

## **Power Electrics Terms and Conditions of Hire**

These Terms and Conditions of Hire and any relevant Hire Quotation and/or Price List (collectively 'the Contract') govern all hires of the Equipment from Power Electrics (Bristol) Limited, a company registered in England and Wales (No.00776704) and whose registered office is situated at St Ivel Way, Warmley, Bristol, BS30 8TY including any of its subsidiaries (**the "Company"**) to you (**the "Hirer"**). The Contract shall govern the hire of the Equipment to the exclusion of all other representations and terms and conditions and no conduct by the Company or its representatives shall constitute acceptance of any other terms and conditions. No representation or variation of the Contract will bind unless it is made in writing and signed by an appropriately authorised representative of the Company.

### **1) Definitions**

**"Charges"** means the Total Hire Charges and the excess charges (if any) and the consumables charges and all other sums due from the Hirer under Clause 3 below, as stated in the Hire Quotation.

**"Commencement Date"** means the date on which the Hire Quotation for the relevant Contract is signed by the Hirer.

**"Delivery Date"** means the date stated as such in the Hire Quotation.

**"Equipment"** means the equipment stated in the Hire Quotation and any replacements or renewals of the whole or any part thereof and accessories thereto provided by the Company during the Hire Period.

**"Force Majeure"** means any circumstances which are beyond the Company's reasonable control, including (without limitation) any act of God, fire, explosion, flood, malicious damage, theft, industrial action, or trade disputes (whether involving employees of the Company or third parties), import or export regulations or embargoes, difficulties in obtaining raw materials, parts, fuel or labour, act of Government or other public authority, civil disturbance, terrorism or war.

**"Total Hire Charges"** means the Total Hire Charges payable by the Hirer to the Company during the Hire Period as stated in the Hire Quotation.

**"Hire Location"** means the location at which the Equipment is to be used as stated in the Hire Quotation.

**"Hire Period"** means the period during which the letting and hiring of the Equipment under the Contract shall continue (being from the Delivery Date until the Return Date, inclusive).

**"Hire Quotation"** means the communication from the Company to the Hirer setting out the specific details relating to the relevant Contract, including any Price List.

**"Price List"** means a price list for hire of Equipment provided by the Company to the Hirer.

**"Return Date"** means the date stated as such in the Hire Quotation or the date on which the Contract is terminated, whichever is earlier.

**"Stand-By Week"** means an arrangement under which the Hirer is permitted to use the Equipment for 10 hours per week on each week within the applicable Hire Period.

**"Unlimited Hours Week"** means an arrangement under which the Hirer is permitted to use the Equipment for an unlimited number of hours on any day within the applicable Hire Period.

### **2) The Basis of the Hire**

- a) The Company owns (or prior to the Delivery Date will acquire ownership of) and the Hirer shall hire the Equipment in accordance with the terms of the Contract.
- b) The quantity, quality, and description of, and/or any specification for, the Equipment shall be those set out in the Hire Quotation.
- c) Without prejudice to the foregoing, the parties irrevocably and unconditionally waive any right they may have to claim damages and/or to rescind the Contract for any misrepresentation whether in tort, under the Misrepresentation Act 1967 or otherwise or for any breach of any warranty not contained in the Contract unless such misrepresentation or warranty was made or given fraudulently.

- d) For the avoidance of doubt, if there is any conflict between the Hire Quotation and these Terms & Conditions of Hire the terms of the Hire Quotation shall prevail.

### 3) Payment of Charges

- a) During the Hire Period the Hirer shall pay the Charges to the Company in accordance with the Payment Terms stated in the Hire Quotation.
- b) Any element of the Charges set out in the Hire Quotation may be varied at any time at the Company's sole discretion in cases where an increase is made to reflect changes in duty or foreign exchange rates.
- c) The Charges are exclusive of any applicable Value Added Tax and any other tax, duty, tariff, or charge arising in the United Kingdom or elsewhere. Where delivery is to take place outside of the United Kingdom the price is exclusive of any import duties, local taxes or other local charges which may be in force from time to time. All such excluded sums shall be for the account of the Hirer.
- d) Unless agreed otherwise between the parties in writing, the Hirer shall be responsible for all reasonable costs incurred by the Company in providing and supplying the Equipment to the Hirer which for the avoidance of doubt will include (without limitation) all transportation, carriage, postal, export, import and other costs (including losses incurred as a consequence of inadequate access to the premises nominated for delivery) which might be applicable from time to time.
- e) In cases where the Hire Charges relate to either a "Stand-By Week" or an "Unlimited Hours Week" the sums charged shall be as stated in the Hire Quotation irrespective of the number of hours worked. In the case of Equipment on hire for a maximum number of hours, the full amount of Hire Charges for the maximum period will be charged, together with an additional charge (being at 2/3 of the relevant Hire Charges) for hours worked in excess of such maximum.
- f) The Hirer shall render to the Company for each week during the Hire Period an accurate statement of the number of hours the Equipment has been used each day, together with a note of any break down period, on a regular basis as indicated in the Hire Quotation.
- g) A proportionate deduction from the weekly rate will be made where a breakdown results from defects in the Equipment (not ascertainable by reasonable examination and other than due to fair wear and tear) and neither the defect or the breakdown is due to misuse or negligence of the Hirer and/or any third party. Deduction under this Clause shall be limited to the breakdown period remaining after deduction of any hours worked in excess of any maximum period.
- h) The Hirer shall pay the Charges in full without any deduction, counterclaim, abatement or set off in the currency invoiced within 30 calendar days of the date of the invoice. Time of payment is of the essence and no payment shall be deemed to have been made until received by the Company in cash or cleared funds.
- i) any element of the Charges remains unpaid after the due date, in addition to any other remedy available to it, the Company may:
- i) charge interest (before or after any judgment) on any such unpaid amount at the rate of 8% above the annual base lending rate from time to time of Barclays Bank plc (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date full payment is received by the Company; and
  - ii) withdraw the Hirer's right to any discount relating to the Charges; and
  - iii) appropriate any payment made by the Hirer under any contract to such of the Equipment as the Company may think fit.
- j) If any element of the Charges remain unpaid following a period of 30 calendar days from the date of the invoice, in addition to any other remedy available to it, the Company shall be entitled to:
- i) suspend any further deliveries under the Contract; and
  - ii) after having given 30 calendar days' notice requiring payment and requiring the Hirer to deliver up the relevant Equipment, terminate the Contract immediately and, if the relevant Equipment has not been returned within a reasonable period of time, enter upon the premises where such Equipment is situated and repossess such Equipment.
- k) The Hirer shall fully indemnify the Company against all loss (including loss of profit), costs (including the costs of all labour and materials used), damage, charges and expenses sustained or incurred by the Company as a consequence of any late payment, cancellation or variation of the Hirer's order as noted in the Hire Quotation, delay or failure to take timely delivery on the Delivery Date.

**4) Delivery and Return****a) On the Delivery Date either:**

- i) the Company will deliver (or arrange for delivery of) the Equipment to the Hire Location; or
- ii) the Company will notify the Hirer that the Equipment is ready for collection and the Hirer will collect (or arrange for collection of) the Equipment from the Company's premises (or such other premises as may be notified to the Hirer by the Company in writing on at least one week's notice),

whichever is applicable according to the Hire Quotation.

**b) On the Return Date either:**

- i) the Hirer will notify the Company that the Equipment is ready for collection and the Company will collect (or arrange for collection of) the Equipment from the Hire Location; or
- ii) the Hirer will return (or arrange for the return of) the Equipment to the Company's premises (or such other premises as may be notified to the Hirer by the Company in writing on at least one week's notice),

whichever is applicable according to the Hire Quotation.

**c) Upon delivery, the Hirer shall (or shall procure that the recipient shall):**

- i) provide written confirmation of receipt, together with a note of any defects in the Equipment identifiable upon reasonable inspection or non-conformance with the Hire Quotation; and
- ii) carry out a reasonable inspection of the Equipment and acquaint himself with its proper usage and operation.

**d) The Company shall endeavour to deliver and, if applicable install, the Equipment by the Delivery Dates but such dates are not guaranteed nor shall the times for delivery or installation be of the essence unless previously agreed by the Company in writing. The dates quoted shall be extended by a reasonable period if there is any delay caused by Force Majeure.****e) The Hirer will be responsible for the loading and unloading, and any necessary installation, of the Equipment at the address specified by the Hirer and likewise at the Company's premises when transported by the Hirer or his agents. Without prejudice to Clause 13, the Hirer shall be responsible for all claims arising in connection with unloading and/or loading of the Equipment by, or with the assistance of, any person supplied by the Company who shall be deemed to be an employee of the Hirer or his agent at such times.****f) If the Hirer fails to collect or take delivery of the Equipment, or to collect or enable collection of the Equipment in accordance with Clause 4.2 above, or fails to give the Company adequate delivery or collection instructions then, without prejudice to any other rights or remedies available to the Company under the Contract, the Company may:**

- i) charge the Hirer a fee for any delay caused by the Hirer which results in employees of the Company spending more than one hour in unloading and installing or uninstalling and reloading the Equipment, charged at the same rate per hour as the Hire Charges applicable to the relevant Equipment;
- ii) store the equipment until actual delivery or re-hire and charge the Hirer for any reasonable costs which may accrue including (without limitation) insurance; and
- iii) following a period of 1 calendar day after the Delivery Date re-hire the Equipment to another party at its sole discretion.

**g) Where a number of items of Equipment are to be provided under one Hire Quotation each shall be governed by a separate contract and failure by the Company to deliver any one or more of the items of Equipment in accordance with the Contract or any claim by the Hirer for one of more such items shall not entitle the Hirer to treat the Contract as a whole as repudiated.****5) Insurance****a) The Hirer shall maintain adequate insurance with a reputable insurer during the Hire Period to cover the following:**

- i) loss or damage to the Equipment howsoever caused and for the full replacement value, free from restriction or excess;
- ii) liability to third parties;

- iii) the Company's employees who may load, unload, install or carry out other work on the Hirer's premises from time to time in accordance with the Contract.
- b) The Hirer shall punctually pay all premiums payable under the above insurance policies, do everything necessary to maintain the above insurance policies in full force and not do anything whereby they will or may be vitiated either in whole or in part.
- c) The Hirer shall ensure that the interest of the Company in the Equipment is noted in the insurance policies for clause 5.1(a) and that insurance policies Clauses 5.1(b) and 5.1(c) are effected in the joint names of the Hirer and the Company.
- d) The above insurance policies may not be cancelled or substantially modified without prior written notice to the Company.
- e) The Hirer shall provide certified copies of the insurance policies and the receipts for premiums (or other evidence of payment of the premiums) to the Company prior to the Delivery Date.
- f) Any money payable under the above insurance policies must be paid direct to the Company unless agreed otherwise in writing.

## **6) Basis of Hire**

- a) The Company agrees to:
  - i) deliver or make available the Equipment to the Hirer on the Delivery Date;
  - ii) let the Equipment on hire to the Hirer for the Hire Period for use only at the Hire Location, subject to termination in accordance with the Contract;upon the terms and conditions of the Contract.
- b) The Hirer agrees to hire the Equipment for the Hire Period upon the terms and conditions in the Contract.
- c) The Company reserves the right, prior to the Delivery Date to substitute an alternative item of equipment for any item comprising the Equipment provided that such substitution shall not materially affect the performance of the Equipment as a whole.

## **7) Risk**

- a) Risk in the Equipment shall pass to the Hirer:
  - i) where the Hirer (or its nominated recipient) is responsible for collection of the Equipment, at the time when the Company, at any time on or after the Delivery Date, notifies the Hirer that the Equipment is available for collection, irrespective of whether the Equipment is collected at that time; or
  - ii) where the Equipment is to be delivered by the Company, when the Company tenders delivery of the Equipment on the Delivery Date, irrespective of whether the Hirer accepts delivery of the Equipment at that time.
- b) Upon expiry of the Hire Period or termination of the Contract (whichever is earlier) risk in the Equipment shall not pass back to the Company until:
  - i) where the Hirer is responsible for returning the Equipment to the Company, the Hirer tenders delivery of the Equipment;
  - ii) where the Company is responsible for collecting the Equipment, the Company commences loading of the Equipment.

## **8) Safety Arrangements**

- a) It is the Hirer's responsibility to ensure they advise the Company in advance of the Company's arrival to site, of any 'foreseeable risks', which might impact the health, safety, and welfare of the Company's employee(s).

## **9) Retention of Title**

- a) The Equipment shall at all times during the Hire Period remain under the sole and exclusive ownership of the Company (or the ultimate owner of the Equipment) and the Hirer shall have no right or interest in the Equipment except for quiet possession and the right to use the Equipment upon the terms and conditions in the Contract.

- b) The Hirer shall not sell, assign, sublet, pledge or part with possession or otherwise deal with the Equipment or any interest therein nor purport to do any of such things nor create or allow to be created any mortgage, charge, lien or any other encumbrance on the Equipment, without the prior written consent of the Company.
- c) The Hirer shall not change, remove or obscure any labels or other markings which are placed on the Equipment by the Company at any time. Furthermore, the Hirer shall not put any label or other markings on the Equipment which might indicate or suggest that the Equipment is not owned by the Company.
- d) The Hirer shall not cause or permit the Equipment or any part thereof to be attached or affixed to any land or buildings so as to become a fixture, without the prior written consent of the Company.
- e) The Hirer shall do all things reasonably necessary to protect and defend the Company's title to the Equipment against all persons claiming against or through the Hirer and shall use reasonable endeavours to keep the Equipment free from distress, execution or any other legal process and shall give to the Company notice of any claim or threatened claim to the Equipment by any third party.

#### **10) Company's Warranties**

- a) The Company excludes any guarantees, conditions, or warranties (including for quality or fitness for purpose of the Equipment) whether express or implied by statute or common law or otherwise to the fullest extent permitted by law except that this Clause shall in no way exclude any warranties, conditions, or other terms where the Equipment is sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977).

#### **11) Hirer's Obligations**

- a) The Hirer shall:
  - i) not move the Equipment from the Hire Location without the Company's prior written consent (not to be unreasonably withheld or delayed);
  - ii) be responsible for the safe-keeping and maintenance of the Equipment and use in a workmanlike manner in accordance with the Company's (and manufacturer's if applicable) instructions and the Hirer shall ensure that the Equipment is properly lubricated and that the water and fuel levels remain at the level required for the correct operation of the Equipment;
  - iii) keep and operate the Equipment in a proper and prudent manner and not operate the Equipment after it has become defective, damaged or in a dangerous state;
  - iv) return the Equipment on the expiry of the Hire Period or termination of the Contract (whichever is earlier) in good working order (fair wear and tear excepted) equal to that as at the Delivery Date;
  - v) permit the Company, its agents, its insurers and any other person authorised by it at all reasonable times to have access to the Hirer's premises (or other such location where the Equipment might be situated) for the purpose of inspecting, testing, maintaining, adjusting, repairing, examining, or replacing the same (or any part thereof). So far as reasonably practicable, such work will be carried out at times to suit the convenience of the Hirer. During working hours no charge will be made to the Hirer for routine work. If, however, the Hirer can only make the Equipment available for maintenance and repair outside of working hours then the Company reserves the right to charge the Hirer overtime costs;
  - vi) ensure that any driver (either directly employed or via a contracted third party / subcontractor) when transporting generators / Equipment; is hazardous goods aware (Note: Transport of Hazardous Goods 'ADR' certification is not required). Additionally, orange hazard plates must be displayed on any vehicle transporting generators with a base tank(s) exceeding 1000 litre capacity.
  - vii) obtain all necessary licences, permits and permissions for the use of the Equipment and not use the Equipment or permit the Equipment to be used contrary to any law or any regulation or by law in force from time to time;
  - viii) pay to the Company all costs and expenses (including legal costs on a full indemnity basis) incurred by or on behalf of the Company in repossessing the Equipment, cleaning, repairing, or restoring it to its condition as at the Delivery Date (other than for fair wear and tear) by reason of any breach by the Hirer of any term of the Contract or of any legal proceedings taken by or on behalf of the Company to enforce any provision of the Contract;
  - ix) pay the Company for loss or damage to, or theft of, the Equipment (or any part thereof), whether or not due to any breach or negligence of the Hirer, to the extent that such loss has not been caused by the negligence or breach of the Company, arising whilst the Equipment is in the possession, or under the control, of the Hirer;

- x) In the event of loss of or damage to the Plant, hire charges shall continue to apply at the agreed hire rate until a settlement has been agreed in writing. Payment of the settlement must be made within 21 calendar days of the date of agreement. If payment is not received within this period, hire charges will continue to accrue from the date of the settlement agreement until full payment is made. The agreed settlement figure shall remain payable in full, together with any additional hire charges and applicable interest incurred due to late payment;
- xi) indemnify the Company against all claims and demands made upon the Company by reason of any loss, injury or damage suffered by any person or to any property arising directly or indirectly out of the presence, control, movement, or use of the Equipment by the Hirer save where such damage, loss or injury arises from the negligence of or breach of contract by the Company or its authorised representatives; and
- xii) not to make any adjustment, modification, or repair to the Equipment (or any part thereof) without the Company's prior written consent.

## **12) Notification of Incidents**

- a) The Hirer must notify the Company immediately of any accidents, damage, destruction, theft, malfunction or loss relating to the Equipment (or any part thereof).
- b) The Hirer must notify the Company when the Equipment has been operating for 350 hours without service. Failure to do so will result in the Company charging for any necessary service and repairs.

## **13) Breakdowns**

- a) If a fault develops in the Equipment during the Hire Period which is not readily repairable, the Company shall be entitled to substitute the Equipment with equipment of a similar type. If the Company are unable to provide any such substitution, the Contract shall be terminated as from the date of the notification of the relevant fault.
- b) Each item of the Equipment set out in the Hire Quotation is hired as a separate unit and the breakdown or stoppage of one or more such items through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other such items, unless the Hire Quotation states that such items are hired together as a unit.

## **14) Limitation of Liability**

- a) Except for liability on the part of the Company which is expressly provided for in the Contract, the Company shall have no liability or responsibility:
  - i) for any failure, delay, loss or damage of whatever nature due to or arising through Force Majeure;
  - ii) whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire for any of the Hirer's loss of profit; business interruption; loss of production or productivity; loss of contracts with any third party; loss of goodwill or anticipated savings; loss arising from third party claims or any special, indirect or consequential loss (whether or not foreseeable); or
  - iii) for any loss, damage, claim, cost, or expense arising from:
    - (1) the Hirer's failure to comply with the Company's (and manufacturer's if applicable) instructions relating to the keeping, handling, movement, use and storage of the Equipment; or
    - (2) inadequate access to the premises nominated for delivery.
- b) In all other cases, the total liability of the Company, its employees, and agents, whether in contract, tort (including without limitation negligence and breach of statutory duty) or otherwise shall not exceed 100% of the Hire Charges to be paid by the Hirer for the Equipment with which the liability is associated for any single event or series of connected events relating to that Equipment under the relevant Contract.
- c) Nothing in the Contract shall exclude or limit the Company's liability for death or personal injury resulting from its negligence or under part I of the Consumer Protection Act 1987 or for any breach of the statutory implied undertakings as to title to the Equipment or for fraud or any other liability which may not be limited or excluded by law.



**15) Termination and Effect of Termination**

- a) Notwithstanding anything else in the Contract, the Contract may be terminated at any time on or after the Commencement Date:
  - i) by either party if the other party commits a material breach of any provision of the Contract which is not remediable or if remediable is not remedied within a period of 30 calendar days after the notifying party has given notice to the other party requiring such breach to be remedied and warning the other party of its intention to terminate;
  - ii) by either party if the other party's financial position is such that either that party, its directors, shareholders or creditors may take steps to institute formal insolvency proceedings with respect to that party of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation whether under English law or otherwise), including (without limitation) administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy;
  - iii) by the Company immediately on written notice if it is unable to effect repairs or provide a replacement for the Equipment (or any part thereof) and in this case the Company shall be responsible for collecting, reloading, and transporting the Equipment upon termination;
  - iv) by either party should an event of Force Majeure continue for longer than two months.
- b) If there is termination by either party the Company's consent to the Hirer's possession of the Equipment will be immediately and automatically withdrawn and the Hirer shall relinquish any claim to possession of the Equipment. The Company reserves the right to repossess the Equipment without notice and for that purpose to enter onto the Hirer's premises (or such other premises where the Equipment is situated) to repossess the Equipment after the effective date of termination.
- c) Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- d) If the Hirer does not return (or if applicable permit collection of) the Equipment on or before the Return Date or upon termination (whichever is earlier) without prejudice to any other rights or remedies the Company will be entitled (until such time as the Equipment shall be returned to the Company) to charge the Hirer a monthly sum by way of compensation for the continued use and/or possession of the Equipment at the same rate as the Hire Charges. This Clause does not however confer on the Hirer any right to the continued use or possession of the Equipment.

**16) Confidentiality**

- a) Each party shall treat as confidential all information obtained from the other under the Contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which becomes known to such party from a source other than the other party to this Contract. Each party shall ensure that its employees and subcontractors are aware of and comply with the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

**17) Data Protection**

- a) The Hirer consents to the Company using the information provided by the Hirer for the purposes of carrying out a credit check on the Hirer, processing payment by the Hirer and carrying out its obligations and enforcing its rights under the Contract.
- b) The Company agrees that it shall (and shall procure that its employees, agents and sub-contractors shall) at all times, comply with the provisions of the Data Protection Act 1998 for data received from the Hirer in connection with the Contract and that it shall only process personal data so received in accordance with the instructions of the Hirer.

**18) Miscellaneous**

- a) Nothing in the Contract is intended to exclude or limit the statutory rights of any person dealing as a consumer (under section 12 of the Unfair Contract Terms Act 1977).
- b) The Hirer may not transfer or assign its rights or obligations under the Contract without the Company's prior written consent.

- c) The parties do not intend that any term of the Contract should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999.
- d) Nothing in the Contract shall be deemed to constitute a partnership or joint venture or contract of employment between the parties nor constitute either party the agent of the other, other than as specified in Clause 4.
- e) All notices shall be given in writing and shall be deemed to have been given at the time at which the letter would be delivered in the ordinary course of post (provided such notice was properly address and posted to the address of the relevant party stated in the Hire Quotation or as notified from time to time), or if delivered by hand upon actual delivery or if by fax within 24 hours of transmission (provided the sender holds a valid delivery note confirming that the fax was successfully transmitted to the number in the attached letter or as notified from time to time).