

Terms & Conditions of Hire

These terms and conditions should be read in conjunction with any offers or proposals YorPower Ltd has made to you, in writing and confirms acceptance of your order, and your acceptance of our terms and conditions.

1. Definitions

‘YORPOWER’ means YorPower Ltd.

‘Hire period means’ means the time from when the plant leaves YORPOWER’s depot or place where last issued, until (at the option of YORPOWER) the plant is received back at YORPOWER depot or delivered to another place named by YORPOWER or collected by YORPOWER.

‘Hirer’ means the party taking YORPOWER’ plant on hire whether individual, firm, company or public authority and its successors, assignees, or personal representatives. The hirer shall be responsible for the payment of all charges detailed in the contract.

‘Invoice’ means the invoice or invoices sent by YORPOWER to the hirer in respect of the charges incurred by the hirer.

‘Plant’ means all generators, plant, equipment, cable, drums, trailers and fuel tanks, machinery and accessories of whatever nature hired by the hirer from YORPOWER.

‘Site’ means the site to which the plant is delivered (or to be delivered) on the hirer’s instructions, or the site to which the plant is moved pursuant to clause 22.

‘Normal working hours’ means 8.30 am – 4.30pm. Monday to Friday inclusive, local, national and bank holidays observed by the relevant depot of YORPOWER accepted.

2. Extent of Contract

The delivery note, hire contract, invoice, changeover note, off hire note and these terms and conditions comprise the contract between YORPOWER and the hirer (‘the Contract’) and no other extraneous terms and conditions shall form part of the contract and no variations of the contract shall be effective unless specifically agreed in writing by an authorised representative of YORPOWER. For the purpose of interpretation, the clause headings contained herein shall be ignored.

3. Loading and Unloading

The hirer shall be responsible for loading and unloading the plant at the site and personnel supplied by YORPOWER for loading and unloading shall do so as agents of the hirer and under the hirers’ direction and control.

4. Condition of Plant on Receipt

Unless notification to the contrary in writing is received by YORPOWER 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.

5. Care of the 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 lubrication oil all in strict accordance with YORPOWER instructions for the use of the plant in conformity with its specification and current Institution of Electrical Engineers (IEE) regulations, and any other relevant laws or regulations and the hirer shall ensure that no plant is operated for any purpose beyond its rated capacity or in any manner likely to result in undue deterioration of the plant. 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 keep himself 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 of which results in a breach of any application 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 occur, loss or accident resulting there from.

Should breakdown or damage occur to the plant due to failure to observe any terms of the contract, due to negligence or misuse by the hirer or its servants or agents or to wilful or accident damage however occurring or due to damage caused by salt water, salt spray and/or salt laden air, the hirer shall be liable to YORPOWER for:

- a) the cost of repairs to the plant; and
- b) YORPOWER' hire charges for the plant while the plant is idle due to the breakdown or damage, and while the repairs are being carried out (without prejudice to YORPOWER' right to receive hire charges in respect of all other periods when the plant is not off hire).

6. Duty to Return

The hirer shall be responsible for the return of the plant to YORPOWER on completion of the hire period in good condition, fair wear and tear expected. When plant includes cable, the hirer shall be responsible for recoiling cable on drums supplied prior to return. If the hirer fails to return the plant for any reason whatsoever (including, without limitation, theft), and 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 the company for:

- a) The whole cost of replacement of the plant, and
- b) YORPOWER' hire charges for the plant until payment of the costs under clause 5i above.

7. Access

The hirer shall allow YORPOWER, 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 YORPOWER or by YORPOWER' servants, agents or insurers as a result of the hirer's failure to provide or delay in providing safe and proper access prevent collection of the plant by YORPOWER, the hire period shall continue until such time as access is available, and thereafter until it is received back at YORPOWER' depot or delivered to another place named by YORPOWER.

8. Routine Maintenance

The hirer shall make the plant available to YORPOWER for the purpose of carrying out routine maintenance and service within one week of YORPOWER advising the hirer of such routine maintenance or service being due. During normal working hours YORPOWER will make no charge to the hirer for such routine maintenance or service (unless otherwise agreed) but if the hirer can only make the plant available for this purpose outside normal working hours, then YORPOWER reserve the right to charge the hirer for overtime costs.

9. Servicing

Notwithstanding the terms and conditions of the clause 8 the hirer shall, without delay, notify YORPOWER when the plant has operated for the number of hours being the service interval period (as marked or displayed on the plant or as notified to the hirer by YORPOWER) since the time when it was last serviced or since the start of the hire period, whichever is the later. The hirer shall thereafter make the plant available to YORPOWER for the purpose of carrying out a service. If a service is not carried out within one week of the plant having operated for the number of hours being the service interval period due to the hirers failure to notify YORPOWER as provided in this clause, there, the hirer shall compensate YORPOWER for the additional wear, tear, and damage to the paint by paying the cost of the next service and any consequent repairs.

10. Timber Mats or Equivalent

If the ground at or providing access to the site is soft or unsuitable for the plant to work on or travel over without timbers or equipment's, the hirer shall supply and lay suitable position for the plant to travel over or work on. The hirer shall be solely responsible for the costs and expenses of recovering any plant from soft ground.

11. Fuel, Oil, Lubricant & Coolant

Fuel, oil, lubricant, and coolants shall, when supplied by the hirer, be of a grade and type specified or approved by YORPOWER.

12. Transport

The hirer shall pay the cost of (and if required by YORPOWER arrange) transport of the plant from the collection place specified by YORPOWER to the site and its return to that place by YORPOWER in order to conclude 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 YORPOWER in the terms of the contract, then the cost of such transport shall be met by YORPOWER. YORPOWER shall pay the cost of transporting replacement plant to the site, unless the provision of such replacement plant rendered

necessary by damage of breakdown of the plant which is the responsibility of the hirer in terms of the contract.

13. 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 YORPOWER. Option, either is repaired or replaced by YORPOWER, at YORPOWER, expense and with the least possible delay. In each case the hirer shall not be charged for the period from the notification by it of the breakdown to YORPOWER, until the repair or replacement is affected, provided such period exceeds 24 hours and YORPOWER have been permitted access to the plant pursuant to clause 7. If repair is impractical and if replacement plant is not available, YORPOWER may terminate the hire forthwith, and will not have any liability whatever to the hirer for such termination, or any consequences of breakdown. Any breakdown, or unsatisfactory working of any part of the plant, must be notified immediately to YORPOWER, and for this purpose no notification shall be effective unless and until it is received by YORPOWER. The hirer shall not attempt to effect repairs himself except with the express authority of YORPOWER. No relief from hire charges nor any claims will be accepted by YORPOWER for stoppages due to causes out with YORPOWER' control, including without prejudice to the foregoing generality bad weather or ground conditions.

14. Consequential Loss

YORPOWER 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 cause on the part of YORPOWER, its servants or agents and whether or not in the contemplation of YORPOWER and/or the hirer at or prior to not commencement of the contract.

15. Information, Advice etc...

The hirer recognises and accepts that into the contract it has not relied on any advice, statement, representation, or warranty given by YORPOWER, 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.

16. Liability

Notwithstanding and without prejudice to any other terms of the contract, and in so far as permitted by law, YORPOWER shall only accept liability for damage, loss, or injury to the plant or for personal injury due to or arising:

- a) prior to delivery of the plant to the site, where the plant is in transport arranged or owned by YORPOWER.
- b) During erection or dismissal of the plant on site, provided such erection or dismissal is entirely within YORPOWER control.
- c) After removal of the plant from the site, where the plant is in transit by transport arranged or owned by YORPOWER, after the unloading of the plant at its destination.

17. Operation of the Plant

Where an operator is provided with the plant, he shall work under the supervision and instruction of the hirer or its representatives and, for the duration of the hire, the operator shall be deemed to have been a servant of the hirer, who shall be responsible for his acts and omissions (including negligence acts of omissions) as if he were the hirer's direct employ, and shall ensure that any such operator is covered by the hirer's insurance accordingly. The hirer shall be responsible for making any such operator fully aware of all applicable safety requirements. The hirer shall not permit any other person to operate the plant without YORPOWER' prior consent in writing.

18. Price

The initial hire rates for the plant and services are the rates in force at the time of delivery and as set out in the hire contract, but YORPOWER reserve the right, upon giving the hirer at least one weeks' notice, to vary the time rates so as to reflect variation in YORPOWER' own cost of goods, materials, fuel and labour.

19. Sale and Other Disposals

The hirer shall in no circumstances sell, transfer, or dispose of (or enter into any agreement to sell, transfer, or dispose) or create security, charge, mortgage or otherwise encumber the plant in any way, nor without the previous written consent of YORPOWER attach the plant to any land or premises so as to cause it to become a heritable fixture on such land or premises.

20. Insurance and Accidents

The hirer shall be responsible at its own expense for ensuring the plant and itself against all risks arising from the presence or operation of the plant on site at all times during the hire period i.e. until received back at YORPOWER' depot or delivered to another place named by YORPOWER or collected by YORPOWER. The hirer's obligation to ensure the plant and itself does not cease until YORPOWER has actually taken possession of the plant. Any insurance monies recovered by the hirer in respect of such risks shall, to the extent deemed necessary by YORPOWER, be applied as directed by YORPOWER. If the plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to YORPOWER by telephone and confirmed in writing to YORPOWER' office and in respect of any claim not within the hirer's agreement or indemnity in clause 32 hereof, no admission, offer, or promise of payment or indemnity shall be made by the hirer without YORPOWER' consent in writing.

21. Rehiring, Sub-letting, lending

The plant or any part thereof shall not be rehired, sub-let, or lent to any third party without the prior written consent of YORPOWER and the hirer shall protect the plant against diligence, distress, execution or seizure, and shall indemnify YORPOWER against all losses, damage, costs, charges and expenses arising as a result of failure to comply with the clause, or arising as a result of any re-hiring, sub-letting or lending.

22. Change of Site

The plant shall not be moved from the site to which it was delivered, taken or consigned at the beginning of the hire period without the prior written consent of YORPOWER.

23. Indefinite Hiring

Any indefinite hiring (not being for an agreed period) may be terminated by either the hirer or YORPOWER 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 YORPOWER, all YORPOWER' rights under the contract will remain and are reserved.

24. Compliance with the Law

The hirer shall be responsible for complying with all relevant laws, bye-laws and regulations applicable and incidental to the installation use and operation of the plant, which without prejudice to the foregoing generality shall include the current IEE regulations.

25. Declaration of Intended Use

The hirer confirms and accepts that fuel purchased from YORPOWER will not be used as fuel for an engine provided for propelling a road vehicle or for an engine which draws its fuel from the same supply as that engine, or otherwise in contravention of the hydrocarbon oil duties Act 1979 or any other legislations concerning the use of fuel. The hirer further confirms and accepts that only duty rebated fuel supplied by YORPOWER must only be used in strict accordance with the current customs and excise and other applicable regulations controlling the same.

26. Force Majeure

YORPOWER shall not be under any liability for any failure to perform in any of its obligations as a result of force majeure. Following notification by YORPOWER to the hirer of force majeure, YORPOWER shall be allowed a responsible extension of time for the performance of its obligations.

For the purpose of this clause, 'Force Majeure' means fire, explosion, flood, lightning, act of god, act of terrorism, war, rebellion, riot, sabotage, strike or similar labour dispute, or other events circumstances outside the responsible control of YORPOWER.

27. Payment and Payment Terms.

Unless otherwise specifically agreed in writing, the purchase price shall be paid in GBP sterling on the due date as stated on the invoice.

The amount of any Deposit and Charges are detailed in the Order and are based on our current price list from time to time.

Where a Deposit is required for the Equipment, it must be paid before you hire the Equipment.

You shall pay the Charges from the date specified in the Order and will continue paying the Charges during the Hire Period until

- (i) we have given you a collection or off-hire confirmation; and
- (ii) you have returned the Equipment to us or we have collected the Equipment within a reasonable period after the issue of the off-hire confirmation, being not more than 3 working days, and the Equipment is in a clean and serviceable condition. All time during the Hire Period is chargeable and the Charges are calculated weekly unless otherwise stated within the quotation and/or order acknowledgement.

If we are unable to collect the Equipment for any reason whatsoever after an off hire has been agreed, we will extend the Contract and the Charges shall continue to be payable in accordance with the Contract.

Where a credit account has not been granted, payment of the Charges shall be made with your order for the Equipment or purchase of the Products. Otherwise, payment of any Charges or any other sums due under this Contract shall be made in full and cleared funds by the end of the following month from the month in the date of the invoice.

All Charges are, unless otherwise stated, exclusive of any applicable VAT.

Prompt payment under a Contract shall be of the essence. Payment shall not be deemed to be made until we have received either cash or cleared funds in respect of the full amount outstanding.

Without prejudice to any of our other rights, if you fail to make any payment in full on the due date we may charge you interest (both before and after judgment) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 and/or to suspend further Services to you or any of your Associated Companies.

You shall pay all sums due to us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

We may set a reasonable credit limit for you. We reserve the right to terminate or suspend the Contract for hire of the Equipment and/or the provision of Services if allowing it to continue would result in you exceeding your credit limit or you have already exceeded the credit limit.

Interest at the rate of 5% per annum or part thereof above the Bank of England base lending rate shall be paid on all accounts remaining unpaid after the due date until actual payment is made.

28. Default

If the hirer defaults in punctual payment of any sum due to YORPOWER for the hire of the plant or other charges, or shall fail to observe and perform the terms and conditions of the contract, or if the hirer shall suffer and diligence, distress or execution to be used or levied against him or make r purpose to make any arrangement with his creditors or, being a company, shall go into liquidation (other than a member voluntary liquidation) or have a receiver, administrator or administrative receiver appointed to the whole or any part of its assets and undertaking (including uncalled capital) or shall do or cause to be done or permit or suffer any act or thing whereby YORPOWER' rights in the plant may be prejudice or put into jeopardy, YORPOWER shall have the option to terminate the contract (without any notice or other act on the part of YORPOWER and notwithstanding that

YORPOWER may have waived some previous default or matter of the same or a like nature) . If YORPOWER opts to terminate the contract it shall thereupon be lawful for YORPOWER to enter any premises where the same may be. The termination of the contract under this clause shall not affect the right of YORPOWER under the contract or damages for the breach thereof.

29. Notices

Any notices to be given by either party here-under may be given:

by delivery to the other party's last known address: or

by sending the same by recorded delivery post addressed to the other party's last known address: or

by facsimile transmission to the other party's last known facsimile number.

A notice shall be deemed to have been received (1) in the case of delivery, at the time of delivery, (2) in the case of recorded delivery post upon the expiry of 48 hours from the time the same was properly addressed, stamped, and posted and (3) in the case of facsimile transmission, upon transmission.

30. Intellectual Property

The hirer shall not infringe any intellectual property rights including, without limitation, copyright, registered design, or patent which YORPOWER may have by seeking to copy any goods or components supplied by YORPOWER.

31. Miscellaneous

If any provision of the contract is rendered void by legislation or declared void by court decree or order the remaining provisions shall not thereby be altered and shall remain in full force of effect.

Any waiver indulgence or forbearance by YORPOWER of any of the terms contained herein shall not affect the enforcement of such terms.

The reliance on or enforced of any of the terms contained herein shall give no right to the hirer to cancel the contract.

It is hereby agreed and declared that YORPOWER may at its own absolute discretion assign any sums owned to it by the hirer (or any of the hirer's related or associated persons, firms, or companies or any of their successors in title) to any of YORPOWER' associated or related companies.

If any sum of money shall be recovered from or payable by the hirer to YORPOWER, the same may be deducted from any sum then due, or which at any time may become due from the hirer to YORPOWER, whether under the contract or otherwise.

The hirer shall not be entitled to withhold payment of any sums after they have become due by reason of any right or set off or counterclaim which the hirer may have or allege to have or for any other reason whatsoever.

Throughout these terms and conditions, wherever the context so requires, the use of the singular number shall be construed to include the plural, and the use of the plural the singular, and the use of any gender shall include all genders.

Reference in these terms and conditions to a 'clause' is to a clause of these terms and conditions.

32. Indemnities

The hirer shall be solely responsible for and shall hold YORPOWER fully indemnified against any loss or damage arising to or in connection with the plant or as result of the use or situation of the plant. The hirer shall fully and completely indemnify YORPOWER in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with the use or situation of the plant and in respect of all costs and charges in connection therewith whether arising under statute or common law. The foregoing indemnities shall be effective whether or not the loss, damage or injury arises from any negligence on the part of the hirer.

33. Exclusion of Warranties

Save as explicitly set out in these Terms and Conditions, YORPOWER 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.

34. Arbitration

If during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between YORPOWER and the Hirer in regard to the Contract or the construction of these Terms and Conditions or anything therein contained or the rights or liabilities of YORPOWER or the hirer, upon the agreement between YORPOWER and the hirer such dispute, difference or question should be referred to a sole arbitrator to be agreed upon by YORPOWER and the hirer and failing agreement to be appointed at the request of either YORPOWER or the hirer by the Chairman of the United Kingdom Plant Association. The remit and powers of the arbitrator will be agreed between YORPOWER and the Hirer. The decision of the arbitrator 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 shall not be entitled to state for the opinion of any court and question of any law or fact.

35. Applicable Law

The contract in all respects shall be subject to, governed by and construed in accordance with English Law, and to subject to clause 34, the English Courts shall have jurisdiction in respect of any question arising hereunder.

36. CPH

CPH regulations apply to this contract.

