

Terms and Conditions of Trade

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

Agreement means the terms and conditions contained in this document and includes the Rental Document.

Australian Consumer Law has the meaning given to it in the *Competition and Consumer Act 2010* (Cth).

Customer means the person(s)/company identified in the Rental Agreement and includes any employees, executors, administrators and representatives.

Customer Account means the Customer's debit card or credit card to where your Rental Charges are to be debited.

Equipment means any kind of equipment including Generators hired by the Customer from Dragon Generators from time to time and includes any and all accessories, tools, instruments, parts, manuals, instructions and transportable materials, substitute and replacement Equipment, unless indicated to the contrary in these rental terms.

Force Majeure Event means any event outside the reasonable control of Dragon Generators including acts of God, war, riots, strikes, lock outs, trade disputes, fires, earthquakes, floods, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

Guarantor means the Director/s of the Customer (as applicable).

GST means the tax imposed by *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

Dragon Generators means Dragon Generators Pty Ltd ACN 167 559 033.

Invoice means the written invoice issued by Dragon Generators to the Customer in respect of the Rental Charges.

Location means the location of the Equipment in the Rental Document or such other locations as agreed by Dragon Generators.

Manufacturer Specifications means the specifications of the manufacturer of the

Equipment as set out in the Equipment's operations manual.

Order means a verbal and/or written order to hire Equipment placed by the Customer with Dragon Generators.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Rental Charges means the fees, costs, amounts and charges specified in the Rental Document or payable under this Agreement.

Rental Period means the period commencing from the date the Customer receives the Equipment and ending on the date that the Customer returns the Equipment to Dragon Generators.

1.2 In this Agreement:

- (a) any reference to a party includes its successors and permitted assigns;
- (b) headings are for convenience only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) "including" and similar words do not imply any limitation;
- (e) a reference to \$ is to the Australian currency;
- (f) a reference to legislation or a legislative provision includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) if the performance of an obligation under this Agreement by Dragon Generators falls due on a weekend or public holiday day it must be performed on the next business day.

2. AGREEMENT

2.1 Dragon Generators rents Equipment to the Customer in the ordinary course of its business.

2.2 This Agreement set out Dragon Generators' terms of trade and requirements for payment of its Invoices for the rental of the Equipment.

2.3 In entering into this Agreement with Dragon Generators, the Customer

acknowledges acceptance of the Rental Charges and associated costs and agrees to make payment for such pursuant to the Agreement.

2.4 This Agreement will apply without further notice to all current and future provision of Equipment by Dragon Generators to the Customer, whether or not it is delivered or executed in the course of the transaction.

3. CUSTOMER OBLIGATIONS

3.1 Risk in the Equipment passes to the Customer on delivery/collection of the Equipment and remains with the Customer until the Equipment is collected by or returned to Dragon Generators. Subject to clause 9, the Customer is liable to Dragon Generators for any and all loss or damage to, or ensured by the Equipment including the cost of repairing or replacing the Equipment at the full new replacement cost, salvage costs and rental charges incurred while the Equipment is repaired or replaced.

3.2 The Customer must:

- (a) ensure the Equipment is operated by a suitably trained, licensed, experienced and certified operator and is operated in accordance with the law, Manufacture Specifications and Dragon Generators' instructions;
- (b) ensure that the Equipment is used for the purpose for which it was designed, in suitable terrain (i.e. no off road etc.) and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
- (c) ensure that the Equipment is not removed from the Location without Dragon Generators' prior written consent;
- (d) ensure that the Equipment is at all times stored safely and protected from theft, loss and damage;
- (e) operate the Equipment with an adequate power source;

(f) immediately report and provide full details to Dragon Generators of any loss, theft, breakdown, damage or accident to the Equipment;

(g) ensure that all safety information supplied with the Equipment is clearly legible, attached to the Equipment, displayed prominently and brought to the attention of any person using the Equipment;

(h) conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety Laws relating to the Equipment and its operation.

(i) ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by Dragon Generators or the safety and operating instructions;

(j) ensure that any person collecting or taking possession of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege any such person is not authorised;

(k) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with Dragon Generators' instructions and the Manufacturer Specifications;

(l) complete daily safety and preventative checks prior to using the Equipment; and

(m) comply with all statutory laws and regulations and all common laws, relating to hired Equipment.

3.3 The Customer must not:

- (a) alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment;
- (b) tamper, damage, repair or attempt to repair the Equipment (only Dragon Generators may repair the Equipment

otherwise the Customer will be breach of this Agreement);

(c) lose or part with possession of the Equipment;

(d) rely upon any representation relating to the Equipment or its operation other than those contained in the Agreement; and/or

(e) exceed the recommended or legal load and capacity limits of the Equipment.

3.4 If the Equipment breaks down, becomes unsafe to operate, the Customer shall immediately stop using the Equipment, ensure it does not sustain any further damage, and prevent the Equipment from causing injury, loss or damage to any person or property and notify Dragon Generators immediately. Subject to clause 6, Dragon Generators will use reasonable endeavours to repair or replace the Equipment at Dragon Generators' discretion and at the Customer's expense after receiving such notification. Any Equipment supplied as a replacement by Dragon Generators will be supplied for the unexpired balance of the Rental Period on the terms of the Agreement.

4. ACCESS AND INSPECTION

4.1 Dragon Generators and its representative have the right to enter the Location at any time and upon giving prior reasonable notice, deemed necessary by Dragon Generators, to inspect, maintain and/or repair the Equipment or repossess the Equipment. The customer must assist Dragon Generators and its representative exercising its rights under this clause

5. RETURN OF EQUIPMENT

5.1 The Customer must:

- (a) deliver the Equipment to Dragon Generators when it is due back in the same condition (except for normal wear and tear) as at the date the

Equipment was hired, being the date on the Rental Document, (Commencement Date) ;					
(b) return the Equipment with a full tank of fuel using only the fuel specified for the Equipment in the Manufacturer Specifications.					
5.2 Dragon Generators may request the immediate return of the Equipment, or Dragon Generators may recover the Equipment without notice if:					
(a) the Rental Period expires without the Customer having made satisfactory arrangements with Dragon Generators;	7. RENTAL CHARGES				
(b) Dragon Generators reasonably suspects that:	7.1 The Customer will incur Rental Charges from the commencement of the Rental Period until and including the day on which the Equipment is returned to Dragon Generators or the Agreement is terminated in accordance with clause 11, whichever is the earlier.	7.3 Where any amount payable under the Agreement becomes overdue, all outstanding amounts whether due to Dragon Generators under the terms of the Agreement or under any other agreement between Dragon Generators and the Customer will become immediately due and payable by the Customer to Dragon Generators.		7.8 If GST is imposed on any taxable supply under this Agreement then the recipient of that taxable supply must pay the supplier an additional amount equal to the GST payable on the taxable supply at the same time as payment for the taxable supply is due.	(c) the Equipment has been wilfully damaged by the Customer or employees or agents;
(i) the Equipment may be used for unlawful purposes;					(d) improper use of the Equipment; and/
(ii) damage to the Equipment, or injury to persons or property is likely to occur;	7.2 At the end of the Rental Period, the Customer must immediately pay all amounts specified in the Invoice to Dragon Generators including:	7.4 Dragon Generators may charge the Customer interest, calculated on a daily basis and compounded monthly on overdue amounts, from the due date of payment to the date of actual receipt of payment or an interest rate, which is 5% greater than the rate published by the Commonwealth Bank of Australia, or its successor, on commercial overdraft finance facilities in excess of \$100,000.00 as at the date of payment.			(e) lack of lubrication or other normal servicing of the Equipment.
(iii) the Equipment will be involved in an industrial dispute.	(a) all Rental Charges;				9.3 The customer must immediately report any theft of the Equipment to the police and provide Dragon Generators with written evidence verifying such report.
5.3 If the Customer does not return the Equipment on the time and date shown on the Rental Document or as otherwise agreed between the parties in writing, then, after written notice to the Customer, Dragon Generators may report the Equipment as stolen to the Police.	(b) all costs incurred in the cleaning of the Equipment(if applicable);	7.5 Without limiting the ability of Dragon Generators to recover all amounts owing to it, the Customer authorises Dragon Generators to charge any amounts owing by the Customer to the Customer Account.	8.1 At the Customer's request, Dragon Generators may organise delivery of the Equipment to the Location as nominated by the Customer. Delivery costs are payable by the Customer at the same time as an Invoice is payable.	8. DELIVERY	
	(c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;		8.2 An estimated timeframe for delivery may be confirmed by Dragon Generators to the Customer. Dragon Generators will use reasonable endeavours to meet the delivery timeframe but accepts no responsibility for costs or charges resulting from a delay in delivery due to factors outside its reasonable control. Dragon Generators may change the estimated delivery time. Dragon Generators reserves the right to deliver the Equipment in installments.		
	(d) any stamp duties, GST, any other taxes, duties, levies, charges fines, penalties or charges payable in respect of or in connection with the Agreement;	7.6 In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by Dragon Generators.			10. PPSA
6. INDEMNITY	(e) all costs and charges incurred by Dragon Generators in delivering, and, if necessary, return of the Equipment;		9. INSURANCE		10.1 Capitalised terms used in this clause but not defined in clause 1 have the meanings given to them in the PPSA
6.1 The Customer and Guarantor (as applicable) agree to indemnify and keep indemnified Dragon Generators and its directors, employees or representatives against all costs, claims, demands, expenses and liabilities of whatsoever nature (including claims of death, personal injury, damage to property and consequential loss including loss of profit), suffered or incurred by, or made against, Dragon Generators as a result of a breach of this Agreement by the Customer, the Customer's use of the Equipment, any loss Dragon Generators suffers (including all additional costs Dragon Generators	(f) all Equipment operating costs (including fuels, oils and lubricants incurred and all consumables) used during the Rental Period;	7.7 Payment must be made by cash, bank cheque or direct credit into Dragon Generators' bank account or by any other method agreed between the Customer and Dragon Generators. Receipt of any form of payment other than cash will not constitute payment until that form of payment has been honoured, cleared or recognised.	9.1 The Customer acknowledges and agrees that it must take-out and maintain during the term of the Agreement insurance for:		10.2 The Customer acknowledges and agrees that:
	(g) the new list price of any Equipment which is for whatever reason not returned to Dragon Generators; and		(a) indemnity cover of not less than full new replacement value of the Equipment; and		(a) this Agreement constitutes a Security Agreement in respect of the Equipment;
	(h) any costs or expenses reasonably incurred by Dragon Generators in enforcing the Agreement as a result of the Customer's breach of the Agreement or in order to return the		(b) third party cover and public liability indemnity cover of not less than \$10,000,000.00.		(b) the Equipment is Collateral for the purposes of the PPSA;
			9.2 The Customer's liability will not be limited in accordance with clause 7.3 if in Dragon Generators' reasonable opinion, the loss or damage to the Equipment arises from or caused by:		(c) Dragon Generators holds (as Security Party) a Security Interest over all the present and after acquired Equipment supplied by Dragon Generators to the Customer;
			(a) a breach of this Agreement;		(d) that any purchase by the Customer on credit terms from Dragon Generators or retention of title will constitute Purchase Money Security Interest;
			(b) the Equipment operator being affected by drugs and/or alcohol;		(e) the Purchase Money Security Interest granted will continue to apply to all Equipment coming into existence proceeds of sale of Equipment coming into existence;
					(f) Dragon Generators will continue to hold a Security Interest in the Equipment in accordance with, and subject to, the PPSA, notwithstanding that the Equipment may be processed commingled or become an accessions with other Equipment;
					(g) any of Dragon Generators' Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered and unregistered Security Interests;

- (h) until title in the Equipment passes to the Customer, it will keep all Equipment supplied by Dragon Generators free of any charge, lien or Security Interest and not otherwise deal with the Equipment in a way that will or may prejudice any rights of Dragon Generators under this Agreement or the PPSA; and
- (i) in addition to any other rights under this Agreement or otherwise arising, Dragon Generators may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA, including entry into any building or premises owned, occupied or used by the Customer to search for and seize, dispose of or retain those Equipment over which Dragon Generators holds a Security Interest.
- 10.3 The Customer undertakes to:
- (a) sign any further documents and provide such information which Dragon Generators may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register;
- (b) indemnify, and on demand reimburse, Dragon Generators for all expenses incurred in registering a Financing Statement or Financing Change Statement on the Personal Property Securities Register or releasing any Security Interests;
- (c) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Dragon Generators; and
- (d) provide Dragon Generators not less than seven (7) days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or other change in the Customer's details registered on the Personal Property Securities Register to enable Dragon Generators to register a Financing Change Statement if required.
- 10.4 Dragon Generators and the Customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Agreement.
- 10.5 The Customer waives its rights:
- (a) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA; and
- (b) as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA; and
- (c) to receive a Verification Statement in accordance with section 157 of the PPSA.
- 10.6 The Customer must unconditionally ratify any actions taken by Dragon Generators under this clause 10.
- 10.7 The Customer appoints and authorises Dragon Generators to be its attorney to sign in the Customer's name all documents which Dragon Generators reasonably considers necessary to protect, preserve and enforce its rights and powers under this Agreement and the PPSA.
- 11. DEFAULT AND TERMINATION**
- 11.1 If the Customer:
- (a) is in default of any payment obligation;
- (b) fails to remedy a breach of any non-payment related obligation within seven (7) days of having been given written notice to remedy the breach by Dragon Generators;
- (c) becomes unable to pay its debts as and when they fall due; or
- (d) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up, then Dragon Generators may, without prejudice to any other rights or remedies available to it under this Agreement or otherwise, by notice in writing to the Customer:
- (e) suspend further supply and require payment in advance for future supply;
- (f) recover possession of any Equipment for which payment has not been made;
- (g) terminate all or any Orders which have been accepted by Dragon Generators;
- (h) claim immediate payment of all moneys due by the Customer in respect of all Equipment which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
- (i) continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due.
- 11.2 In the event that the Customer commits an event of default as specified in this clause 11, all moneys owing to Dragon Generators become immediately due and payable together with all interest, debt collection costs, legal costs and expenses associated with the exercise or enforcement of the debt on an indemnity basis.
- 12. DISPUTE RESOLUTION**
- 12.1 With the exception of a default as referred to in clause 11.1(a), which will be subject to standard debt recovery proceedings, if there is a dispute in relation to any aspect of the supply of the Equipment either party may notify the other in writing of the dispute.
- 12.2 Following any such notification, there will be a period of 30 days during which both parties must participate in good faith in any negotiations or discussions regarding the dispute which Dragon Generators requests the Customer to participate in.
- 12.3 If the dispute has not been resolved by the end of this 30 day period, Dragon Generators may require that the dispute be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia and its applicable rules.
- 12.4 Neither party is permitted to commence any court proceedings or other similar actions relating to a dispute unless it has complied with the procedure set out in this clause.
- 13. WARRANTIES AND LIMITATION OF LIABILITY**
- 13.1 Unless expressly provided in the Rental Document, Dragon Generators gives no warranties and makes no representations regarding the Equipment.
- 13.2 Dragon Generators will not be liable to the Customer or any third party whatsoever for any indirect or consequential damages, loss of profit, loss of bargain or liability.
- 13.3 Dragon Generators' liability to the Customer is limited to the Rental Charges for the Equipment.
- 13.4 The Customer warrants that in placing an Order it has:
- (a) satisfied itself as to the description and condition of the Equipment and its fitness for the purpose for which the Customer will use the Equipment;
- (b) not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Dragon Generators or anyone on Dragon Generators' behalf in respect of the Equipment, other than those expressly contained in this Agreement, the Quotation or any other document that Dragon Generators has provided to the Customer;
- (c) in the case of a natural person, never been bankrupt; and
- (d) in the case of a company, never been under external administration or subject to the appointment of an external receiver or controller or entered into a Deed of Company Arrangement and that it is solvent and able to pay its debts as and when they fall due.
- 13.5 Where the Customer hires Equipment as a consumer, this Agreement is subject to the Australian Consumer Law which governs the rights of consumers and nothing in this Agreement affects the Customer's statutory rights.
- 14. PRIVACY**
- 14.1 In connection with an application for credit, entering into a rental Agreement with Dragon Generators, an act of default, the Customer consents to Dragon Generators giving information about the Customer to a credit reporting agency to obtain a credit report and obtaining that credit report containing personal credit information about the Customer required by Dragon Generators.
- 14.2 The information given to the credit reporting agency may include personal particulars; details concerning the Customer's application for credit; the amount of credit requested; advice that Dragon Generators is a current credit provider to the Customer; advice of any overdue accounts, loans, repayments, or any outstanding monies for which debt collection action has been started; advice that cheques drawn by the Customer for over \$100.00 or more have been dishonoured more than once; information that, in the opinion of Dragon Generators, the Customer has committed a serious credit infringement; and advice that credit provided to the Customer by Dragon Generators has been paid.
- 14.3 The Customer agrees that Dragon Generators may exchange information about the Customer (including anything about the Customer's creditworthiness, credit standing, credit history or credit capacity) with credit providers are allowed to exchange under the *Privacy Act 1988* (Cth)) with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the purposes of:

- (a) assessing an application by the Customer;
- (b) notifying other credit providers of a default by the Customer;
- (c) exchanging 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) assessing the creditworthiness of the Customer.

14.4 The Customer agrees that personal credit information provided may be used and retained by Dragon Generators in relation to the provision of the Equipment; the marketing of Equipment by Dragon Generators, its agents or distributors; analysing, verifying or checking the Customer's credit, payment or status in relation to the provision of Equipment; processing any payment instructions, direct debit facilities or credit facilities requested by the Customer; enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Equipment; and/or for any other purposes agreed between the parties or required by law from time to time.

15. **FORCE MAJEURE**

- 15.1 Dragon Generators will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 15.2 If a Force Majeure Event arises, Dragon Generators will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on Dragon Generators' performance under this Agreement. If the Force Majeure Event affects the capacity of Dragon Generators to complete its material obligations under this Agreement in a timely manner, Dragon Generators may by notice to

the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

16. **GUARANTEE**

- 16.1 The Guarantor unconditionally and irrevocably guarantees to Dragon Generators the due and punctual performance and observance by the Customer of all under this Agreement that must be performed and observed by the Customer (**Guaranteed Obligations**).
- 16.2 The Guarantor unconditionally and irrevocably indemnifies Dragon Generators against all liabilities which Dragon Generators may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Customer of a Guaranteed Obligation.
- 16.3 This clause 16 is a principal obligation (and is not to be treated as ancillary or collateral to another right or obligation) and is independent of, and not in substitution for or affected by, another security interest or guarantee or other document or agreement which Dragon Generators or another person may hold concerning the Guaranteed Obligations.
- 16.4 Dragon Generators may enforce this clause 16 against the Guarantor without first having to resort to action against the Customer.

17. **GENERAL PROVISIONS**

- 17.1 The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Dragon Generators.
- 17.2 Dragon Generators may assign or deal with any of its rights or obligations under this Agreement at any time and without any requirement to notify the Customer. Dragon Generators reserves the right to subcontract the performance of any of its obligations under this Agreement to any other person it so determines.

17.3 Dragon Generators may vary this Agreement from time to time and any variation takes effect in relation to subsequent Orders placed after the Customer has received notice of the variation from Dragon Generators.

17.4 No failure to exercise or delay in exercising any right under this Agreement constitutes a waiver and any right may be exercised in the future. A waiver of any right under this Agreement must be in writing and is only effective to the extent set out in that written waiver.

17.5 If any provision of this Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement without affecting the validity or enforceability of the remaining provisions.

17.6 This Agreement (including the Rental Document and Invoice) constitutes the entire agreement between the parties in respect of the Equipment and supersedes all previous communications, representations, understandings or agreements.

17.7 This Agreement is governed by the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

17.8 Any notice to be given to a party must be in writing.

17.9 Clauses 4, 6, 7, 10, 12, 13, 15, 16 and 17 survive termination or completion of this Agreement.

Executed by the Customer (individual, sole trade, partnership etc):

Customer (Signature)

Customer (Print Name)

Licence Number

Dated

OR

Executed on behalf of the Customer by its Director/s in accordance with section 127 of the *Corporations Act* 2001:

Secretary/Director

Name (please print)

Director

Name (please print)

Dated

Executed by the Guarantor:

Guarantor

Licence Number

Dated

Executed on behalf of Dragon Generators by its Director/s in accordance with section 127 of the *Corporations Act* 2001:

Secretary/Director

Name (please print)

Director

Name (please print)

Dated