

## TERMS OF TRADE

### A) HIRE CONTRACT

This is a contract between NZGH and the Hirer on the following terms and conditions:

#### 1. DEFINITIONS

1.1 "NZGH" means N.Z. Generator Hire Limited trading as NZ GENERATOR;

"Conditions" means these conditions;

"Conditions and Exclusions" in respect of Condition 12 means the conditions and exclusions defined in Condition 12.3.

"Contract" means the Contract for hire and/or sale of the Plant by NZGH to the Hirer of which these Conditions form a part;

"Day" means twenty-four (24) hours unless otherwise specified;

8.1(a) and 12.2(a) means the transportation of plant to and/or from NZGH's yard to the site by an authorised agent of NZGH, but does not include loading or unloading of plant.

"Ex-Yard" means from the place at which NZGH is holding or having held on its behalf the Plant for delivery to the Hirer;

"Hirer" means the party taking NZGH's Plant on hire whether an individual, firm, company or public authority and includes a party purchasing plant from NZGH;

"Hirer's Risk" means the responsibility of obtaining insurance for plant hired under this contract rests with the Hirer in accordance with Condition 11 of this contract.

"Insurance Premium" means a reasonable amount of money determined by NZGH or NZGH's Insurer and charged to and paid by the Hirer pursuant to Condition 12.2(a).

"Invoice" means the invoice or invoices sent by NZGH to the Hirer on a monthly basis in respect of charges incurred by the Hirer;

"NZGH's Yard" means the place NZGH designates as the place to uplift or deliver Plant.

"Office Days" means Monday, Tuesday, Wednesday, Thursday and Friday in any week, except where any such day is a public holiday as defined in the Holidays Act 1981;

"Owner's Risk" means the responsibility of obtaining insurance for plant hired under this contract rests with NZGH as owner of the plant in accordance with Condition 12 of this contract.

"Office Hours" means 9am to 5pm on an office day;

"Plant" means all plant, equipment, cable, cable drums, trailers, fuel tanks, machinery and accessories of whatever nature supplied by NZGH;

"Rental Period" means the period during which the Hirer hires Plant being the time from when the Plant leaves NZGH's Yard, until received back at NZGH's Yard, in the same undamaged condition as the Plant left NZGH's Yard.

"Safekeeping" means the Hirer taking all the due care and diligence that a reasonable and prudent Hirer would take to ensure the preservation of Plant in the same undamaged condition in which it left NZGH's Yard.

"Site" means the site to which the Plant is delivered (or to be delivered) on the Hirer's instructions including, without limiting the generality of the foregoing, any ship, truck or other mobile vehicle upon which the Plant is used or intended to be used by the Hirer or used to transport Plant to or from the place specified by the Hirer;

"Week" means seven consecutive days;

1.2 Except to the extent that the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing a gender include other genders and corporations and vice versa;

(c) words importing individuals include corporations and vice versa;

(d) where the Hirer comprises two or more persons those persons are jointly and severally bound by these Conditions and a reference to the Hirer includes a reference to any one or more of those persons;

(e) a reference to a party to these Conditions includes its successors and permitted assigns.

(f) references to the Consumer Guarantees Act 1993, the Privacy Act 1993 and the Personal Property Securities Act 1999 includes such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

#### 2. APPLICATION AND VARIATION OF THESE CONDITIONS

2.1 The Hirer acknowledges receipt of a copy of these Conditions and that it is bound by them.

2.2 These Conditions are deemed to be incorporated in all agreements for the sale and hire of Plant by NZGH to the Hirer and apply in place of and prevail over any terms or conditions contained or referred to elsewhere or implied by trade custom, practice or course of dealing.

2.3 These Conditions cannot be varied except in writing signed by each party.

2.4 An order will be deemed to be an offer to NZGH on these Conditions notwithstanding that such order contains terms and conditions which may purport to conflict or add to or vary these Conditions.

#### 3. CANCELLATION

3.1 Hirer is not without NZGH's written consent, entitled to cancel any order or materially vary any specifications after issue of any confirmation of order by NZGH. Such consent may be made conditional on payment by Hirer of a cancellation charge, being an assessment of damage including lost profit suffered by NZGH.

3.2 Changes in the specifications provided by Hirer, or errors or omissions from the specifications which result in extra cost to or work by NZGH will be charged to Hirer at NZGH's standard rates for such work. NZGH will use its reasonable best endeavours to advise Hirer in advance of the need for any additional work. Where the requested changes errors or omissions materially affect the specifications, NZGH shall have the option to terminate the Contract by written notice within two (2) office days of being aware of the extent of the effect on the specifications. NZGH shall refund any moneys paid by the Hirer less reasonable costs incurred by NZGH to the date of termination.

#### 4. DOCUMENTATION AND SPECIFICATION

4.1 All drawings, designs, specifications and particulars of weight and dimensions submitted by NZGH are intended merely to describe Plant generally. NZGH gives no warranties to accuracy and they are not to be regarded as a warranty, representation or contractual term unless expressly so stated by NZGH in writing.

4.2 NZGH reserves the right to alter the specification of standard items accordingly and to make changes to the materials and/or specifications provided that the end performance or fitness for a particular purpose is not prejudiced.

4.3 All NZGH's specifications, drawings and technical representations submitted are the sole and absolute property of NZGH.

#### 5. PRICE AND PRICE VARIATION

5.1 Unless otherwise agreed by NZGH in writing, prices quoted are net Ex-Yard prices ruling at date of quotation. Any levies or taxes including but not without limitation goods and services tax, government charges, duties or excise, insurance, transportation and delivery charges are (unless otherwise specified) additional to prices quoted, and shall be borne by Hirer. Quotations given are always subject to availability of plant and quoted prices are firm for twenty one (21) office days and thereafter shall be subject to immediate variation by NZGH in its absolute discretion and without prior notice.

5.2 If between the date of a quotation or initial agreement on price and the date of delivery the price payable by NZGH for significant material items included in the Plant shall have increased for whatever reason including currency variation, NZGH may increase the price and shall in writing so notify Hirer, who shall accept the Plant at the new price. NZGH shall only increase the price by such amount as is necessary to compensate for the increased cost to NZGH.

## 6. INVOICING AND PAYMENT

- 6.1 Subject to NZGH's approval of Hirer's current credit rating, full payment shall be made on the 20th of the month following invoice date unless otherwise specified by NZGH in writing. Payment by cheque shall not be deemed made until clearance of the cheque.
- 6.2 NZGH reserves the right at its discretion at any time to withdraw any credit terms and substitute Cash With Order or Cash On Delivery or any other terms.
- 6.3 Unless otherwise expressly appropriated by NZGH, payments shall be taken to discharge Hirer's oldest debt, and shall first reduce any interest or costs outstanding including costs of collection, before reducing the principal debt.
- 6.4 If Hirer fails to make payments on the due date, NZGH may, in addition to any other rights it may have, charge interest on all overdue payments at the rate being the highest overdraft rate charged by NZGH's bank from the due date until the date of payment.

7. PAYMENT VALIDITY

- 7.1 The Hirer acknowledges that NZGH continues to supply the Hirer on condition that all payments received by NZGH from the Hirer are valid and made in the ordinary course of the Hirer's business.
- 7.2 The Hirer further acknowledges that NZGH receives all payments in the ordinary course of the Hirer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Hirer gives notice in writing to NZGH:
- of its inability to pay its due debts; and
  - that it's intention or purpose in making any such payment is to enable NZGH to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Hirer
- and until receipt of such notice, NZGH shall be entitled to assume that all payments received from the Hirer are made in the ordinary course of the Hirer's business.
- 7.3 The Hirer acknowledges that NZGH has, by accepting each payment from the Hirer on due date altered its position in reliance on the validity of that payment by:
- the continued supply by NZGH to the Hirer after the receipt of such payment, whether or not that plant is paid for by the Hirer, and
  - using the payment for NZGH's own purposes.
- 7.4 The Hirer acknowledges that where it makes payment to NZGH after the due date for such payment, NZGH has, by accepting such late payment, altered its position in reliance on the validity of the late payment by:
- foregoing its immediate right to take action against the Hirer and any guarantor in relation to the late payment;
  - continuing the supply of plant to the Hirer after the receipt of such late payment, whether or not that plant is paid for by the Hirer; and
  - using the payment for NZGH's own purposes.
- 7.5 NZGH may apply any payments received from or on behalf of the Hirer in reduction of the Hirer's indebtedness as NZGH thinks fit.

## 8. DELIVERY AND TRANSPORT

- 8.1 (a) Delivery of plant from the NZGH's Yard to the Site and return to NZGH's Yard shall be the responsibility of the Hirer and at the Hirer's risk. NZGH at the request, cost and Hirer's risk will arrange delivery of Plant from NZGH's Yard to the Site and return to NZGH's Yard on completion of the Rental Period.
- (b) In the event that the Plant requires to be transported for the purposes of repair of damage or breakdown, the cost of which is to be met by NZGH under these Conditions, then the cost of such transport shall be met by NZGH. Similarly, NZGH shall pay the cost of transporting replacement Plant to the Site unless the provision of such replacement Plant is rendered necessary by damage or breakdown of the Plant which is the responsibility of the Hirer under these Conditions.
- 8.2 Any period or date for delivery stated is intended as an estimate only and is not a contractual commitment. The estimate is based on Hirer's total co-operation, the complete accuracy of Hirer's specifications, and the absence of Force Majeure, and will be deemed extended at NZGH's option in the event of a variation in any of the foregoing. NZGH will use its reasonable endeavours to meet any delivery dates to which it expressly agrees in writing, but in no circumstances whatsoever (including when NZGH agrees time to be of the essence) shall NZGH be liable for any loss or damage suffered by Hirer or any other person, and Hirer shall not be entitled to cancel the Agreement when time is agreed to be of the essence until the expiry of one (1) week from a given delivery date.
- 8.3 Hirer shall take any action necessary on its part for timely delivery of the Plant.

## 9. CONDITIONS RELATING TO OPERATION ETC OF PLANT

- 9.1 Loading and Unloading: The Hirer shall be responsible for loading and unloading the Plant at Site and personnel supplied by NZGH for loading and unloading shall do so as agents of the Hirer and under the Hirer's direction and control. The Hirer shall be responsible for ensuring that all methods and equipment (including not by way of limitation chains and all machinery) used to load, unload, lift or otherwise move any Plant at Site during the Rental Period is of a sufficient standard and specification and chosen and used as a prudent Hirer would to ensure the absolute safekeeping of the Plant.
- 9.2 Condition of Plant on Receipt: Unless notification to the contrary in writing is received by NZGH within three (3) office days of delivery on Site or completion of construction on Site of the Plant all Plant will be deemed to have been delivered in good working condition and to the Hirer's satisfaction.
- 9.3 Care of Plant
- (a) The hirer shall be absolutely responsible for:
- (i) The safekeeping of the Plant during the Rental Period;
  - (ii) The maintenance of the Plant in good condition including (but not limited to) the lubrication of the Plant and changing the lubricating oil all in strict accordance with NZGH's instructions, checking lubricating oil and coolant levels in the Plant daily and ensuring that lubricating oil and coolant are kept at levels required for the proper operation of the Plant;
  - (iii) The use of the Plant in conformity with its specifications;
  - (iv) The use of the Plant in conformity with the terms and conditions of this Contract and Conditions and any relevant laws or regulations of local and central government applicable at the place of operation;
  - (v) Ensuring that the Plant is not operated for any purpose beyond its rated capacity or operated in any other manner likely to result in undue deterioration.
- (b) The hirer shall seek the assistance and advice of NZGH if it is in doubt at any time as to the safekeeping, maintenance, use and operation of Plant including but not limited to all circumstances as outlined in Clause 9.3(a) (i) to (v) inclusive.
- (c) The hirer shall become and remain acquainted with the condition of the Plant and not operate it in an unsafe, damaged or dangerous state or manner, or in a state or manner, which results in a breach of any applicable law or regulation. If the hirer or any servant or agent of the hirer does operate the Plant in breach of this standard the hirer shall be solely responsible for damages, loss, and liability to any other Party arising from such operation.
- (d) Should breakdown or damage occur to the Plant due to failure to observe any term of these Conditions or due to negligence of or misuse by the hirer or its servants or agents or due to wilful or accidental damage however occurring or due to damage caused by salt water, salt spray, and/or salt laden air the hirer shall be liable to NZGH for:
- (i) The cost of repairs; and
  - (ii) The full cost of NZGH's potential hire charges for the Plant (for the full Rental Period) while the Plant is idle due to breakdown or damage and while repairs are being carried out (without prejudice to NZGH's right to receive hire charges in respect of all other periods when the Plant is not off hire).

#### 9.4 Duty to Return

The Hirer shall return the Plant to NZGH's Yard on completion of the Rental Period in good working condition, fair wear and tear excepted and when Plant includes cable, the Hirer shall be responsible for recoiling cable on drums supplied. If the Hirer fails to return the Plant for any reason whatsoever whether or not involving any negligence or other fault on the part of the Hirer its servants or agents, then the Hirer shall be liable to NZGH for:

- (a) the whole cost of replacement of the Plant; and
- (b) NZGH's hire charges for the Plant for the total time from the commencement of the hire until payment for the whole cost of replacement of the Plant is received by NZGH or the Plant is returned to NZGH's Yard. If payment for replacement Plant is made by cheque payment shall not be deemed made until clearance of the cheque.

#### 9.5 Access

- (a) The Hirer shall allow NZGH's servants, agents and insurers access to the Plant at all reasonable times to inspect, test, adjust, maintain, repair or replace the same.
- (b) The Hirer shall be:
  - (i) responsible for providing safe and proper access to Plant for such purposes; and
  - (ii) responsible for delivery of Plant to NZGH's Yard and collection of Plant from NZGH's Yard where it is necessary for NZGH to carry out such maintenance work as described in Condition 9.5(a).
  - (iii) liable for all loss or damage suffered by NZGH or by NZGH's servants, agents or insurers as a result of the Hirer's failure to provide or delay in providing safe and proper access to Plant as required by Condition 9.5.

9.6 Routine Maintenance/Service: The Hirer shall make the Plant available to NZGH for the purposes of carrying out routine maintenance or service within one week of NZGH advising the Hirer of such routine maintenance or service being due. During normal working hours NZGH will make no charge to the Hirer for such routine maintenance or service but if the Hirer can only make the Plant available for this purpose outside the Working Week then NZGH reserve the right to charge the Hirer for overtime costs. Notwithstanding this clause, NZGH reserves the right to charge the Hirer for the routine maintenance or service.

9.7 Servicing: Notwithstanding the terms of clause 9.6 the Hirer shall notify NZGH when the Plant has operated for 250 hours since it was last serviced or since the start of the Rental Period, whichever is later. If the service is carried out within one week of such notice being received by NZGH, the costs of such service will normally be met by NZGH. If a service is not carried out within one week of the Plant having operated for 250 hours due to the Hirer's failure to notify NZGH as provided in this clause then the Hirer shall compensate NZGH for additional wear, tear and damage to the Plant by paying the costs of the next service and any consequent repairs. If NZGH fails to service the Plant within one week of receipt of notification by the Hirer as provided in this clause then the cost of the next service and any consequent repair costs will be met by NZGH.

9.8 Working Platform: If the ground is soft or unsuitable for the Plant to travel over or work on without a proper platform or standing area the Hirer shall supply and lay a suitable surface or platform in a suitable position for the Plant to travel over or work on. In the event the Hirer does not provide a proper safe operating platform then the cost of recovery, repair or any other damage including loss of hire shall be met by the Hirer.

#### 9.9 Fuel, Oil, Lubricants and Coolants

- 9.9.1 (a) The Plant is supplied by NZGH fully fuelled and ready for use.
- (b) NZGH will upon request received from the Hirer supply fuel, oil, lubricants and coolants that may be required from time to time during the rental period.
- (c) At the end of the rental period, the Hirer will pay for all fuel, oil, lubricants and coolants required to fully refuel the Plant.

9.9.2 Fuel, oil, lubricants and coolants shall, when supplied by the Hirer, be of a grade and type specified by NZGH.

9.10 Coolant: Coolant, when supplied by the Hirer, shall be a mixture of clean fresh water and antifreeze in a proportion and of a grade and type specified by NZGH.

9.11 Breakdown: Breakdowns or defects in Plant resulting from proper ordinary usage or fair wear and tear or the development of an inherent fault or a fault not ascertainable by reasonable examination prior to commencement of the Rental Period may, at NZGH's option, either be repaired at NZGH's expense and with the least possible delay in which case the Hirer shall not be charged from its notification of breakdown to NZGH until repair or alternatively NZGH may replace the Plant. If repair is impracticable and if replacement Plant is not available, NZGH may terminate the hiring forthwith and will not have any liability whatever to the Hirer for such termination or any consequences of breakdown. Any breakdown or the unsatisfactory hiring of any part of the Plant must be notified immediately to NZGH in writing and for this purpose no notification shall be effective unless and until it is actually received by NZGH. The Hirer shall not attempt to effect repairs himself except with the express authority of NZGH. No relief from hire charges nor any claims will be accepted by NZGH for stoppages due to causes out of NZGH's control including without prejudice to the foregoing generality bad weather or ground conditions or supplies required from third parties. The Hirer shall be solely responsible for the costs and expenses of recovering any Plant from soft ground.

9.12 Inspection Reports: Any inspection reports which NZGH are obliged by law to possess or a copy thereof, shall be supplied to the Hirer if requested and returned at the end of the Rental Period.

9.13 Operations of the Plant: Where an operator is provided with the Plant, he shall work under the supervision and instructions of the Hirer or its representatives and, for the Rental Period, the operator shall be deemed to have been a servant of the Hirer, who shall be responsible for his acts and omissions (including negligent acts and omissions) as if he were in the Hirer's direct employ. The Hirer shall not permit any other person to operate the Plant without NZGH's prior consent in writing or the appropriate training and instructions from NZGH.

9.14 Rehiring Etc: The Plant or any part thereof shall not be rehired, sublet or lent to any third party without the written consent of NZGH and the Hirer shall protect the Plant against distress, execution or seizure and shall indemnify NZGH against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this clause.

9.15 Change of Site: The Plant shall not be removed from the Site without the prior written consent of NZGH.

9.16 Compliance with Law: The Hirer shall be responsible for complying with all relevant laws, statutes, by-laws and regulations application and incidental to the installation, use and operation of the Plant.

9.17 Indefinite Hiring: Where the Rental Period is indefinite, that is not being for an agreed period, then:

- (a) the Contract may be terminated by either the Hirer or NZGH on five (5) office days written notice to the other (except that in cases where the Plant has been lost or damaged no such notice may be given by the Hirer); and
- (b) in the event of termination of the Rental Period by NZGH all NZGH's rights under the Contract will remain and are reserved. Where the Hirer purports to terminate the contract pursuant to Condition 9.17(a) the Contract will not be deemed to have been terminated until the Hirer has returned the Plant to NZGH's yard notwithstanding the expiry of five (5) office days written notice as provided in Condition 9.17(a);
- (c) NZGH reserves the right to increase the previously agreed hire charge following the expiration of six (6) months of any period of indefinite hire.

#### 10. HIRER'S ACKNOWLEDGEMENT

The Hirer acknowledges that NZGH has provided the Hirer with all information necessary to enable the Hirer to operate the Plant safely without risks to health or property.

#### 11. LIMITATION AND EXCLUSION

- 11.1 The Hirer recognises and accepts that in entering into the Contract it has not relied on any advice, statement, representation or warranty given by NZGH, its servants or agents, to the Hirer in relation to the Plant or its use whether regarding specification, performance, capability or suitability for any purpose.
- 11.2 Save as explicitly set out in these Conditions, NZGH makes no representations and gives no warranties – statutory, implied or other – as to the Plant itself, nor as to the quality and condition of the Plant, nor as to its suitability for any particular or general purpose.
- 11.3 NZGH shall be under no liability to Hirer for any damages or losses, direct or indirect, resulting from defects in design, materials or workmanship.

- 11.4 NZGH shall not in any event be liable to the Hirer for consequential loss whether or not arising from breach of contract, negligence or any other fault on the part of NZGH, its servants or agents and whether or not in the contemplation of NZGH and/or the Hirer at, or prior to, the commencement of the Contract.
12. INSURANCE
- 12.1 If the Hirer elects to hire the plant at the Hirer's Risk then the Hirer shall be responsible at its own expense for insuring the plant with an Insurer approved by NZGH in accordance with a Material Damage/Plant & Equipment policy subject to the standard conditions and exclusions for full replacement value, for loading, unloading, transit and commercial all commercially insurable perils including theft. Any variation from such an insurance contract must be approved by NZGH's insurer. The Hirer shall forthwith provide to NZGH evidence of such insurance of the Plant, including receipts for the premium payable for such insurance and a copy of the insurance policy noting the interest of NZGH as owner of the Plant against any such policy of insurance. Any insurance moneys recovered by the Hirer in respect of such risks shall, to the extent deemed necessary by NZGH, be applied as directed by NZGH. If the Plant is involved in any incident resulting in injury to persons or damage to property, immediate notice must be given to NZGH by telephone and confirmed in writing to NZGH's office and in respect of any claim not within the Hirer's agreement for indemnity in clause 13 hereof, no admission, offer, promise or payment or indemnity shall be made by the Hirer without NZGH's consent in writing.
- 12.2(a) If the Hirer elects to hire the plant at the Owner's risk the Hirer must pay to NZGH the insurance premium and accept liability to pay the excess on any claim as defined in Clause 12.4. On receipt of the insurance premium NZGH will waive its rights against the Hirer in respect of any loss covered under NZGH's Material Damage (All Risks Generators) insurance policy subject to the conditions and exclusions. If the Hirer makes an election under condition 12.2(a) the Plant shall be hired at the Owner's risk during the rental period including delivery of Plant notwithstanding condition 8.1(a).
- 12.2(b) Where the Hirer has made an election under Clause 12.2(a) that the Plant be hired at the Owner's risk NZGH shall uphold that claim provided that:
- (i) The Hirer has paid the insurance premium up to date and in full; and
  - (ii) NZGH's insurers are satisfied that the damage caused to the Plant is covered by NZGH's Material Damage (All Risks Generators) insurance Policy subject to standard conditions and exclusions and the conditions and exclusions under this contract; and
  - (iii) The Hirer can satisfy NZGH and NZGH's insurer that the Hirer has at all times acted reasonably and has taken adequate precautions to safeguard the Plant from the loss or damage sustained; and
  - (iv) The Hirer generally complies with all reasonable requests of NZGH or NZGH's insurers in relation to the submission of information and the application for assessment of the relevant insurance claim and where appropriate the Hirer procures a written Police report and promptly submits the Police report to NZGH or NZGH's insurers.
- 12.3 For the avoidance of doubt the Hirer acknowledges that the conditions and exclusions defined below are expressly excluded from the insurance cover offered pursuant to Condition 12.2(a):
- (a) Conditions and exclusions as defined by NZGH's Standard Commercial All Risks Insurance Policy.
  - (b) Damage to Plant or any other property due to misuse, abuse, or overloading of the Plant.
  - (c) Damage to Plant or any other property caused by the Hirer or his servants or agents or any other person or persons lawfully or unlawfully on the Site intentionally, unintentionally, accidentally, negligently or otherwise allowing howsoever Plant or any other property to cause damage to or by the Plant during loading, unloading, lifting or otherwise moving Plant or any other property;
  - (d) Mysterious disappearance or wrongful conversion of the Plant;
  - (e) Loss or damage in contravention of the conditions of this Contract;
  - (f) Loss or damage from use in violation of any statutory laws and regulations;
  - (g) Loss of tools, accessories, electric cord, power cable, welding cable, batteries and other similar accessories;
  - (h) Loss or damage resulting from lack of lubrication or other normal servicing or equivalent;
  - (i) Loss or damage to motors or other electric appliances or devices caused by overloading or artificial electrical current, including use of under rated extension leads or electrical powered tools and machines including automatic voltage regulators.
  - (j) Damage to tyres, including punctures;
  - (k) Loss or damage caused by incorrectly synchronising plant with other plant, utility power source, main power supply or any other power supply;
  - (l) Where plant is synchronised or otherwise connected to other plant or any other power source by any person other than an authorised agent of NZGH then that plant shall not be covered;
  - (m) Plant transported at any time during the rental period other than by NZGH or its authorised agent shall not be covered by the insurance provisions of this agreement and are transported at the Hirer's risk.
- 12.4 When the Hirer elects to insure at Owner's Risk, if damage or risk occurs for any reason, the excess payable by the Hirer will be:  
\$2,500.00; for Plant up to \$15,000.00 in value;  
\$5,000.00; for Plant above \$15,000.00 in value;
- 12.5 The Hirer shall fully indemnify NZGH against any loss or damage (including solicitor costs on a solicitor client basis) arising or suffered as a result of any insurance held by NZGH or any claim under any such insurance being declined or declared void due to the acts or omissions of the hirer or any person for whom the hirer is responsible.
13. INDEMNITY
- The Hirer shall be solely responsible for and shall hold NZGH fully indemnified against any loss or damage arising to or in connection with the Plant or as a result of the use or situation of the Plant. The Hirer shall fully and completely indemnify NZGH in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with the use or situation of the Plant and in respect of all costs and charges in connection therewith whether arising under statute or common law. The foregoing indemnities shall be effective whether or not the loss, damage or injury arises from any negligence on the part of the Hirer.
14. INSOLVENCY AND DEFAULT
- 14.1 NZGH may by notice in writing effective immediately or on such other date specified in the notice (without any previous notice or other act on the part of NZGH and notwithstanding that NZGH may have waived some previous default or matter of the same or a like nature) terminate the Contract if:
- (a) Hirer shall commit any breach of the Contract (including, without limitation, terms concerning the time for payment of any moneys payable under the Contract) or any other contract with NZGH;
  - (b) Hirer compounds with or negotiates for any composition with its creditors generally;
  - (c) being an individual, Hirer shall die, become permanently incapacitated, or be declared bankrupt;
  - (d) being a body corporate, Hirer shall call any meeting of its creditors or have a liquidator, provisional liquidator, statutory manager, or receiver of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commit any other act of insolvency;
  - (e) the financial position of the Hirer or some other fact or circumstance, leads NZGH believe on reasonable grounds that the Hirer is likely to materially fail to complete its obligations under the Contract;
  - (f) in the opinion of NZGH, NZGH's rights in the Plant may or are put in jeopardy.
- 14.2 In the event of such termination:
- (a) Hirer shall forthwith on demand deliver to NZGH the Plant and, in default thereof NZGH shall be entitled to repossess the same and for such purpose to enter into and upon any premises of Hirer where the Plant is suspected to be situated without being liable for any damage caused thereby, and Hirer shall indemnify NZGH from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims demands, costs, damages and expenses howsoever arising; and

- (b) NZGH shall be entitled by notice in writing to Hirer to declare immediately due and payable any amounts outstanding from the Contract or any other contract (such sums thereby becoming forthwith due and payable); and
- (c) NZGH may claim damages from Hirer for breach of the Contract and all consequential loss.

#### 15. LEGAL EXPENSES

The Hirer shall pay all costs, charges and expenses including reasonable legal fees incurred in retaking possession of the Plant or in the collection of any such sums which may be due and owing NZGH by the Hirer, including the defence of any action brought against NZGH for damages caused by the Plant while the Plant is in the possession of the Hirer. The Plant shall be deemed to be in the possession of the Hirer for all purposes of the Contract from the time Hirer begins unloading it at the Site until the time that the Hirer has completed unloading the Plant at NZGH's yard or such other points as NZGH shall in writing direct.

#### 16. FORCE MAJEURE

- 16.1 Neither party shall be liable for breach of the Contract (other than payment, if and to the extent that fulfilment of a term or condition hereof has been prevented hindered or delayed by force Majeure as defined in condition 16.2 below, and in such event that the time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances.
- 16.2 The expression "force Majeure" shall mean any event or circumstance beyond the immediate control of either party, including without prejudice to the generality of the foregoing, strikes, electricity outages, disruption of essential services or utility supply, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war either civil or international, emergency, destruction or damage due to natural forces, fire flood, explosion, and compliance with orders or requests of any national or local authority.

#### 17. CONFIDENTIALITY

Each party shall keep confidential any trade secrets or other confidential information of the other party including any information, document or item which may not otherwise at law be classified as confidential but which is commercially sensitive and/or has the word "CONFIDENTIAL" written upon it clearly.

18. PUBLICITY: Hirer hereby authorises NZGH to promote, photograph and publicise in a manner which is dignified, truthful, not misleading and not prejudicial to the goodwill or reputation of Hirer NZGH's involvement with Hirer in a general manner, excluding any specific technical details.

#### 19. PRIVACY ACT

- 19.1 The Hirer agrees that NZGH may obtain information about the Hirer from the Hirer or any other person and any credit or debt collection agencies in the course of NZGH's business, including credit assessment, debt collecting and direct marketing activities, and the Hirer consents to any person providing NZGH with such information.
- 19.2 The Hirer agrees that NZGH may use any information it has about the Hirer relating to the Hirer's credit worthiness and, subject to any confidentiality agreement between the Hirer and NZGH, give that information to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes. The Hirer agrees that any other information collected by NZGH about the Hirer is accessed or collected for the use of any member of NZGH in the course of its business, including direct marketing activities.
- 19.3 The Hirer must notify NZGH of any change in circumstances that may affect the accuracy of the information provided by the Hirer to NZGH.
- 19.4 Any Hirer who is a natural person, for the purposes of the Privacy Act 1993 may access and request the correction of any personal information which NZGH holds about the Hirer.

#### 20. MISCELLANEOUS

- 20.1 Headings are included in these Conditions for convenience and identification only, and are not to be taken to limit the meaning of any part of these Conditions.
- 20.2 If any provision or part of a provision of the Contract should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the Contract which shall not be affected by such severance.
- 20.3 The Contract represents the entire agreement between NZGH and Hirer with regard to the hire of the Plant and contains all agreements, warranties, conditions, representations and other terms agreed made or relied upon by either party in connection with same.
- 20.4 The rights of NZGH shall not be prejudiced or restricted by any indulgence or forbearance extended to Hirer and no waiver of any breach shall operate as a waiver of any subsequent breach.
- 20.5 These Conditions and every contract connected therewith shall be governed by the laws applicable in New Zealand and any claim or dispute arising there from shall be submitted to the courts of that jurisdiction.
- 20.6 The reliance on or enforcement of any of the terms and conditions herein shall give no right to the Hirer to cancel the Contract.
- 20.7 Unless any dispute or difference arising under the Contract is resolved by mediation or other agreement, such dispute or difference shall be referred to the arbitration of one arbitrator who shall conduct arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- 20.8 Any notice required or authorised to be given or served under these Conditions shall be in writing and be deemed duly given or made if delivered or sent by pre-paid mail or by telex, telegram or facsimile communication as follows:
- (a) to NZGH at its aforesaid address;
- (b) to the Hirer at the Site or the address of the Hirer stipulated in the Contract;
- or such other address as may be notified by one party to the other and where served by post shall be deemed served 48 hours following its posting.
- 20.9 The Hirer acknowledges that where the plant hired is being used for business purposes the provisions of the Consumer Guarantees Act do not apply.

## B) AGREEMENTS FOR SALE AND PURCHASE

### TERMS OF TRADE

1. PAYMENT– Standard – 20th day of the month immediately following delivery  
OR by written alternative arrangement.
2. TITLE
- 2.1 It is the intention of NZGH and agreed by the Purchaser that property in the plant shall not pass until NZGH has received full payment under this contract and that the plant, or proceeds of sale of the plant, shall be kept separate until NZGH shall have received the and:
- (a) The Purchaser will hold the plant or any of part of it on trust for NZGH as bailee of NZGH.
- (b) The Purchaser will store the plant without cost to NZGH separately from other items in the possession of the Purchaser, and clearly distinguish and identify the plant as NZGH's plant.
- (c) If the Purchaser sells or trades the plant before NZGH has been paid the plant will be sold at market value as fixed by this agreement on account of NZGH.
- (d) While the Purchaser shall deal as principal and NZGH shall not be liable to any person with whom the Purchaser deals, nevertheless the Purchaser shall hold the entire proceeds of sale or other dealing in respect of the plant on trust for NZGH in a separate account for NZGH.

- (e) The Purchaser shall not deal with the money of NZGH in any way adversely to NZGH.
- (f) Until such time as ownership of the plant shall pass from NZGH to the Purchaser NZGH may give notice in writing to the Purchaser to return the plant or any part of it to NZGH. Upon such notice the rights of the Purchaser to obtain ownership or any other interests in the plant shall cease.
- (g) If the Purchaser fails to return the plant to NZGH then NZGH or NZGH's agent may enter upon and into buildings and premises owned, occupied or used by the Purchaser where the plant is situated and take possession of the plant. NZGH shall exercise reasonable care in entering and removing such plant but shall not be liable for any damage so caused. NZGH may resell any such plant and apply the proceeds of sale in reduction of the Purchaser's indebtedness. The Purchaser shall remain liable for any balance outstanding under this contract.
- (h) The Purchaser shall not charge the plant in any way nor give any interest in the plant while it remains the property of NZGH.
- (i) The Purchaser shall insure and keep insured the plant to the full price against all risks until full payment is received by NZGH.
- (j) NZGH may require payment of the purchase price or the balance of the purchase price due together with any other amounts due from the Purchaser to NZGH arising out of this agreement, and NZGH may take any lawful steps to require payment of the amounts due and the purchase price.
- (k) The foregoing provisions shall not entitle the Purchaser to return the plant without demand from NZGH.

### 3. RISK AND SECURITY

- 3.1 Risk of any loss, damage or deterioration of or to plant passes to the Purchaser on delivery.
- 3.2 The Purchaser grants to NZGH a security interest under the Personal Property Securities Act 1999 ("PPSA") in all the plant NZGH agrees to sell to the Purchaser under any contract as security for payment of the Purchaser's indebtedness and for the performance from time to time of the Purchaser's other obligations to NZGH under the relevant contract
- 3.3 NZGH may allocate all amounts received by the Purchaser in any manner it determines including any manner required to preserve any purchase money security interest in the plant.
- 3.4 The Purchaser agrees that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 124(1)(a), 133 and 134 of the PPSA shall apply to any contract for the sale of plant, or the security under such contracts, and waives the Purchaser's rights under sections 121, 125, 126, 127, 129, 131, 132 and 133 of the PPSA
- 3.5 The purchaser acknowledges that this clause creates a Purchase Money Security Interest (PMSI) as defined in the PPSA in both present and after acquired products.
- 3.6 The PMSI has attached to the products and has not been deferred or postponed.
- 3.7 The Purchaser will do all things and execute all documents as are necessary to ensure that NZGH has a preferred first ranking PMSI in the Plant.
- 3.8 The Purchaser will not permit the Plant to become an accession (as defined in the PPSA) or to be affixed to any land or premises.
- 3.9 The Purchaser acknowledges receiving a copy of this document and waives all rights to receive from NZGH verification of any financing statement or any other notice of any event described by the PPSA.
- 3.10 The Purchaser indemnifies NZGH for any costs it incurs in registering, maintaining and enforcing the security interest created by this document.

### 4. GUARANTEES

- 4.1 If the plant is acquired by the Purchaser for business purposes, the Purchaser acknowledges that the Consumer Guarantees Act 1993 does not apply.
- 4.2 Where the Purchaser supplies the plant in trade to a person acquiring the same for business purposes the Purchaser agrees to obtain an acknowledgement from that person to be included in the relevant contract that the Consumer Guarantees Act 1993 does not apply in respect of the plant.
- 4.3 Where the Consumer Guarantees Act 1993 applies to this contract NZGH reserves the right to repair or replace any plant which fails to comply with any guarantee contained in the Consumer Guarantees Act 1993.
- 4.4 The Purchaser acknowledges that NZGH does not provide any Express Guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by NZGH in writing.
- 4.5 Where the Purchaser supplies the plant to any other person in the course of trading, the Purchaser shall not give or make any undertaking, assertion or representation in relation to the plant without NZGH's prior approval in writing.
- 4.6 The Purchaser agrees to indemnify NZGH against any liability or cost incurred by NZGH under the Consumer Guarantees Act 1993 as a result of any breach by the Hirer of the obligations contained in this contract.
- 4.7 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993.
  - Defective plant which does not comply with the contract shall at NZGH's discretion be repaired or replaced, or the price refunded.
  - Any right which the Purchaser may have to reject non-conforming or defective plant shall only be effective if the Purchaser notifies NZGH in writing within 14 days following delivery and NZGH is given the opportunity to inspect the plant.
  - No plant shall be returned unless NZGH has agreed in advance.
  - NZGH may, at its discretion, delay the repair or replacement of, or the refund of the price of, any plant for so long as the Purchaser is in default in relation to the Amount Owing.
  - NZGH accepts no liability for any claim by the Purchaser or any other person, including without limitation any claim relating to or arising from:
    - any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
    - any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by NZGH in writing, and the Purchaser agrees to indemnify NZGH against any such Claim.
  - In any event, NZGH's liability under any Claim shall not exceed the price of the plant.
- 5.1 Subject to NZGH's approval of Hirer's current credit rating, full payment shall be made on the 20th of the month following invoice date unless otherwise specified by NZGH in writing. Payment by cheque shall not be deemed made until clearance of the cheque.
- 5.2 NZGH reserves the right at its discretion at any time to withdraw any credit terms and substitute Cash With Order or Cash On Delivery or any other terms.
- 5.3 Unless otherwise expressly appropriated by NZGH, payments shall be taken to discharge Hirer's oldest debt, and shall first reduce any interest or costs outstanding including costs of collection, before reducing the principal debt.
- 5.4 If Hirer fails to make payments on the due date, NZGH may, in addition to any other rights it may have, charge interest on all overdue payments at the rate being the highest overdraft rate charged by NZGH's bank from the due date until the date of payment.