

## **Power Electrics Terms and Conditions for Fuel Management**

These Terms and Conditions together with the Terms and Conditions of Hire and any relevant Hire Quotation and/or Price List (collectively 'the Contract') govern all hires of the Equipment and purchase of fuel 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 "Owner"**) 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 Owner 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 Owner.

### **1) Definitions**

"Owner" means POWER ELECTRICS (BRISTOL) LIMITED and any of its subsidiaries

"Supplier" means POWER ELECTRICS (BRISTOL) LIMITED and any of its subsidiaries or their agents or sub-contracted fuel supplier in respect of fuel deliveries;

"Hirer" is the company, firm, person, corporation, or public authority taking the Owners equipment on hire and includes their successors or personal representatives

"Site" means the address of the Hirer or such other place specified by the Hirer at the time of hire

The "Hire Period" means the time from when the Plant leaves the Owners premises to when it is received back at the Owners Premises

"Contract" means a contract for hire with or without an Order for Fuel Management which incorporates these terms and conditions and the terms and conditions of hire and any special conditions detailed in Hire Quotation made between the Owner and the Hirer for the provision of the Services and/or the sale of Products

"Order for Fuel Management" means the purchase order containing the details of the Contract

"Product" means the products (including fuel) sold by the Owner or Supplier to the Hirer

"Equipment" means the equipment detailed in the Order together as a whole and any accessories hired by the Hirer as specified in the Contract

"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including but without limitation all legal costs and disbursements) and any other losses and/or liabilities

"Services" means the services and/or work (if any) to be performed by the Owner and/or Supplier for the Hirer in conjunction with the hire of Equipment, including any delivery and/or collection service for the Equipment or any Product

"Force Majeure" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions, non-performance by suppliers or subcontractors; and any failure outside the Owners reasonable control that effects a remote monitoring system (including a failure of hub or network and local area conditions) and any other similar event.

"Normal Working Hours" means Monday to Friday, 08.00 am to 17.00 pm.

**2) The Basis of the Hire**

- a) The Owner 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.

**3) Fuel Delivery Planning**

- 3.1 The Owner will identify a suitable frequency for fuel deliveries at the commencement of hire period (or from such date that the Hirer places an Order for Fuel Management to commence if not on the same date as the Hire commences). The frequency will be determined by the Owners knowledge of the maximum potential fuel usage rate of the Equipment, the capacity of any related Fuel Tank and the usage allowed within the terms of Hire (for Example, if Equipment is hired on 50 Hours per week terms, it will be assumed that the equipment will not be being using fuel for more than this number of hours per week)
- 3.2 The Hirer is responsible for informing and updating the Owner regarding any change of use during the course of a Hire Period which may have an impact on the fuel usage rate (for example – the equipment is to be used for considerably more hours per week than it has before; or the Equipment will be called to provide more power than it has before; or the Equipment will be used less than it was before).
- 3.3 At the request of the Owner, the Hirer will be required to take a fuel level reading or dip check the tank or tanks on hire at the earliest opportunity in order to facilitate a more accurate calculation of Fuel delivery frequency.
- 3.4 Any customer specified auxiliary tank supplied with a hire generator that results in frequent or low delivery quantities may result in a refueling surcharge being levied.
- 3.5 After each Fuel delivery, the Owner will revise the delivery frequency based upon actual data obtained when carrying out the refueling (i.e. how much fuel was required to fill the tank since it was last refueled, and how long has it been since the last refueling)
- 3.6 In the event that the Equipment runs out of fuel, the Owner is not liable for any Consequential losses. The Owner will make all reasonable attempts to provide a fuel delivery at the soonest opportunity.
- 3.7 Should any incident of the Equipment running out of fuel result from the Hirer not informing the Owner of any change of use, or any other failure of the Hirer to uphold their obligations under this contract, then the Hirer shall be responsible for any costs of repairs or works required in order to reinstate the use of the Equipment.
- 3.8 The Owner shall not be liable for any delay in performance, any non-performance, or any other deviation in performance of the Owners obligations, nor for any loss or damage of the equipment hereunder, when occasioned directly or indirectly by any cause or causes beyond the reasonable control of the Owner or its subcontractors or suppliers.
- 3.9 The Owner shall not be liable for any losses as a result of Force Majeure.

**4) Deliveries**

- 4.1 The Owner and/or Supplier will use its reasonable endeavours to effect delivery in accordance with the Hirer's requirements and in any event, the Owner will attempt to deliver within three (3) working days of the Order (should a specific delivery date be requested).

4.2 Time shall not be of the essence in relation to the delivery of fuel.

4.3 All deliveries shall be made within the Owner's normal business hours unless by prior arrangement. Any deliveries outside of the Owner's Normal Working Hours may result in a refueling surcharge being levied unless otherwise agreed.

4.4 For all deliveries made to the Site, the Hirer must provide safe and suitable, including but not limited to : (a) free and unimpeded access off a public road (b) free and unimpeded access to the loading point of the tank or tanks not requiring more than thirty (30) feet of hose to be used: (c) supervision of the refueling and off-loading operation in accordance with safe practice and in compliance with applicable statutory or other requirements; and in respect to each condition the Hirer will indemnify the Owner and/or Supplier and for that purpose shall maintain appropriate insurance against all third party claims, costs and expenses attributable thereto, including any extra costs or expenses incurred by the Owner and/or Supplier arising from any failure by the Hirer to make such provisions, together with bearing the responsibility for any accidents loss or damage caused to the Products, Equipment or any property whether of the Hirer the Owner, Supplier or any third party resulting directly or indirectly for the transportation of the products being requested by the Hirer to premises situated away from a public road.

4.5 In the event the Owner and/or Supplier is unreasonably delayed or unable to effect a delivery to the Hirer by reason of the failure of the Hirer to satisfy the aforesaid conditions or for any other reason (including the Hirer or the Hirer's agents refusal to accept the delivery of the products or part thereof). The Owner shall charge the Hirer a surcharge to cover all additional costs incurred.

4.6 The Hirer shall provide every facility to ensure that the products are promptly discharged or offloaded.

4.7 The measurements of the Owner and/or Supplier or its agents shall be conclusive as to the quantities delivered; in particular : (a) at unmanned premises – the driver's confirmation as shown on the reading stated on the invoice/ delivery note; (b) at manned premises – signature of the Hirer or his agent on the invoice/ delivery note or in the absence of such signature as in accordance with unmanned premises.

4.8 The Hirer shall ensure that it shall not permit smoking , the use of naked lights or electric or gas fires or radiators near to any tank or inlet pipe into which a delivery of the products is being made or in the vicinity of any vent pipe connected to a tank and will fully indemnify the Owner against any damage claims or costs arising of its failure to comply with this condition and shall retain appropriate insurance cover for that purpose.

4.9 The Owner shall ensure that fuel deliveries are carried out in accordance with industry best practice with respect to Health and Safety considerations. Notwithstanding, The Owner, or the Owner's agent, will be responsible for the timely clearing up of any fuel spillage occurring at the time of fuel delivery however The Owner shall not be liable for any consequential losses resultant from such spillage.

## **5) Payment of Fuel Management Charges**

5.1 Prior to delivery, the Owner will notify the Hirer of any changes to the contracted fuel management rates as a result of market fluctuations.

5.2 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 Owner in cash or cleared funds.

5.3 If any element of the Charges remains unpaid after the due date, in addition to any other remedy available to it, the Owner may charge interest (before or after any judgment) on any such unpaid

### The Generator Specialist

amount at the rate of 8% above the annual base lending rate from time to time of HSBC 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 Owner; and

5.4 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 Owner 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.

### 6) Miscellaneous

- 6.1 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).
- 6.2 The Hirer may not transfer or assign its rights or obligations under the Contract without the Owner's prior written consent.
- 6.3 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.
- 6.4 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.
- 6.5 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 addressed 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).
- 6.6 If the Equipment is exported outside the United Kingdom, the Hirer shall be responsible for complying with all laws and regulations governing their importation, handling and use in the country of destination. Unless agreed otherwise in writing, the Hirer shall bear all risks in exported Equipment after it leaves the Owner's premises.
- 6.7 No delay or failure by either party in enforcing its rights under the Contract shall operate as a waiver unless confirmed in writing by an appropriately authorised representative of the relevant party.
- 6.8 Notwithstanding that the whole or any part of any provision of the Contract may prove to be illegal or unenforceable the other provisions of the Contract and the remainder of the provision in question shall remain in full force and effect.
- 6.9 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.