

Terms and Conditions

1. What is the purpose of this contract?

1.1 This contract sets out the terms and conditions that apply when **Dependable Power Limited** ("we", "us" and "our") supply you ("you" and "your") with **products and services**.

1.2 If these terms and conditions vary or are in conflict with any terms and conditions that you impose on us then our terms and conditions shall prevail.

1.3 These terms and conditions are in addition to any "hire contract" entered into by you.

2. What information about you can we collect?

2.1 You agree that we may obtain information about you to assess your credit worthiness, enforce any rights under this contract and market any of our **products and services** to any other entity.

2.2 You agree that we may give that information to any person for the above purposes, but you may withdraw your consent at any time.

2.3 You may access any information that we hold about you and request us to correct any mistakes in it.

3. What are our products and services?

3.1 In these terms and conditions "**products and services**" means and includes, without limitation, the following:

- the manufacture and supply of generators and associated products;
- all servicing, rebuild, repair, maintenance and hire services;
- all products and services identified in any order form, supply request, quotation, email or in any invoice issued by us to you, which documents are deemed to be incorporated into and form part of our contract with you.

4. What is the price?

4.1 The price of the **products and services** is as agreed in writing between you and us.

4.2 If no price is stated in writing or agreed to orally, the **products and services** will be treated as supplied at the current amount that we supply those **products and services** at the time of the contract.

5. What and when must you pay us?

5.1 Unless payment for **products and services** is required immediately or prior to delivery, payment shall be made:

- in full on or before the 20th day of the month following the date of our invoice ("the due date"); and
- a deposit may be required;
- on occasions we may invoice by way of "payment claims" made pursuant to the Construction Contracts Act 2002;
- interest may be charged on any amount you owe us after the due date at the rate of 2.5% per month or part month; and
- any costs, including debt collection and legal costs, which we may incur as a consequence of having to enforce any of our rights contained in this contract, shall be payable by you.

6. What happens when we give you a quotation?

6.1 When we give a quotation for **products and services**:

- unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- the quotation shall be exclusive of Goods and Services tax unless specifically stated to the contrary; and
- where **products and services** are required in addition to the quotation, you agree to pay for the additional cost of such **products and services**;
- any quotation is subject to these terms and conditions.

7. When are you responsible for the products and services?

7.1 With respect to any products delivered to you, we are responsible for the products until they are picked up by you or given to you by us or our carrier agent. Thereafter you are responsible for insuring the products (an insurance option is available with respect to hireage).

7.2 The time stated for delivery is an estimate only and we are not responsible for any delay in the delivery of products.

8. Does a warranty apply?

8.1 A manufacturer's warranty applies where applicable.

8.2 Any written warranty that we provide to you will also form part of this contract.

9. What security rights do we have?

9.1 Until you have paid us in full for all **products and services** supplied, we retain ownership of the products we have supplied.

9.2 Until you have paid us in full for all **products and services** supplied or you have hired or leased a generator from us for more than 12 months (or for periods which cumulatively total a period of longer than 12 months), then it is agreed that pursuant

to the Personal Properties Security Act 1999 ("the Act"), that we have a security interest in all products supplied by us to you.

9.3 If the products are attached, fixed or incorporated into any property belonging to you by way of any manufacturing or assembly process, title in the products shall remain with us until you have made payment for all products supplied and when those products are mixed with other property so as to be part of or a constituent of any new products, title to the new products shall be deemed to be assigned to us as security for the full satisfaction by you of the full amount owing between you and us.

9.4 If you default (as defined in the Act) or if we consider a default is likely to occur or the products are "at risk", you give us an irrevocable authority and licence to enter at any reasonable time, premises occupied by you or on which products we have supplied are situated and remove and repossess those products including any new products ("the repossession").

9.5 We are not liable for any costs, damages, expenses or losses incurred by you or any third party nor liable in contract or in tort as a result of the repossession and you agree to indemnify us for any costs, damages, expenses or losses incurred as a consequence of the repossession.

9.6 It is also agreed that we are not obliged to comply with our obligations under sections 107 (2) (a) to (e) and 107 (g) to (i) of the Act and that you will not register a financing change statement without our prior written consent.

9.7 Further you agree to waive your entitlement to receive the notice of sale referred to in section 114 (1) (a) of the Act and that nothing in sections 133 and 134 shall apply.

9.8 Following the repossession, we are entitled to sell the repossessed products or retain the repossessed products and give credit for such reasonable amount as we shall determine.

10. What is the limitation on our liability?

10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Sales of Goods Act 1908 and other statutes may imply warranties or conditions or impose obligations upon us which cannot by law be excluded ("the statutory requirements").

10.2 Subject to the statutory requirements, it is agreed by you that we are not liable to you for any loss or damage of any kind whatsoever, arising from the supply of **products and services** by us to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract or tort (including our negligence) or otherwise.

11. Hire of generators

11.1 When a generator ("generator") is hired from us the following shall apply:

- you shall not part with the possession of the generator and shall not sublet, or sell, or attempt to alienate the generator in any way, or deal with the generator in any way that may be prejudicial to us;
- you will be liable for any damage to or loss of the generator hired however caused and in the event of any generator being damaged, lost or stolen then you will pay us the cost of making good the repair to the generator or the cost of replacing the generator whichever is the lesser;
- you shall on request by us, inform us of the whereabouts of any hired generator and you give us an irrevocable licence (including as your agent) to enter any premises within your control for the purposes of inspecting, repairing, testing or removing the generator and further if you fail to pay any monies owing after the due date you give us an irrevocable licence (including as your agent) to enter the premises where the generator is located and take possession and remove the generator.

12. Does a personal guarantee apply?

12.1 If you are a company or a trust:

- the director or trustee signing this contract, in consideration for us agreeing to supply **services** and grant credit to the company or the trust, also sign this contract in their personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment;
- any personal liability of a company director or trustee will not exclude the company or trust from the liabilities and obligations contained in this contract.

13. Miscellaneous

13.1 We are not liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our control.

13.2 We fail to enforce any of the terms and conditions contained in this contract it shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.

13.3 If any of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining terms and conditions shall not be affected, prejudiced or impaired.

13.4 This contract and any dispute arising from it, is governed exclusively by the laws of New Zealand.