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## New Generation Power Systems Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “NGPS” means New Generation Power Systems Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of New Generation Power Systems Pty Ltd.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting NGPS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by NGPS to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Equipment” means all Equipment including any accessories supplied on hire by NGPS to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by NGPS to the Customer.
- 1.6 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by NGPS to the Customer.
- 1.7 “Deposit” means the deposit/bond which shall be immediately due and payable by the Customer at the time of ordering that (in the case of hire services) will be reimbursed to the Customer upon approval from NGPS’ staff once the Goods are returned, subject to the terms of this Contract.
- 1.8 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using NGPS’ website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 “Price” means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between NGPS and the Customer in accordance with clause 5 below.
- 1.11 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999”.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 These terms and conditions may be meant to be read in conjunction with NGPS’ Hire Form or any other additional forms or schedules, and:  
(a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and  
(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.5 None of NGPS’ agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of NGPS in writing nor is NGPS bound by any such unauthorised statements.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that NGPS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):  
(a) resulting from an inadvertent mistake made by NGPS in the formation and/or administration of this Contract; and/or  
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by NGPS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of NGPS; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Customer shall give NGPS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by NGPS as a result of the Customer’s failure to comply with this clause.

### 5. Price and Payment

- 5.1 At NGPS’ sole discretion the Price shall be either:  
(a) as indicated on any invoice provided by NGPS to the Customer; or

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- (b) NGPS' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 NGPS reserves the right to change the Price if a variation to NGPS' quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods/Equipment (including, but not limited to, any variation as a result of increases to NGPS in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, change in design and specifications, availability of Goods/Equipment, poor weather conditions, limitations to accessing the site, obscured site defects, safety considerations or prerequisite work by any third party not being completed, etc. which are only discovered on delivery of the Goods/Equipment) will be charged for on the basis of NGPS' quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by NGPS within ten (10) working days. Failure to do so will entitle NGPS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At NGPS' sole discretion:
- (a) a non-refundable deposit may be required; and/or
  - (b) a bond may be required, which shall be refunded upon return of the Equipment in a condition acceptable to NGPS.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by NGPS, which may be:
- (a) on delivery of the Goods/Equipment;
  - (b) before delivery of the Goods/Equipment;
  - (c) by way of instalments/progress payments in accordance with NGPS' payment schedule;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by NGPS.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and NGPS.
- 5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by NGPS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to NGPS an amount equal to any GST, NGPS must pay for any supply by NGPS under this or any other agreement for the sale of the Goods/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods/Equipment**
- 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at NGPS' address; or
  - (b) NGPS (or NGPS' nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At NGPS' sole discretion, the cost of Delivery is either included in, or in addition to, the Price.
- 6.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then NGPS shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 6.4 NGPS may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by NGPS to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and NGPS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 7. Risk to Goods**
- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, NGPS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by NGPS is sufficient evidence of NGPS' rights to receive the insurance proceeds without the need for any person dealing with NGPS to make further enquiries.
- 7.3 If the Customer requests NGPS to leave Goods outside NGPS' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8. Access**
- 8.1 The Customer shall ensure that NGPS has clear and free access to the work site at all times to enable them to deliver the Goods. NGPS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of NGPS.
- 8.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify NGPS against all costs incurred by NGPS in recovering such vehicles in the event they become bogged or otherwise immovable.
- 9. Title to Goods**
- 9.1 NGPS and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid NGPS all amounts owing to NGPS; and
  - (b) the Customer has met all of its other obligations to NGPS.
- 9.2 Receipt by NGPS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:

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- (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to NGPS on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for NGPS and must pay to NGPS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for NGPS and must pay or deliver the proceeds to NGPS on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of NGPS and must sell, dispose of or return the resulting product to NGPS as it so directs.
- (e) the Customer irrevocably authorises NGPS to enter any premises where NGPS believes the Goods are kept and recover possession of the Goods.
- (f) NGPS may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of NGPS.
- (h) NGPS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 To the extent that this Contract does not exceed a twelve (12) month Contract Term, the Customer acknowledges that nothing in this Contract creates or provides for a security interest.
- 10.2 To the extent that this Contract does exceed a twelve (12) month Contract Term, this agreement is the security agreement for the purposes of PPSA generally, and in particular Section 20.
- 10.3 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.4 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all collateral (account), being a monetary obligation of the Customer for the Services that have previously been provided, and that will be provided in the future, by NGPS for the Customer.
- 10.5 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which NGPS may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 10.5(a)(i) or 10.5(a)(ii);
  - (b) indemnify, and upon demand reimburse, NGPS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of NGPS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of NGPS.
- 10.6 NGPS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.7 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.8 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.9 Unless otherwise agreed to in writing by NGPS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.10 The Customer must unconditionally ratify any actions taken by NGPS under clauses 10.5 to 10.7.
- 10.11 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 11. Security and Charge

- 11.1 In consideration of NGPS agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies NGPS from and against all NGPS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NGPS' rights under this clause.
- 11.3 The Customer irrevocably appoints NGPS and each director of NGPS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

### 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify NGPS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow NGPS to inspect the Goods/Equipment.

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- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 NGPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, NGPS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. NGPS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, NGPS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If NGPS is required to replace the Goods under this clause or the CCA, but is unable to do so, NGPS may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, NGPS' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by NGPS at NGPS' sole discretion;
  - (b) limited to any warranty to which NGPS is entitled, if NGPS did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
  - (b) NGPS has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, NGPS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods/Equipment;
  - (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by NGPS;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second-hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by NGPS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that NGPS has agreed to provide the Customer with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 12.10.
- 12.11 NGPS may in its absolute discretion accept non-defective Goods for return in which case NGPS may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 12.12 Notwithstanding anything contained in this clause if NGPS is required by a law to accept a return then NGPS will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 Where NGPS has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of NGPS. Under no circumstances may such designs, drawings and documents be used without the express written approval of NGPS.
- 13.2 The Customer warrants that all designs, specifications or instructions given to NGPS will not cause NGPS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify NGPS against any action taken by a third party against NGPS in respect of any such infringement.
- 13.3 The Customer agrees that NGPS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which NGPS has created for the Customer.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at NGPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes NGPS any money the Customer shall indemnify NGPS from and against all costs and disbursements incurred by NGPS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NGPS' contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies NGPS may have under this Contract, if a Customer has made payment to NGPS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by NGPS under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 14.4 Without prejudice to any other remedies NGPS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions NGPS may suspend or terminate the supply of Goods/Equipment to the Customer. NGPS will not be liable to the Customer for any loss or damage the Customer suffers because NGPS has exercised its rights under this clause.
- 14.5 Without prejudice to NGPS' other remedies at law NGPS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to NGPS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NGPS becomes overdue, or in NGPS' opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by NGPS;

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- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 15. Cancellation

- 15.1 Without prejudice to NGPS' other rights under this Contract, NGPS will, without notice to the Customer, cancel this Contract if:
  - (a) the charges are not paid for in accordance with this Contract;
  - (b) any other event occurs which is likely to adversely affect the Customer's ability to pay the charges (including, but not limited to, the appointment of a receiver, administrator, liquidator or similar person to the Customer).
- 15.2 NGPS retains full discretion whether to offer a refund of any charges or Deposit paid by the Customer under this Contract.
- 15.3 In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by NGPS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 16. Privacy Policy

- 16.1 All emails, documents, images or other recorded information held or used by NGPS is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. NGPS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). NGPS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by NGPS that may result in serious harm to the Customer, NGPS will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to NGPS in respect of Cookies where the Customer utilises NGPS' website to make enquiries. NGPS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as:
  - (a) the Customer's IP address, browser, email client type and other similar details; or
  - (b) tracking website usage and traffic; and
  - (c) reports are available to NGPS when NGPS sends an email to the Customer, so NGPS may collect and review that information ("collectively Personal Information")If the Customer consents to NGPS' use of Cookies on NGPS' website and later wishes to withdraw that consent, the Customer may manage and control NGPS' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Customer agrees for NGPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by NGPS.
- 16.4 The Customer agrees that NGPS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
  - (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 16.5 The Customer consents to NGPS being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Customer agrees that personal credit information provided may be used and retained by NGPS for the following purposes (and for other agreed purposes or required by):
  - (a) the provision of Goods/Equipment; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 16.7 NGPS may give information about the Customer to a CRB for the following purposes:
  - (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.8 The information given to the CRB may include:
  - (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that NGPS is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

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the Customer no longer has any overdue accounts and NGPS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of NGPS, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

16.9 The Customer shall have the right to request (by e-mail) from NGPS:

(a) a copy of the Personal Information about the Customer retained by NGPS and the right to request that NGPS correct any incorrect Personal Information; and

(b) that NGPS does not disclose any Personal Information about the Customer for the purpose of direct marketing.

16.10 NGPS will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

16.11 The Customer can make a privacy complaint by contacting NGPS via e-mail. NGPS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 17. Unpaid Seller's Rights

17.1 Where the Customer has left any item with NGPS for repair, modification, exchange or for NGPS to perform any other service in relation to the item and NGPS has not received or been tendered the whole of any moneys owing to it by the Customer, NGPS shall have, until all moneys owing to NGPS are paid:

(a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

17.2 The lien of NGPS shall continue despite the commencement of proceedings, or judgment for any moneys owing to NGPS having been obtained against the Customer.

### 18. Service of Notices

18.1 Any written notice given under this Contract shall be deemed to have been given and received:

(a) by handing the notice to the other party, in person;

(b) by leaving it at the address of the other party as stated in this Contract;

(c) by sending it by registered post to the address of the other party as stated in this Contract;

(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 19. Trusts

19.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not NGPS may have notice of the Trust, the Customer covenants with NGPS as follows:

(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

(b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

(c) the Customer will not without consent in writing of NGPS (NGPS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:

(i) the removal, replacement or retirement of the Customer as trustee of the Trust;

(ii) any alteration to or variation of the terms of the Trust;

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

### 20. General

20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which NGPS has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.

20.3 Subject to clause 12 NGPS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by NGPS of these terms and conditions (alternatively NGPS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

20.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this Contract without the written consent of the other party.

20.5 The Customer agrees that NGPS may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for NGPS to provide Goods/Equipment to the Customer.

20.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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- 20.7 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

**Additional Terms & Conditions Applicable to Hire Only**

**21. Hire Period**

- 21.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 21.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Customer from NGPS' premises and will continue until the return of the Equipment to NGPS' premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 21.3 If NGPS agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves NGPS' premises and continue until the Customer notifies NGPS that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 21.4 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 21.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless NGPS confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies NGPS immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

**22. Risk to Equipment**

- 22.1 NGPS retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.
- 22.2 The Customer acknowledges and agrees that only oil or fuel approved by NGPS shall be used by the Customer in any of NGPS' Equipment. In the event, any loss or damage is caused by the use of non-approved oil and fuels, then NGPS will rectify and charge the Customer's account for the cost incurred.
- 22.3 NGPS shall not be liable to compensate the Customer or any third party for any loss, damages to property, personal injury arising from the use or operation of NGPS' Equipment howsoever caused. The Customer agrees to indemnify NGPS and keep NGPS indemnified against such claims for the term of the Hire period.
- 22.4 The environmental management on any site that NGPS' Equipment is used on remains the responsibility of the Customer. In this regard, NGPS disclaims responsibility for breaches of Acts, rules or regulations in respect of environmental pollution, aspects such as noise, atmosphere, water sewage, dangerous substances and waste disposal.
- 22.5 The Customer accepts full responsibility for and shall keep NGPS indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

**23. Damage or Loss of Equipment/Insurance Requirements**

- 23.1 Subject to clause 23.2 the Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies NGPS for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer. The Customer further agrees that it will insure, or self-insure, NGPS' interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks.
- 23.2 Notwithstanding clause 23.1 NGPS will charge a fee equivalent to ten percent (10%) of the hire charges as a damage waiver until such time as it is in receipt of evidence that the insurance required under clause 23.1 is in place. Whilst such a fee is being paid NGPS waives its rights to make a claim against the Customer for any loss or damage to the Equipment. The Customer acknowledges that the waiver shall only apply in relation to, acts of nature, fire, accident, collision or theft (in the instance of theft the waiver shall only apply where the Customer has supplied NGPS with satisfactory evidence that the Equipment was stored to a reasonably secure standard and that the theft has been reported to the police). The damage waiver shall also not apply in the following circumstances:
- (a) where the Equipment has been damaged (or destroyed) due to misuse, abuse, improper application or servicing; or
  - (b) loss or damage resulting from mysterious disappearance of the Equipment; or
  - (c) loss or damage caused by contravention of any condition of hire; or
  - (d) any loss or damage to the Equipment occurring where the Equipment is being used, transported on or over, or being loaded or unloaded over, or next to, water (including, but not limited to, on wharves, bridges, barges, or other vessels of any type).
- 23.3 The Customer further agrees:
- (a) to put in place (at its own cost) Public Liability Insurance covering any loss, damage or injury to property or person(s) arising out of the Equipment; and that
  - (b) the Customer shall not use the Equipment, nor permit it to be used, in such a manner as would permit an insurer to decline any claim.

**24. Title to Equipment**

- 24.1 The Equipment is and will at all times remain the absolute property of NGPS.
- 24.2 If the Customer fails to return the Equipment to NGPS then NGPS or NGPS' agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 24.3 The Customer is not authorised to pledge NGPS' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

**25. Customer's Responsibilities**

25.1 The Customer shall:

- (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
- (b) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to NGPS upon request;
- (c) maintain the Equipment as is required by NGPS (including, but not limited to, maintaining (where applicable) water, oil and fluid levels);
- (d) ensure that all reasonable care is taken by the Customer and that the Equipment is left securely stored when not in use;
- (e) not exceed the recommended or legal load and capacity limits of the Equipment;
- (f) refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;
- (g) notify NGPS immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (h) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (i) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by NGPS or posted on the Equipment;
- (j) comply with all work health and safety laws relating to the Equipment and its operation;
- (k) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to NGPS (or NGPS' designated employee);
- (l) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
- (m) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (n) use the Equipment solely for the Customer's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work.

25.2 Immediately on request by NGPS the Customer will pay:

- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to NGPS;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Customer or the Customer's employees;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in NGPS' reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
- (f) the cost of fuels and consumables provided by NGPS and used by the Customer;
- (g) any costs incurred by NGPS in picking up and returning the Equipment to NGPS' premises if the Customer does not return the Equipment to NGPS' premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
- (h) any lost hire fees NGPS would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (i) any insurance excess payable in relation to a claim made by either the Customer or NGPS in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or NGPS'.

**26. Wet Hire**

26.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of NGPS and operates the Equipment in accordance with the Customer's instructions. As such NGPS shall not be liable for any actions of the operator in following the Customer's instructions.