



## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

In these Terms and Conditions:

- 1.1 The "Seller" is Total Rentals Pty Ltd as Trustee for the ANP Unit Trust ABN 79 047 904 519 trading as "Total Generators".
- 1.2 The "Customer" is the person, firm or corporation purchasing the Goods or the Service from the Seller.
- 1.3 The "Goods" means all plant, equipment and machinery, including tools, accessories and parts supplied to the Customer under this Contract.
- 1.4 The "Service(s)" means all maintenance work carried out either by casual order or contract, work associated with the installation or removal of goods supplied or traded-in or equipment testing and reporting under this Contract.
- 1.5 The "Purchase Price" means the price of the Goods or Services payable by the Customer pursuant to the Quotation to supply the Goods or Services to which these Terms and Conditions form part.
- 1.6 The "Contract" means this contract between the Seller and the Customer for the supply of the agreed Goods and/or Services, as evidenced by the Quotation, the Customer's acceptance of the Quotation and these Terms and Conditions.
- 1.7 The "Quotation" means the invoice, quote or other similar document issued by the Seller to the Customer which details the Goods and/or Services offered to the Customer and the Purchase Price for these Goods and/or Services.

### 2. OFFER AND VARIATION:

- 2.1 The offer to supply the Goods or a Service in the Quotation is open for consideration and is valid for thirty (30) days from the date of the Quotation unless otherwise stated. It is not binding on the Seller until accepted in writing by a duly authorised officer of the Customer, and can be withdrawn by the Seller at any time before such acceptance.
- 2.2 Unless otherwise stated in writing, prices are subject to any variations in currency exchange rates, ocean freight rates or marine insurance charges occurring to the time of delivery. Any other variations that may be applicable, such as labour and materials, etc, will be nominated in writing as part of the Quotation.
- 2.3 The prices given are based on current pricing schedules and/or exchange rates as may be stated in the Quotation, and are based on the quantity of Goods and/or Services specified in the Quotation. If there is any variation in the total quantity of Goods or Services ordered, the Seller reserves the right to amend the Purchase Price.
- 2.4 If repairs or variations are identified and/or recommended by the Seller in the course of providing any Services, the Seller will advise the Customer of such repairs and/or variations as soon as reasonably practicable. However, the Seller will only proceed to make such repairs and/or variations with the agreement of the Customer (including as to price). If the Customer instructs the Seller that the repairs and/or variations are not approved, then the Seller may, in its absolute discretion:
  - a) proceed with the agreed Services without affecting the repairs and/or variations;
  - b) proceed with the agreed Services with such parts of the repairs and/or variations as are agreed by the Customer in writing; or
  - c) terminate this Contract by notice to the Customer and invoice the Customer for the work performed.

### 3. GOVERNMENT TAXES & CHARGES:

Goods and Services Tax (GST) has not been included in the Purchase Price unless stated otherwise and will be payable in addition to the Purchase Price.

### 4. DELIVERY:

- 4.1 The Seller gives no warranty or other representation in respect to delivery times of the Goods or the performance of the Services.
- 4.2 No liability will be accepted by the Seller in respect of any claims through or in connection with the delivery of Goods or Services.
- 4.3 If at any time before delivery of the Goods by reason of any cause whatsoever beyond the control of the Seller, the Seller is prevented from making delivery and/or commissioning the Goods at the time stipulated, then the Seller shall be entitled to determine this Contract and the Customer shall not in consequence have any claim for damages but without prejudice to the rights of the Seller to recover all sums owing to it in respect of deliveries made or services performed prior to the date of such determination or to recover all payments made or expenses incurred by the Seller in connection with this Contract.
- 4.4 The Seller will not accept any liability for delays due to strikes, shipping, transport, inclement weather or due to any other cause beyond the control of the Seller, except as provided for in these Terms and Conditions.
- 4.5 For the purpose of these Terms and Conditions, 'delivery' will be deemed to occur:
  - a) in the case of any Service – upon the Seller providing the Service, and without the need of acceptance of that Service by the Customer; and
  - b) in the case of any Goods – the earlier of:
    - (i) the Seller leaving or attempting to leave the Goods at the Place of Delivery, whether or not any person is present to accept the Goods; and
    - (ii) 7 days after the Seller notifies the Customer, or a person ostensibly acting for the Customer, that the Goods are available for collection.
- 4.6 For the purpose of these Terms and Conditions, the "Place of Delivery" will be deemed to be:
  - a) the Customer's address as stated in the Quotation; or
  - b) such other place agreed by the parties.

### 5. CONTRACT LIABILITY

- 5.1 After the Customer has accepted the Quotation, such order shall not be cancelled or withdrawn by the Customer without the written consent of the Seller.
- 5.2 The liability of the Seller for any alleged breach of this Contract shall be limited to these Terms and Conditions and the Seller shall not be responsible for any special or consequential damages suffered by the Customer.
- 5.3 In cases where the Seller has arranged for delivery of the Goods to the Place of Delivery by rail, ship, aircraft or other transport method, the Customer will be responsible for the immediate examination of the Goods upon arrival and in the event of any Goods arriving in a damaged condition, the Customer must report the matter in writing to the Seller within three (3) days following the arrival of the Goods. The Seller will not be liable for any claim for Goods damaged in transit unless the Customer makes a claim within the specified timeframe of three (3) days.
- 5.4 Unless specified to the contrary in this Contract, and except to the extent prohibited by any law, the responsibility of the Seller ceases upon delivery of the Goods to the Place of Delivery.
- 5.5 Should the Seller carry out work of any kind on the Customer's site or any other site nominated by the Customer, the Seller shall not be liable for any loss or damage occasioned by the Customer arising from any cause connected in any way with such work.

### 6. UNLOADING GOODS

The Customer shall at its cost unload the Goods upon delivery at the Place of Delivery unless it is specified separately in this Contract.

### 7. RETURN OF GOODS

If the Customer wishes to return the Goods, the Seller may, in its absolute discretion, notify the Customer that it accepts the return of the Goods and that the Seller will refund the Purchase Price to the Customer subject to the conditions imposed by the Seller in its absolute discretion including, but not limited to, the following:

- a) a 10% handling charge will be deducted from the refund of the Purchase Price by the Seller;
- b) the Customer being liable for all costs associated with the return transportation of the Goods to the Seller; and
- c) the Goods not being damaged or used in any way;
- d) the Seller notifying the Customer that after the Goods being returned to the Seller, that the Goods are in a condition acceptable to the Seller;
- e) that title to the Goods will automatically vest in the Seller upon the Goods being returned to the Seller;
- f) that risk in the Goods remains with the Customer until the Goods have been received by the Seller and the Seller has notified the Customer that the Goods are in an acceptable condition;
- g) the Customer being liable for the cost of any items acquired by the Seller from other parties for inclusion in the Goods which are not able to be returned; and
- h) the Customer being liable for any losses or expenses incurred by the Seller as a result of the cancellation of the Contract and return of the Goods.

### 8. TERMS OF PAYMENT:

The Customer must:

- 8.1 Pay for all Goods prior to the delivery or collection of the Goods. Payment must be made by way of cash, electronic funds transfer, bank cheque or such other mode agreed by the Seller in its absolute discretion.
- 8.2 Pay to the Seller for all Services prior to performance of the Services.
- 8.3 Without prejudice to any other rights of the Seller; pay to the Seller interest at the rate of 1.5% per month on any charges due by the Customer to the Seller that remain unpaid over 30 days.
- 8.4 Not make any deduction from the Purchase Price by way of set-off or counterclaim.

### 9. ITEM PERFORMANCE AND DESCRIPTION:

- 9.1 Any information concerning the performance, dimensional information, operating costs and applications of the Goods contained in the Quotation or any other communication prepared by the Seller or its suppliers, are intended as guidelines only. As a result of the many variables peculiar to specific applications, to the extent permitted by law, neither the Seller nor its suppliers, expressly or implicitly make any representations or warranties whatsoever about the Goods.
- 9.2 All description specifications, illustrations, drawings, data, dimensions and weights supplied by the Seller or otherwise contained in catalogues, price lists and other advertising matters about the Goods are approximate only and are intended to be by way of a general description of the Goods and shall not form part of this Contract.
- 9.3 The *Competition and Consumer Act 2010* (Cth) and the *Australian Consumer Law* may impose certain guarantees in to this Contract. To the extent that these guarantees apply and cannot be excluded by contract, these Terms and Conditions do not purport to exclude any such guarantees.

### 10. TITLE:

- 10.1 As long as the Customer owes the Seller any part of the Purchase Price, the Seller retains the legal title to all of the Goods. When such Goods are used the legal title remains vested in the Seller.
- 10.2 All Goods, whether used or unused may only be on-sold by the Customer for market value in the ordinary course of business as bailee for the Seller and the proceeds of such sale, shall be received by the Customer as trustee of the Seller and shall be kept separate and on trust from other monies of the Customer.
- 10.3 If Goods are in the possession of a Customer to which the title has not passed:
  - a) the Customer is under an obligation to retain them in a good and merchantable condition and to ensure that they are stored separately and otherwise kept the same in such manner, which clearly identifies them as the goods of the Seller.
  - b) the Seller shall have a right of inspection and a right of repossession of the Goods as well as a right of entry on to the Customer's premises to give effect to these rights.
  - c) the Customer must on request disclose to the Seller all information regarding the Goods and any sale of any of them by the Customer.
- 10.4 Notwithstanding that the title to the Goods has not passed to the Customer, the party who has possession of the Goods shall accept all liability for damages to the Goods as well as any liability to person or property.

## TERMS & CONDITIONS OF SALES continued

### 11. PERSONAL PROPERTY SECURITIES ACT:

11.1 The Customer acknowledges that this Contract constitutes a "Security Agreement" (in particular, a "Purchase-Money Security Interest") within the meaning of the PPSA in relation to all present and after-acquired Goods supplied to the Customer, while title in such Goods remains with the Seller.

11.2 The Customer agrees to:

- a) promptly, at its cost, sign any further documents and provide any further information which the Seller requires in order:
  - (i) to register a Financing Statement or a Financing Change Statement on the PPSR in relation to the Seller's Security Interest.
  - (ii) register any other document required or permitted to be registered by the PPSA; and
  - (iii) correct a defect in any statement or document referred to in this clause.
- b) pay the Seller on demand for all expenses incurred in registering any statement or document referred to in this clause or releasing any goods which are the subject of the Security Interest;
- c) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party, without the written consent of the Seller;
- d) give the Seller not less than 14 days written notice of any proposed changes in the Customer's details, including but not limited to changes in name, address, facsimile number, email address or trading name;
- e) pay to the Seller any costs reasonably incurred by the Seller, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to section 182 of the PPSA and/or enforcing or attempting to enforce any Security Interest created in favour of the Seller under these Terms and Conditions.

11.3 The Customer waives any right it has:

- a) to receive a Verification Statement under section 157 of the PPSA; and
- b) under any section of the PPSA referred to in section 115(1) of the PPSA (the intention being that such sections, to the extent they give the Customer rights, are contracted out of).

11.4 The parties acknowledge that the Seller does not, pursuant to these Terms and Conditions, waive any right that it has or may have under the PPSA.

11.5 In this clause 11:

"PPSA" means the *Personal Property Securities Act 2009* (Cth), and includes subordinate legislation made under that Act.

"PPSR" means the Personal Property Securities Register established under the PPSA.

Words and expressions that are defined in the PPSA, have the meaning assigned to them in the PPSA.

### 12. INSURANCE AND RISK:

12.1 Upon delivery of the Goods, the risk in the Goods (including risk of any loss or damage to or any deterioration in the Goods from whatever causes arising) shall pass to the Customer.

12.2 Until delivery of the Goods to the Customer, the Seller shall insure the goods and shall receive any and all benefit from any proceeds paid pursuant to a claim upon such insurance.

12.3 The Customer is responsible for insuring the Goods immediately following delivery.

### 13. WARRANTY:

13.1 Unless otherwise notified by the Seller to the Customer before entry into this Contract, the Goods may be covered by the Seller's Warranty Program, ("the Warranty") which is available upon request subject to all necessary requirements, terms and conditions of the Warranty being fulfilled to the satisfaction of the Seller and the duration of the Warranty still being effective. To the extent allowed by law, the Warranty is to the exclusion of all other warranties, conditions or liabilities expressed or implied by statute, common law or otherwise. Equipment options, attachments and auxiliary equipment not manufactured by the manufacturer of the Goods offered may be covered by the individual manufacturer's warranties but are not covered in any way separately by the Seller.

13.2 The Seller will use its best endeavours to ensure the Warranty remains in effect. However, the Customer acknowledges that matters outside the control of the Seller, may render the Warranty ineffective. This includes the insolvency of the manufacturer of the Goods, a breach of any contract between the Seller and the manufacturer and any of the conditions of exclusion specified in the Warranty.

### 14. NOTICES

Any notices, demand or similar communication to the Seller or to the Customer made under these Terms and Conditions must be in writing signed by a duly authorised officer and delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender. Such notices will be taken to have been given or made:

14.1 in the case of delivery by post, three days after the date of posting;

14.2 in the case of delivery by hand, when delivered; and

14.3 in the case of delivery by fax, on receipt by the sender of a transmission control report.

### 15. JURISDICTION:

The legal jurisdiction of any dispute in relation to these Terms and Conditions shall be the State of Queensland in the Commonwealth of Australia and the Seller may institute and prosecute legal proceedings in this jurisdiction, which shall be accepted as the proper jurisdiction by the Customer.

### 16. TERMINATION

The Seller shall have the right forthwith to terminate this Contract by notice to the Customer without prejudice to any claim or right the Seller may otherwise have, make or exercise against the Customer or otherwise in respect to the Contract, if:

16.1 the Customer makes default or commits a breach of this Contract; or

16.2 any distress or execution is levied upon the Customer's property or assets; or

16.3 the Customer makes, or offers to make, any arrangement or composition with creditors or commits an act of insolvency or bankruptcy, or if any petition or order in insolvency or bankruptcy is presented or made against it; or

16.4 where the Customer is a company and any resolution or petition to wind up the Customer's business (other than for the purpose of reconstruction) is passed or presented; or

16.5 a receiver or any provisional liquidator or official manager of such Customer's undertaking's, property or assets or any part thereof is appointed.

### 17. GENERAL

17.1 The Seller may assign all of its rights, benefits and interests under this Contract to any other entity. The assignment will not affect the rights, claims or interests of the Customer or the Seller, which are present prior to the date of assignment.

17.2 The Customer must not assign, transfer or novate its rights and obligations under this Contract without the prior written consent of the Seller.

17.3 If any provision of this Contract is, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.

17.4 Failure to neither exercise, nor any delay in exercising, any right power or remedy by the Seller operates as a waiver. A single or partial exercise by the Seller of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Seller unless in writing. The Seller's rights, powers and remedies under this Contract are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by any other agreement or instrument.

17.5 These Terms and Conditions apply to and bind the Customer's employees, contractors, permitted assigns, executors, successors, agents and licensees.

17.6 Where the Seller's consent or approval is required that consent or approval may be withheld or granted in the sole and absolute discretion of the Seller.

17.7 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of these Terms and Conditions.