



Generator Rental NZ

GENERATOR RENTAL NZ LTD - TERMS & CONDITIONS OF TRADE ("TERMS & CONDITIONS")

1. DEFINITIONS

In these Terms & Conditions unless inconsistent with the subject or context:

- 1.1 "Customer" means the person named as Customer on the Credit Application, Quotation and/or the Invoice, any person who accepts the Invoice as Customer and the successors in title, legal personal representatives, assigns, employees, servants and agents of the Customer; and where more than one person is included in the term "Customer" they will be jointly and severally liable;
- 1.2 "Delivered" means that the Goods and/or Services have been delivered as directed by the Customer and the receipt by GRNZ of a delivery acknowledgement signed by the Customer is sufficient evidence of delivery;
- 1.3 "Delivery Date" means the date for delivery of the Goods reflected on the face of the order;
- 1.4 "Goods" means the article(s) or service(s) provided by GRNZ to the Customer and shall include any article or service named and described on the face of the Invoice or in any agreement for sale of goods/services; and includes where appropriate the services provided to the Customer by GRNZ in installing or renting the Goods and any other incidental services provided by GRNZ to the Customer;
- 1.5 "Invoice" means a written invoice from GRNZ to a Customer for Goods delivered by GRNZ to the Customer;
- 1.6 "Purchase Price" means the price for the Goods specified on the face of the Invoice and/or any agreement for the sale of Goods/Services between GRNZ and the Customer;
- 1.7 "Statement" means a monthly statement rendered by GRNZ to a Customer in relation to Goods delivered by GRNZ;
- 1.8 "GRNZ" means the supplier being Generator Rental NZ Ltd (Company no. 964708) its successors in title, legal personal representatives, transferees, assigned and permitted employees, servants and agents.

2. SALE AND PURCHASE OF GOODS

- 2.1 GRNZ agrees to supply and the Customer agrees to purchase the Goods subject to these Terms & Conditions.
- 2.2 GRNZ reserves the right to accept or reject all or part of any order submitted by the Customer.

3. PAYMENT FOR GOODS

- 3.1 The Customer will pay GRNZ the Purchase Price in New Zealand Dollars within **seven (7) working days** from receipt of the Invoice in respect of those Goods, unless otherwise agreed in writing between both parties.
- 3.2 If the Purchase Price is not paid in full the Customer will pay a late payment fee calculated on the unpaid amount from the date that the unpaid amount became due and payable to the date that the Purchase Price is paid in full at a monthly rate of interest equal to 1.5% per calendar month.
- 3.3 The Customer is not entitled to withhold payment of any amount due on account of any claim against GRNZ.
- 3.4 The prices quoted by GRNZ are subject to variation by GRNZ to take account of variances in wages, materials or other costs. All prices are exclusive of sales and/or any goods and services, tax which will be charged at the appropriate rate where applicable.
- 3.5 If the Goods are delivered in instalments GRNZ may invoice on a pro rata basis as and when delivery of an instalment has been made, and payments shall be due in respect of each delivered instalment notwithstanding non-delivery of other instalments.

4. DELIVERY OF GOODS

- 4.1 Unless agreed otherwise the costs of delivery of the goods from GRNZ to the Customer will be payable by the Customer.
- 4.2 The Customer acknowledges that any Delivery Date is an estimate only and that whilst GRNZ shall use reasonable and commercial endeavours to deliver the Goods on or before the Delivery Date GRNZ does not warrant or represent or that the Goods will be delivered on the Delivery Date. GRNZ, its servants or agents will not be liable for late delivery or non-delivery and under no circumstances will GRNZ be liable for any loss, damage or delay occasioned to the Customer arising from late or non-delivery nor shall the Customer be entitled to treat the agreement between GRNZ and the Customer as repudiated should the Goods not be delivered on or before the Delivery Date. However if special requests for urgent deliveries are made then any additional costs will be charged to the Customer.

5. LIMITATIONS OF CLAIMS BY CUSTOMER

Any claims by the Customer in respect of the Goods must be notified in writing by the Customer to GRNZ within seven days after delivery and if the Customer does not do so, the Customer agrees to forever release and discharge GRNZ from all actions, suits, charges, claims and demands which relate directly or indirectly to the purchase of the Goods by the Customer.

6. LIABILITY AND INDEMNITY

- 6.1 Subject to Clause 6.5, the Customer acknowledges and expressly agrees with GRNZ that:
 - 6.1.1 the Customer is satisfied that the Goods are fit for the purpose for which they were purchased;
 - 6.1.2 GRNZ has given the Customer no warranty as to the fitness of the Goods for any particular purpose or that the Goods are of merchantable quality; and
 - 6.1.3 Any term, warranty, condition, representation or obligation whether express or implied and whether as to quality, fitness for any particular purpose or otherwise relating to the Goods which is not expressly stated herein is expressly excluded from these Terms & Conditions to the extent permitted by the law.
- 6.2 The Customer agrees that GRNZ, to the extent permitted by law, accepts no liability whether in contract or tort (including negligence or breach of statutory duty) or otherwise for any loss, damage, cost or expense of any kind whether direct, indirect or consequential (including for loss of profits, business or anticipated savings):
 - 6.2.1 arising directly or indirectly out of or in respect of the use, custody or supply of the Goods;
 - 6.2.2 caused directly or indirectly by the inadequacy of the Goods for any purpose or any defect in the Goods, and the Customer releases and forever discharges GRNZ from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof.
- 6.3 The Customer hereby indemnifies GRNZ against any liability, loss, damage, cost or expense suffered or incurred by GRNZ as a result of GRNZ taking any action or exercising any of its rights under these Terms & Conditions including but in no way limited to any debt collection costs and related legal costs.
- 6.4 The Customer shall, to the extent permitted by law, indemnify and keep indemnified, GRNZ against any actions, proceedings, claims or demands for loss, damage, cost or expense whether direct, indirect or consequential (including for loss of profits, business or anticipated savings) brought, made or threatened against GRNZ by any third party arising directly or indirectly out of or in respect of the use, custody or purchase and supply of Goods.
- 6.5 Nothing in this contract, whether express or implied, shall be taken to exclude, restrict or modify any non-excludable conditions, warranties or rights contained in applicable New Zealand legislation.
- 6.6 If GRNZ is held liable for a breach of a condition or warranty implied by The Sale of Goods Act 1908, The Consumer Guarantees Act 1993 and The Fair Trading Act 1986 or equivalent statutes of any relevant jurisdiction any liability for such breach will be limited at GRNZ option to any of the following as determined in the sole discretion of GRNZ:
 - 6.6.1 a replacement of the Goods or the supply of equivalent Goods;
 - 6.6.2 the payment of the value of the Goods or of replacing the Goods or of acquiring equivalent Goods;
 - 6.6.3 the repair or restoration of the Goods; or
 - 6.6.4 the payment of the costs of having the Goods repaired or restored.

7. RETENTION OF OWNERSHIP

- 7.1 Upon delivery to the Customer, the Goods shall be at the Customer's risk.
- 7.2 Notwithstanding Clause 7.1, property in and title to the Goods will pass to the Customer only when all moneys owing by the Customer to GRNZ have been paid in full. Until such time, the Customer will hold the Goods as bailee for GRNZ and in such a way that the Goods are at all times clearly identifiable as the property of GRNZ.
- 7.3 In the event that:
 - 7.3.1 (where the Customer is a corporation) the Customer is wound up or a meeting is called to consider its winding up or is placed under administration or a meeting is called to consider its administration or a provisional liquidator or a receiver or a receiver and manager is appointed or a security holder takes possession of its undertakings or property or any part thereof;

- 7.3.2 (where the Customer is a natural person) the Customer becomes insolvent or bankrupt or commits an act of bankruptcy or makes any arrangements with his or her creditors.
- 7.3.3 the Customer parts with possession of the Goods otherwise than by way of sale to a customer in the ordinary course of the Customer's business;
- 7.3.4 the Customer breaches any other conditions of the agreement between GRNZ and the Customer;
GRNZ will have the immediate right to;
- 7.3.5 retake possession of the Goods without notice and for that purpose GRNZ may enter upon any premises occupied by the Customer or any other place where the Goods are stored; and/or
- 7.3.6 sell the Goods and apply the proceeds after defraying expenses of sale and enforcement in or towards reduction of amounts due and payable.
- 7.4 The Customer shall be liable for all costs associated with the exercise of GRNZ's rights under Clause 7, which will be payable by the Customer on demand by GRNZ.
- 7.5 The Customer is authorised to sell the Goods in the ordinary course of business if permission is granted in writing by GRNZ. If the Customer does on-sell the Goods, the Customer will sell the Goods as agent and bailee of GRNZ, and will hold the proceeds in trust for GRNZ and will not mingle the proceeds with other moneys and the proceeds will be identified at all times as GRNZ's money as long as there are any moneys owing by the Customer to GRNZ.
- 7.6 The Customer irrevocably appoints GRNZ as its true and lawful attorney to recover any proceeds of Goods on-sold by the Customer to any person and to exercise the Customer's rights against such person, including, without limitation, the rights to retake possession of the Goods.
- 7.7 This Retention of Title Clause 7 creates a security interest under The Personal Properties Securities Act 1999. The security interest extends to the proceeds of selling the goods (as specified in Section 45 and Section 46 of that Act); extends to any product or mass into which the goods sold are processed or co-mingled (as specified in Section 82 of the Act); and maintains its priority if the goods become part of an accession (as specified in Section 79 of the Act).
- 7.8 The Customer (for the purposes of Section 36(b) of The Personal Property Securities Act) agrees to this Retention of Title Clause creating a purchase money security interest in all goods that GRNZ sells to the customer while those goods are held as inventory by the Customer until the Customer has fully paid GRNZ for the goods. The Customer further hereby waives the right to receive a verification statement for the purposes of Section 148 of the said Act.
- 8. CANCELLATION**
- 8.1 Subject to Clause 6.5, the Customer may not cancel any orders unless:
- 8.1.1 written notice of intention to cancel the order is given within five (5) working days after the date of the order; and
- 8.1.2 GRNZ (in its absolute discretion) notifies the Customer in writing that it agrees to accept the cancellation of the order; and
- 8.1.3 the Customer pays GRNZ any amounts necessary (in the absolute determination of GRNZ) to indemnify GRNZ against all loss resulting from the cancellation.
- 9. OTHER TERMS AND CONDITIONS**
- 9.1 The Customer must immediately notify GRNZ of any alteration of the ownership or effective control of the Customer.
- 9.2 The Customer may not assign its rights contained in any agreement between GRNZ and the Customer to supply and purchase Goods without the prior written consent of GRNZ but any such agreement is assignable in whole or in part by GRNZ in its absolute discretion.
- 9.3 GRNZ will have the right to suspend deliveries of Goods (notwithstanding that the Customer may not be in arrears with any payment) where GRNZ in its absolute discretion considers the amount outstanding in the Customer's account (whether actually due for payment or not) is the limit to which GRNZ is prepared to allow the Customer credit.
- 9.4 The waiver by a party of a breach or default of any of the provisions of these Terms & Conditions committed by the other party will not be construed as a waiver of any succeeding breach or default of the same or any other provisions.
- 9.5 These Terms & Conditions may not be amended or varied unless agreed in writing by the parties.
- 9.6 If any provision of these Terms & Conditions or its application to any person or circumstance is found to be invalid or unenforceable this will not affect the validity or enforceability of the other provisions of these Terms & Conditions which will remain in full force and effect.
- 9.7.1 All notices and other communications (including invoices) must be in writing and must be served by one of the following means:
- a) By personal delivery; or
- b) By posting by registered or ordinary mail; or
- c) By facsimile; or
- d) By email
- 9.7.2 In respect of the means of service specified in clause 9.7.1 a notice is deemed to have been served:
- a) In the case of personal delivery, when received by the addressee;
- b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
- c) In the case of facsimile transmission, when sent to the addressee's facsimile number; or
- d) In the case of email, when acknowledged by the addressee by return email or otherwise in writing.
- 9.7.3 A notice shall be valid if given by any director, general manager, solicitor or other authorised representative of the party giving the notice.
- 9.7.4 For the purposes of this clause (and the whole Agreement) a working day means any day on which registered banks are open in the province where the head office of GRNZ is situated, except any Saturday or Sunday or any day between 24th December and 5th January in the following year (both inclusive). Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.
- 10. WHOLE AGREEMENT**
- 10.1 These Terms & Conditions contain the entire agreement and understanding between GRNZ and the Customer with respect to the subject matter to which they relate and there are no other prior or subsequent agreements, understandings, terms, conditions, warranties or representations, oral or written between the parties of their respective employees, servants or agents extending or otherwise relating to the provisions of these Terms & Conditions.
- 10.2 The Customer agrees that the terms and conditions contained in any document which passes from the Customer to GRNZ that in any way alters these Terms & Conditions shall be of no effect and shall in no way represent the understanding between GRNZ and the Customer.
- 11. GOVERNING LAW**
- These Terms & Conditions will be governed by the laws of New Zealand and the Customer and GRNZ agree to submit to the jurisdiction of the New Zealand Courts.
- 12. PRIVACY ACT 1993**
- Please read the following carefully
- 12.1 The Customer hereby acknowledges that it has been informed by GRNZ and its successors and assigns ("GRNZ") that personal information about it may be disclosed to or acquired from a credit reporting agency.
- 12.2 The Customer hereby agrees that GRNZ may contact any trade references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness.
- 12.3 The Customer hereby agrees that GRNZ may receive from any credit provider or provide to any other credit provider any credit information whether by way of report record or otherwise relating to credit worthiness for the purposes of exchanging information, assessing credit worthiness and notifying or any default at any time whether now or in the future.
- 12.4 The Customer hereby agrees that GRNZ may obtain from a reporting agency a credit report on the Customer for the purposes of assessing this credit application, and the Customer further consents to GRNZ obtaining such reports from time to time for the purpose of assessing credit worthiness during the continuance of the credit provision.
- 12.5 The Customer hereby agrees that GRNZ may obtain from a business which provides credit information a report or information in relation to the Customer's commercial credit worthiness or commercial dealings and use such information for the purposes of assessing this application for credit.
- 12.6 The Customer hereby agrees that in the event of default of payment of the debts that GRNZ may disclose all information relating to the Customer's account to its collection agency for the purpose of receiving any or all amounts outstanding.
- 12.7 The Customer irrevocably authorises any person or company to provide GRNZ with such information as GRNZ may require in response to credit enquiries as set out above now or at any later date.
- 12.8 The Customer hereby agrees and authorises GRNZ to furnish to any third-party details of this application and any subsequent dealings that the Customer may have with GRNZ as a result of this application being actioned by GRNZ.
- 12.9 The Customer further agrees that the information collected above may be used by GRNZ to compile mailing lists and the provision of promotional material either by GRNZ or by any third party.