

GENERATOR RENTALS AUSTRALIA

Updated May 2013

(A Division of East Coast Generators Pty. Ltd. - A.C.N. 006 517 362)

1. DEFINITIONS

"Generator Rentals"	Generator Rentals Australia (A Division of East Coast Generators Pty Ltd)
"Conditions"	These conditions of hire or rent
"Contract"	The Contract for hire or Rent of the Plant by Generator Rentals to the Hirer or Renter.
"Day"	Eight hours unless otherwise specified.
"Hire Period"	The time from when the Plant leaves Generator Rentals' depot or place where last issued until received back at Generator Rentals' depot or delivered to another place named by Generator Rentals.
"Hirer" or "Renter"	The party taking Generator Rentals' Plant on hire or rent whether an individual, firm, company or public authority.
"Invoice"	The invoice or invoices sent by Generator Rentals to the Hirer or Renter in respect of charges incurred by the Hirer or Renter.
"Plant"	All plant, generators, equipment, cable, cable drums, trailers, fuel tanks, machinery and accessories of whatever nature hired or rented by the Hirer or Renter from Generator Rentals.
"Possession"	The plant shall be deemed to be in the possession of the Hirer for all purposes of the contract from the time loading of the Plant begins for transit from Generator Rentals' yard or point of Hire until such time as unloading of the Plant has been completed at Generator Rentals' yard or such other points as Generator Rentals shall direct.
"PPSA"	The PPS Act and any other legislation and regulations in respect of it and the following words in clause 9.2, 10 and 31 have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement. "PPS Act" means the Personal Property Securities Act 2009 (Cth) (as amended).
"Site"	The site to which the Plant is delivered (or to be delivered) on the Hirer or Renter'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 Renter.
"Theft & Damage Waiver"	Waiver of Generator Rentals' rights against the Hirer or Renter in respect of loss or damage to the plant pursuant to Condition 11.2. DOES NOT CONSTITUTE AN INSURANCE POLICY.
"Week"	Seven consecutive days.
"Working Week"	9 a.m. on Monday to 5 p.m. on Friday.

1.2 Except to the extent that the context otherwise requires:

- words importing the singular include the plural and vice versa.
- words importing a gender include other genders and corporations and vice versa.
- words importing individuals include corporations and vice versa.
- the word Hirer shall mean Hirer or Renter
- 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.
- a reference to a party to these conditions includes its successors and permitted assigns.

2. APPLICATION AND VARIATION OF THESE CONDITIONS :

- These Conditions are deemed to be incorporated in every Contract between Generator Rentals and the Hirer and apply in place of and prevail over any terms or conditions in relation to the Contract contained in or referred to elsewhere or implied by trade custom, practice or course of dealing.
- These Conditions cannot be varied except in writing signed by each party.
- Generator Rentals' catalogues, price lists and quotations do not constitute offers made by Generator Rentals. Hirer's order will be deemed to be an offer to Generator Rentals on these Conditions. Notwithstanding that such order contains terms and conditions which may purport to conflict, add to or vary these Conditions.

3. CANCELLATION

- Hirer is not, without Generator Rentals' written consent, able to terminate any Contract or materially vary any specifications after issue of any confirmation or order by Generator Rentals. Such consent may be made conditional on payment by Hirer of a cancellation charge, being an assessment of damage including lost profits suffered by Generator Rentals.
- Changes in the specifications provided by Hirer, or errors or omissions from the specifications which results in extra cost to or work by Generator Rentals will be charged to Hirer at Generator Rentals' standard rates for such work. Generator Rentals 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, Generator Rentals shall have the option to terminate the Contract by written notice within a reasonable time of becoming aware of the extent of the effect on the specifications. Generator Rentals shall refund any moneys paid by the Hirer less reasonable costs incurred by Generator Rentals to the date of termination.

4. DOCUMENTATION AND SPECIFICATION

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

- All Generator Rental's specifications, drawings and technical representations submitted are the property of Generator Rentals.

5. PRICE AND PRICE VARIATION

- Unless otherwise agreed by Generator Rentals in writing, prices quoted are net Ex-Works prices ruling at date of quotation. Any levies or taxes, including sales tax or consumption tax, government charges, duties, or excise, insurance 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 thirty (30) days and thereafter shall be subject to immediate variation by Generator Rentals in its absolute discretion and without prior notice.
- If between the date of a quotation or initial agreement on price and the date of delivery the price payable by Generator Rentals for significant material items included in the Plant shall have increased for whatever reason including currency variation. Generator Rentals may increase the price and shall in writing so notify Hirer, who shall accept the Plant at the new price. Generator Rentals shall only increase the price by such amount as is necessary to compensate for the increased cost to Generator Rentals.

6. INVOICING AND PAYMENT

- Subject to Generator Rentals approval of Hirer's current credit rating, full payment shall be made within credit terms as stated on invoice unless otherwise specified by Generator Rentals in writing. Payment by cheque shall not be deemed made until clearance of the cheque.
- Generator Rentals reserves the right at its discretion at any time to withdraw or alter any credit terms and substitute cash with order or cash on delivery or any other terms.
- Unless otherwise expressly appropriated by Generator Rentals, payments shall be taken to discharge Hirer's oldest debt, and shall first reduce any interest or costs outstanding, including cost of collection, before reducing the principal debt.
- If the Client fails to make any payment, Generator Rentals may charge interest on the outstanding amount/amounts at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) from the due date of payment until the date of full payment. In addition, a twenty (20) percent Recovery Charge will be applied to accounts where collection action is undertaken.
- The property in the Plant sold and delivered pursuant to a Contract shall remain with Generator Rentals until full payment is made by the Client to Generator Rentals together with all charges for extra materials and / or works.
- DELIVERY AND TRANSPORT**
 - Hirer shall pay the cost and if required by Generator Rentals arrange transport of the Plant from the collection place specified by Generator Rentals to the Site and return to a collection place so specified on completion of the Hire Period. In the event that the Plant requires to be transported for the purpose of repair or damage or breakdown, the cost of which is to be met by Generator Rentals under these Conditions, then the cost of such transport shall be met by Generator Rentals. Similarly, Generator Rentals 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.
 - 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 Generator Rental's option in the event of a variation in any of the foregoing. Generator Rentals will use its reasonable endeavours to meet any delivery dates to which it expressly agrees in writing but in no circumstances whatsoever (including when Generator Rentals agrees time to be of the essence) shall Generator Rentals 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 expiration of seven (7) days from a given delivery date.
 - Hirer shall take any action necessary on its part for timely delivery of the Plant.

8. CONDITIONS RELATING TO OPERATION ETC. OF PLANT

- Loading and Unloading.** The Hirer shall be responsible for loading and unloading the Plant at Site and personnel supplied by Generator Rentals for loading and unloading shall do so as agents of the Hirer and under the Hirer's direction and control.
- Condition of Plant on Receipt.** Unless notification to the contrary in writing is received by Generator Rentals within 3 working days of delivery on Site or completion of construction on Site of the Plant, all Plant will be deemed to have been delivered and/or constructed in good working condition and to the Hirer's satisfaction.
- Care of Plant.** The Hirer shall be absolutely responsible for the safekeeping of the Plant during the Hire Period, for the maintenance of the Plant in good condition, for the lubrication of the Plant and changing the lubricating oil all in strict accordance with Generator Rentals instructions, for the use of the Plant in conformity with its specifications and any other relevant laws or regulations and the Hirer shall ensure that the Plant is not operated for any purpose beyond its rated capacity or in a manner likely to result in undue deterioration. The Hirer shall check lubricating oil and coolant levels in the Plant daily and ensure that lubricating oil and coolant are kept at the level required for the proper operation of the Plant. The Hirer shall become and remain acquainted with the condition of the plant and shall not operate it after it has become defective, damaged or in a dangerous state or in a state which results in a breach of any applicable law or regulation and if the Hirer or any servant or agent of the Hirer does operate the Plant in such condition the Hirer shall be solely responsible for any damage loss or accidents resulting there from. 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, its servants or agents or 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 Generator Rentals for:
 - the cost of repairs; and
 - Generator Rentals charges for the Plant while the Plant is idle due to breakdown or damage and while repairs are being carried out (without prejudice to Generator Rentals right to receive hire charges in respect of all other periods when the Plant is not off hire).

- Duty to Return.** The Hirer shall be absolutely responsible for the return of the Plant to Generator Rentals on completion of the Hire 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 Generator Rentals for:
 - the whole cost of replacement of the Plant; and
 - Generator Rentals charges for the Plant until payment of the costs under clause 8.3 above.

- Access.** The Hirer shall allow Generator Rentals servants, agents and insurers access to the Plant at all reasonable times to inspect, test, adjust, maintain, repair or replace the same. The Hirer shall be responsible for providing safe and proper access for such purposes and for delivery and collection of the Plant and shall be liable for all loss or damage suffered by Generator Rentals or by Generator Rentals servants or insurers as a result of the Hirer's failure to provide or delay in providing such safe and proper access.
- Routine Maintenance/Service.** The Hirer shall make the Plant available to Generator Rentals for the purpose of carrying out routine maintenance or service within one week of Generator Rentals advising the Hirer of such routine maintenance or service being due. During normal working hours Generator Rentals 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 Generator Rentals reserve the right to charge the Hirer for overtime costs.
- Servicing.** Notwithstanding the terms of clause 8.6 the Hirer shall notify Generator Rentals when the Plant has operated for 250 hours since it was last serviced or since the start of the Hire Period, whichever is later. If the service is carried out within one week of such notice being received by Generator Rentals, the costs of such service will normally be met by Generator Rentals. 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 Generator Rentals as provided in this clause then the hirer shall compensate Generator Rentals for additional wear, tear and damage to the Plant by paying the costs of the next service and any consequent repairs. If Generator Rentals 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 Generator Rentals.
- Timber Mats or Equivalents.** If the ground is soft and unsuitable for the Plant to work on or travel over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over or work on.
- Fuel, Oil, Lubricants and Coolants.** Fuel, oil, lubricants and coolants shall, when supplied by the Hirer, be of a grade and type specified by Generator Rentals.
- 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 Generator Rentals.
- 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 Hire period may, at Generator Rentals option, either be repaired at Generator Rentals expense and with the least possible delay in which case the Hirer shall not be charged from its notification of breakdown to Generator Rentals until repair or alternatively Generator Rentals may replace the Plant. If repair is impracticable and if replacement Plant is not available, Generator Rentals 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 working of any part of the Plant must be notified immediately to Generator Rentals and for this purpose no notification shall be effective unless and until it is actually received by Generator Rentals. The Hirer shall not attempt to effect repairs himself except with the express authority of Generator Rentals. No relief from hire charges or any claims will be accepted by Generator Rentals for stoppages due to causes out of Generator Rental's control including without prejudice to the foregoing generality bad weather or ground conditions. The Hirer shall be solely responsible for the costs and expenses of recovering any Plant from soft ground.
- Inspection Reports.** Any inspection reports which Generator Rentals 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 Hire period.
- 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 representative and, for the Hire 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 Generator Rentals' prior consent in writing.
- Rehiring, Etc.** The Plant or any part thereof shall not be rehired, sub-let or lent to any third party without the written consent of Generator Rentals and the Hirer shall protect the Plant against diligence, distress, execution or seizure and shall indemnify Generator Rentals against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this clause.
- Change of Site.** The Plant shall not be removed from the Site without the prior written consent of Generator Rentals.
- Compliance with Law.** The Hirer shall be responsible for complying with all relevant laws, by-laws and regulations applicable and incidental to the installation, use and operation of the Plant.
- Indefinite Hiring.** Where the Hire period is indefinite, that is not being for an agreed period, then:
 - the Contract may be terminated by either the Hirer or Generator Rentals on 5 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 in the event of termination of the Hire period by Generator Rentals all Generator Rentals' rights under the Contract will remain and are reserved; and
 - Generator Rentals reserves the right to increase the previously agreed hire charge following the expiration of 6 months of any period of indefinite hire.

{V-0494561:1}

9. HIRER'S ACKNOWLEDGMENT

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

10. LIMITATION AND EXCLUSION

- 10.1 The Hirer recognises and accepts that in entering into the Contract it has not relied on any advice, statement, representation or warranty given by Generator Rentals, 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.
- 10.2 Save as explicitly set out in these Conditions, Generator Rentals 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.
- 10.3 Generator Rentals shall be under no liability to Hirer for any damages or losses, direct or indirect, or consequential resulting from defects in design, materials or workmanship or failure of the Plant to operate for any reason.
- 10.4 Generator Rentals 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 Generator Rentals, its servants or agents and whether or not in the contemplation of Generator Rentals and/or the Hirer at, or prior to, the commencement of the Contract.
- 10.5 Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of Generator Rentals for death or personal injury resulting from the negligence of Generator Rentals, its employees, agents, or sub-contractors.
- 10.6 If you are a consumer as defined in the Australian Consumer Law Schedule to the Competition and Consumer Act 2010 (Cth) as amended ("ACL"), nothing in these Terms restricts, limits or modifies your rights or remedies against us for failure of a statutory guarantee provided under the ACL.

11. INSURANCE

- 11.1 The Hirer shall be responsible at its own expense for insuring the Plant to its full replacement value and itself against all risks arising from the possession of the Plant. Any insurance monies recovered by the Hirer in respect of such risks shall, to the extent deemed by Generator Rentals, be applied as directed by Generator Rentals. If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to Generator Rentals by telephone and confirmed in writing to Generator Rentals's office and in respect of any claim not within the Hirer's agreement for indemnity in clause 12 hereof, no admission, offer, promise or payment or indemnity shall be made by the Hirer without Generator Rentals's consent in writing.
- 11.2 If the Hirer elects to take up Damage Waiver and pays to Generator Rentals the appropriate amount in full then Generator Rentals will waive its rights against the Hirer in respect of loss or damage to the Plant caused by fire, storm, collision, accident, theft or burglary provided:
- (i) the Hirer can satisfy Generator Rentals or Generator Rentals' insurer that the Hirer has taken adequate precautions to safeguard the Plant from the loss or damage sustained; and
 - (ii) the Hirer immediately ensures that a written police report is promptly submitted to Generator Rentals or its insurers and generally complies with all reasonable requests of Generator Rentals or its insurers in relation to the submission of information and the application for and assessment of the relevant insurance claim.

NOTE: Such waiver of rights by Generator Rentals is subject to **payment by the Hirer** of the excess required (if any) payable under Generator Rentals policy of insurance.

EXPRESSLY EXCLUDED FROM THE ABOVE WAIVER IS DAMAGE AS DEFINED BELOW:

- (a) Damage due to misuse, abuse, or overloading of the equipment and/or overhead damage to hire equipment;
 - (b) Mysterious disappearance or wrongful conversion of the equipment;
 - (c) Loss or damage in contravention of the conditions of the agreement;
 - (d) Loss or damage from use in violation of any statutory laws and regulations;
 - (e) Loss of leads, cables, distribution centres, tools, batteries or any accessories supplied with and/or fitted to the Plant.
 - (f) Loss or damage resulting from lack of lubrication or other normal servicing of equipment;
 - (g) 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.
 - (h) Loss or damage to third parties whilst Hirer is driving and/or towing Plant in a truck and/or trailer hired from Generator Rentals.
- 11.3 Registered Plant.
- (i) The Hirer is responsible for ensuring that truck mounted and/or trailer mounted plant is only to be driven and/or towed by a driver possessing suitable driving licences as applicable.
 - (ii) If the Hirer elects to take up Damage Waiver and the Hirer or the Hirer's driver is convicted of a driving offence whilst in possession of the plant or drives and/or tows the plant in a manner causing loss or damage to the plant or a third party then the Damage Waiver is deemed to be void and any consequential loss or damage that may arise is deemed to be the responsibility of the Hirer.

12. INDEMNITY.

The Hirer shall be solely responsible for and shall hold Generator Rentals 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 Generator Rentals in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with the use of 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.

13. PPSA and Title

- 13.1 Ownership and title to the Plant remains with Generator Rentals at all time and nothing in the Contract or these Conditions can be interpreted otherwise..

13.2 The Hirer consents to Generator Rentals affecting and maintaining a registration on the PPS register (in any manner Generator Rentals considers appropriate) in relation to any security interest contemplated or constituted by the Contract and these Conditions in the Plant and the proceeds arising in respect of any dealing in the Plant and the Hirer agree to sign any documents and provide all assistance and information to Generator Rentals required to facilitate the registration and maintenance of any security interest. Generator Rentals may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Hirer agrees to waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

13.2 The Hirer undertakes to:

- (a) do anything (in each case, including executing any new document or providing any information) that is required by Generator Rentals (i) so that Generator Rentals acquire and maintain one or more perfected security interests under the PPSA in respect of the Plant and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that Generator Rental's security position, and rights and obligations, are not adversely affected by the PPSA;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Generator Rentals' prior written consent; and
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Generator Rental's prior written consent.

13.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

- (a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Hirer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Hirer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

13.4 Unless otherwise agreed and to the extent permitted by the PPSA, The Hirer and Generator Rentals agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Hirer waives any right the Hirer may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

13.5 For the purposes of section 20(2) of the PPS Act, the collateral is the Plant including any Plant which is described in any hire schedule provided by Generator Rentals to the Hirer either with the Contract or from time to time. The Contract is a security agreement for the purposes of the PPS Act.

13.6 Generator Rentals may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way Generator Rentals determines in its absolute discretion.

13.7 The Hirer agrees to notify Generator Rentals in writing of any change to the Hirer's details set out in the Credit Application, within 5 days from the date of such change.

14. INSOLVENCY AND DEFAULT

- 14.1 Generator Rentals 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 Generator Rentals and notwithstanding that Generator Rentals may have waived some previous default or matter of the same or a like nature) terminate the Contract if:
- (i) 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 Generator Rentals;
 - (ii) Hirer compounds with or negotiates for any composition with its creditors generally;
 - (iii) being an individual, Hirer shall die, become permanently incapacitated, or have a trustee appointed or a receiving order made against him or commit any act of insolvency;
 - (iv) being a body corporate or legal persona, Hirer shall call any meeting of its creditors or have a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or comment any other act of insolvency;
 - (v) the financial position of the Hirer, or some other fact or circumstance, leads Generator Rentals to believe on reasonable grounds that the hirer is likely to materially fail to complete its obligations under the Contract;
 - (vi) in the opinion of Generator Rentals, Generator Rentals rights in the Plant may or are put in jeopardy.

14.2 In the event of such termination:-

- (i) Hirer shall forthwith on demand deliver to Generator Rentals the Plant and, in default thereof, Generator Rentals 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 thereof, and Hirer shall indemnify Generator Rentals 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
- (ii) Generator Rentals shall be entitled by notice in writing to Hirer to declare immediately due and payable any amounts outstanding from Customer to Generator Rentals under this or any other contract (such sums thereby becoming forthwith due and payable); and
- (iii) Generator Rentals claims damages from Hirer for breach of the Contract.

15. LEGAL EXPENSES

- 15.1 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 Generator Rentals by the Hirer, including the defence of any action brought

against Generator Rentals for damages caused by the Plant to any person while the Plant is in the possession of the hirer.

16. FORCE MAJEURE

16.1 Neither party shall be liable for breach of the Contract (other than payment) if and to the extent that fulfillment of a term or condition hereof has been prevented, hindered or delayed by force majeure as defined in Condition 15.2 below, and in such event that time for fulfillment 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, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war national or international, emergency, destruction or damage due to nature 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 has the word "CONFIDENTIAL" written upon it clearly.

18. PUBLICITY

Hirer hereby authorises Generator Rentals to promote, photograph and publicise in a manner which is dignified, truthful, not misleading and not prejudicial to the goodwill or reputation of Hirer Generator Rentals involvement with hirer in a general manner, excluding any specific technical details.

19. MISCELLANEOUS

- 19.1 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.
- 19.2 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 enforceable 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.
- 19.3 The Contract represents the complete agreement between Generator Rentals and the 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.
- 19.4 The rights of Generator Rentals 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.
- 19.5 These Conditions and every contract connected therewith shall be governed by the laws applicable in the State of in which the Contract has been executed by Generator Rentals, and any claim or dispute arising there from shall be submitted to the courts of that jurisdiction.
- 19.6 The reliance on or enforcement of any of the terms contained herein shall give no right to the Hirer to cancel the Contract.
- 19.7 Notwithstanding the foregoing, if during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between Generator Rentals and the Hirer in regard to the Contract or the construction of these conditions or anything therein contained or the rights or liabilities of Generator Rentals or the Hirer, such dispute, difference or question shall be referred to a sole Arbitrator or Arbiter to be agreed upon by Generator Rentals and the Hirer failing agreement to be appointed at the request either Generator Rentals or the Hirer by the President for the time being of the Law Institute of Victoria. The decision of the Arbitrator or Arbiter shall be final and binding, no appeal shall lie from his decision on any point of law or fact to any court, and the Arbitrator or Arbiter shall not be entitled to state for the opinion of any court any question of law or fact.
- 19.8 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 Generator Rentals 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.