advising Aggreko immediately the Plant breaks down or fails to operate properly; and
- (xii) protecting the Plant against fire, theft, distress or seizure.

8.3 **Solid Footing:** If the Site is soft or unsuitable for the Plant to work on or travel over, the Hirer must at its cost supply suitable timbers or equivalent for the Plant to travel over or work on.

8.4 **Access:** The Hirer must allow Aggreko's servants, agents and insurers access to the Plant at all reasonable times to deliver, remove, inspect, test, adjust, maintain, repair or replace it. The Hirer is responsible for providing safe and proper access and is liable for all loss or damage suffered by Aggreko or its servants, agents or insurers as a result of the Hirer's failure or delay in doing so.

8.5 **Maintenance/Service:** The Hirer must notify Aggreko in writing immediately the Plant has operated for 250 hours from the date it was last serviced or from the start of the Hire Period, whichever is later. Aggreko will, at its cost, service the Plant within 1 week of Aggreko advising the Hirer that it will do so. If the Hirer fails to notify Aggreko or if Aggreko is unable to access the Plant to service the Plant during business hours within the period specified in which case, Aggreko may, in addition to any other rights it has, charge the Hirer for:

- (i) compensation for added wear, tear and damage to the Plant;
- (ii) any overtime costs incurred by Aggreko; and
- (iii) the costs of the next service and any consequential repairs.

The Hirer must not try to effect any repairs on the Plant. The Hirer is responsible for all costs associated with access to the site, including inductions whilst servicing Aggreko's equipment.

8.6 **Operations of the Plant:** Only the Hirer or its employees or agents may operate the Plant, must do so under the supervision and instructions of the Hirer and be qualified to operate the Plant. The Hirer is responsible for the acts and omissions of all Plant operators. The Hirer must not permit any other person to operate the Plant.

8.7 **Transfer and Rehiring:** The Plant nor any part must not be lent, rehired or sub-let to any person. If Aggreko consents in writing to a rehire or sub-lease of the Plant, the Hirer remains bound by all of the Conditions and must ensure that any sub-lessee also complies with all terms of the Conditions relating to the use or care of the Plant.

8.8 **Inspection Reports:** Any reports or copies which Aggreko is obliged by law to possess will be supplied to the Hirer on request and must be returned at the end of the Hire Period.

9. Breakdown

- 9.1 Breakdowns or defects in the Plant resulting from:
- (i) proper and ordinary use or fair wear and tear; or
 - (ii) the development of an inherent fault or a fault not ascertainable prior to commencement of the Hire Period;
- may, at Aggreko's option, either be repaired or the Plant replaced at Aggreko's expense. No charge will apply from the date of notice of breakdown until the repair or replacement of the Plant.
- 9.2 If repair is impracticable and if replacement Plant is not available, Aggreko may terminate the Hire Contract and will not have any liability whatsoever to the Hirer for such termination or any consequences of breakdown.
- 9.3 No relief from hire charges nor any claims will be allowed by Aggreko for stoppages due to causes out of Aggreko's control including, without limitation, bad weather or Site conditions.

10. Limitation and exclusion

- 10.1 Except as specifically set out in the Conditions, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Plant, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 10.2 Replacement or repair of the Plant is the absolute limit of Aggreko's liability howsoever arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Plant or alternatively the use of or any other dealings with the Plant by the Hirer or any third party.
- 10.3 Aggreko is not liable for any indirect or consequential losses or expenses suffered by the 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.
- 10.4 Aggreko will not be liable for any loss or damage suffered by the Hirer where Aggreko has failed to meet any delivery date or cancels or suspends the supply of the Plant.
- 10.5 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

11. Insurance

- 11.1 The Hirer is responsible at its own cost for insuring itself, its property, third parties and their property against all risks arising from the presence or operation of the Plant.
- 11.2 The Hirer must have its own insurance for loss, damage or theft of the Plant to its full replacement value.
- 11.3 The Hirer must, prior to commencement of the hire, provide evidence of its insurance policies. If proof of insurance is not provided, Aggreko may:
- (a) undertake to insure the Plant and the Hirer must pay any excess under Aggreko's insurance policy, upon demand; or
 - (b) cancel or suspend any Hire Contract.
- 11.4 The Hirer must on request provide Aggreko with all assistance and information necessary to enable Aggreko to claim under its insurance policies.
- 11.5 If the Plant is involved in any accident resulting in injury to persons or damage to the Plant or other property, immediate notice must be given to Aggreko by telephone and confirmed in writing to Aggreko's office. The Hirer must not make any admission, offer, promise, payment or indemnity without Aggreko's prior written consent. Any insurance monies recovered by the Hirer in respect of any risks specified in this clause 10 must be applied as reasonably directed by Aggreko.

12. Damage Waiver

- 12.1 If the Hirer pays Damage Waiver, then Aggreko will, subject to clause 12.2, rectify at its cost the following damage to the Plant:
- (i) dints, scratches, chips or cracked glass;
 - (ii) blistered or discoloured paint or graffiti; or
 - (iii) other minor damage;
- to the extent that the cost of rectification is less than 10% of the replacement value of the Plant or \$10,000, whichever is less.
- 12.2 The Damage Waiver will not apply to damage caused by or due to:
- (i) misuse, abuse, or overloading of the Plant;
 - (ii) lack of lubrication or failure to comply with Aggreko's servicing requirements;
 - (iii) by overloading or artificial electrical current, use of under rated extension leads or electrical powered tools, machines or automatic voltage regulators; or
 - (iv) the Hirer breaching the Conditions.
- 12.3 If the cost of rectifying damage to the Plant is greater than the amount covered by the Damage Waiver (if any), the Customer must pay the difference and any other amount required to be paid under the Conditions, within 14 days of demand by Aggreko.
- 12.4 Aggreko will inspect the Plant upon return and will provide the Hirer with details of any damage or loss within 14 days of inspection.

13. Responsibility and Indemnity

- 13.1 The Hirer is solely responsible for all risks relating to or arising from the selection, use and location of the Plant.
- 13.2 The Hirer must indemnify Aggreko and keep it harmless from all costs, actions, claims, demands, loss or damage (including all legal costs) arising from or in connection with the Plant or as a result of its use or location.

14. Default

- 14.1 If the Hirer:
- (a) breaches any term of the Conditions;
 - (b) allows the Plant to be damaged or lost or the Plant is damaged or lost while under the responsibility of the Hirer;
 - (c) defaults in payment by the due date of any amount payable;
 - (d) is an individual and dies or becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally;
 - (e) is a corporation and it enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, has as a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Hirer; or
 - (f) in the reasonable opinion of Aggreko, the Hirer is likely to breach its obligations under the Contract;

Aggreko may, without prejudice to any other remedy available to it:

- (i) require immediate payment of all money which would become payable by the Hirer to Aggreko at a later date on any account, without further notice;
 - (ii) charge the Hirer interest at 1.5% per month for the period from the due date until the date of payment in full;
 - (iii) charge the Hirer for, and the Customer must indemnify Aggreko from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Conditions or to recover the Plant;
 - (iv) charge the Hirer for the cost of repairing (subject to clause 10) or replacing any lost, damaged or destroyed Plant;
 - (v) charge the Hirer for subsequent lost hire charges as a result of the Plant being lost, damaged or destroyed until the Plant is repaired or replaced;
 - (vi) claim damages from Hirer for breach of the Contract
 - (vii) cease or suspend for such period as Aggreko thinks fit, supply of any further Plant to the Hirer; and/or
 - (viii) by notice in writing to the Hirer, terminate any Hire Contract so far as unperformed by Aggreko;
- without effect on Aggreko's accrued rights under a Hire Contract.
- 14.2 On termination, the Hirer must on demand immediately return the Plant. If the Hirer does not, Aggreko is entitled to enter any premises of the Hirer where the Plant is suspected to be to repossess the Plant. Aggreko will not be liable for any damage caused and the Hirer must indemnify Aggreko from any liability to it or any third party in respect of any damage, proceedings, claims, demands, costs and expenses howsoever arising.

15. Privacy

- 15.1 Aggreko is bound by the *Privacy Amendment (Private Sector) Act 2000*. All personal information obtained in connection with the Hirer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles ("NPP").
- 15.2 Aggreko requires that the Hirer comply with the NPP in connection with any personal information supplied to it by Aggreko in connection with this Agreement.

16. Variation

- 16.1 Aggreko may from time to time amend these Terms & Conditions and shall as soon as possible forward a copy of the amended version to the Customer. The Customer shall then have 21 days from the date of being sent such variations to decline the same and to terminate any Hire Contract but in the absence thereof they will be bound by such variations and shall not thereafter be entitled to dispute the same whether or not they apply or otherwise.

17. Miscellaneous

- 17.1 The law of Victoria from time to time governs the Conditions and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.