

Ian Webb Engineering Ltd

General Conditions of Hire

1. DEFINITIONS

In these Conditions and the Agreement, the following words and expressions shall bear the following meanings:-

“Conditions”	Means these General Conditions of Hire
“Consumer Agreement”	Shall have the meaning ascribed to it in the Unfair Contract Terms Act 1977
“Agreement”	Shall have the meaning ascribed to it in Clause 2
“Day”	Eight hours unless otherwise specified
“Hire Period”	means the time from when the generator leaves Ian Webb Engineering location or place where last issued until received back at Ian Webb Engineering location or delivered to another place named by Ian Webb Engineering. The minimum Hire Period shall in any event be not less than 40 hours (unless specified otherwise) in respect of a generator
“Hirer”	Means the party taking Ian Webb Engineering generator on hire and named as such in the Agreement, whether an individual, firm, company, unincorporated association, public authority or other body and shall include its successors, assignees or personal representatives.
“IEE”	Means the regulations of the Institute of Electrical Engineers in force from time to time
“Invoice”	Means the invoice or invoices sent by Ian Webb Engineering to the Hirer on a monthly basis in respect of charges incurred by the Hirer.
“Normal Working Hours”	Means 8am to 5pm on each Monday, Tuesday, Wednesday, Thursday or Friday
“Plant”	Means all plant, equipment, cable, cable drums, trailers, fuel tanks machinery and accessories of whatever nature hired by the Hirer from Ian Webb Engineering, including any replacement thereof supplied pursuant to Clause 17 of these conditions.
“Service Guarantee”	Means Ian Webb Engineering service guarantee as published and applicable from time to time
“Site”	Means the site to which the plant is delivered (or to be delivered) on the Hirer’s instructions.
“Week”	Means a period of seven consecutive days.
“Working Week”	Means, in any Week, the period from 8am on Monday to 5pm on Friday

- 1.2 For the purposes of interpretation the paragraph headings contained herein shall be ignored
- 1.3 Unless the context otherwise requires the masculine gender shall be deemed to include the feminine and neuter and the singular number shall be deemed to include the plural and vice versa.
- 1.4 All Instructions, notifications, authorisations and acknowledgements under the Agreement shall be in writing and in English
- 1.5 Reference to Clauses are to clauses of these Conditions
- 1.6 Where Ian Webb Engineering and the Hirer have expressly agreed that the Service Guarantee is not to form part of the Agreement, all references in these Conditions to the Service Guarantee shall be deemed not to form part of these Conditions.

2 EXTENT OF AGREEMENT

The Ian Webb Engineering proposal together with the agreement, delivery note, invoice, termination note & return note, these Conditions and the Service Agreement comprise the entire agreement, agreement and understanding between Ian Webb Engineering & the Hirer ("The Agreement") and no other terms & conditions shall form part of the Agreement. The Agreement supersedes any previous agreement between the parties relating to the subject matter of the Agreement. No variation of the Agreement shall be effective unless specifically agreed in writing by an authorised officer of Ian Webb Engineering and of the Hirer.

Nothing in this Clause 2 shall, however, operate to limit to exclude any liability for fraud.

In the event of any inconsistency between any of the documents forming part of the Agreement, The Ian Webb Engineering proposal shall prevail against all other such documents and the terms of all such documents (but excluding the Service Guarantee, which is subject to these Conditions) shall prevail against these Conditions.

3 LOADING & UNLOADING

The Hirer shall be responsible for loading and unloading the Generator at the Site and personnel supplied by Ian Webb Engineering for loading and unloading shall do so as agents of the Hirer and under the Hirer's direction and control. For the avoidance of doubt, any period agreed by the parties for installation and commissioning shall not commence until the Hirer has completed such unloading and located the Generator in its required position

4 CONDITION OF GENERATOR ON RECEIPT

Unless notification to the contrary in writing is received by Ian Webb Engineering within three working days of the date of delivery of any Generator on Site or (where applicable and if later) completion of construction on Site of any Generator, all Generator will be deemed to have been timeously delivered and (where applicable) constructed in good working condition and to the Hirer's satisfaction.

5 CARE OF PLANT

- 5.1 The hirer shall be absolutely responsible (In each case at its own cost, unless agreed otherwise by the parties in writing) for the safekeeping and insurance of the Generator during the Hire Period, for the maintenance of the Generator in good condition in accordance with Ian Webb Engineering specification, for the lubrication of the generator and changing the lubrication oil in accordance with Ian Webb Engineering instructions, for the use of the Generator in conformity with its specification and current IEE

Regulations, and any other relevant laws or regulations and the Hirer shall ensure that the Generator is not operated for any purpose beyond its rated capacity or in a manner likely to result in deterioration of the Generator (except normal wear & tear). The Hirer shall check lubricating oil & coolant levels in the generator daily and ensure that lubricating oil & coolant are kept at the level required for the proper operation of the Generator in accordance with Ian Webb Engineering specification.

5.2 The Hirer shall keep himself acquainted with the condition of the Generator and shall not operate it after it has become defective, damaged or in a dangerous state which results in a breach of any applicable law or regulation and if the Hirer or any employee, servant or agent of the Hirer does operate the Generator in such condition then the Hirer (i) shall be solely responsible for any damage, loss or accidents resulting therefrom and (ii) shall (without prejudice to Clause 35 of these Conditions) indemnify Ian Webb Engineering in respect of any loss or damage suffered by Ian Webb Engineering and against any claims made against Ian Webb Engineering resulting therefrom.

5.3 Should breakdown or damage occur to any of the part of the Generator due to (i) failure by the Hirer to observe any terms of the Agreement, (ii) negligence or misuse by the Hirer or its employees, servants or agents, (iii) wilful or accidental damage however occurring or (iv) damage caused by salt water salt spray and/or salt laden air, the Hirer shall be liable to Ian Webb Engineering for:-

- (i) The full cost of any repairs which Ian Webb Engineering shall deem necessary or desirable; or
- (ii) If Ian Webb Engineering considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Generator; and
- (iii) Ian Webb Engineering hire charges for the Generator (i) while the generator is idle due to such breakdown or damage and (ii) while repairs are being carried out (but without prejudice to Ian Webb Engineering right to receive hire charges in respect of all other periods when the Generator is not off hire)

And the Service Guarantee shall be amended as follows:-

- (a) Ian Webb Engineering will still meet any stated response time for providing a service engineer on site but, without prejudice to the foregoing provisions of this paragraph (a), if any such response time is not met then no refund of hire charges or other credit or payment will be made by Ian Webb Engineering; and
- (b) Ian Webb Engineering will use responsible endeavour to ensure that the Generator is operational within any stated repair period but, without prejudice to the foregoing provisions of this paragraph (b), Ian Webb Engineering shall not be obliged to offer at the end of such period replacement Generator if any generator is not so operational and Ian Webb Engineering shall be entitled at its sole discretion either to delay offering replacement Generator or not to offer replacement Generator to the Hirer.

6 RECALL NOTICE

Subject always to Clauses 29 & 33, Ian Webb Engineering may, without, incurring any liability to the Hirer in respect of or in connection with such recall, recall any or all Generators upon giving Thirty (30) days written notice to the Hirer.

7 DUTY TO RETURN

7.1 The Hirer shall be entirely responsible for the return of all Generators to Ian Webb Engineering on completion of the agreed period of hire. Such Generator shall be returned to Ian Webb Engineering in good working condition, fair wear & tear excepted, and when Generator includes cable, the Hirer shall be responsible for recoiling cable on drums supplied.

If the Hirer returns any of the Generator other than in such condition for any reason whatsoever (whether or not involving any negligence or other fault on the part of the Hirer or its employees, servants or agents), then the Hirer shall be liable to Ian Webb Engineering for:-

- (i) The full cost of any repairs which Ian Webb Engineering shall deem necessary or desirable; or
- (ii) If Ian Webb Engineering considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Generator; and
- (iii) Ian Webb Engineering hire Charges for the Generator (i) while the generator is idle due to any such repairs or, where relevant, until the payment of the costs referred to in Clause 7.1 (ii) above (but without prejudice to Ian Webb Engineering right to receive hire charges in respect of all other periods when the Generator is not off hire)

7.2 If the Hirer fails to return any of the Generator for any reason whatsoever (whether or not involving any negligence or other fault on the part of the Hirer, its employees, servants or agents), then the Hirer shall be liable to Ian Webb Engineering for:-

- (i) The whole cost of replacement of such Generator; and
- (ii) Ian Webb Engineering's Hire charges in respect of the Generator until payment of the costs referred to in Clause 7.2 (i) above

8 OWNERSHIP OF GENERATOR

The Generator is and shall at all times remain in the property of Ian Webb Engineering and the Hirer shall have no right, title or interest in the Generator. The Hirer shall not remove or deface any plate or marking on the Generator identifying Ian Webb Engineering as the owner of the Generator. The Hirer shall keep the Generator free and clear of any and all diligence, distress, execution, seizure, attachment, levies, liens security interests and encumbrances of any kind and shall not give Ian Webb Engineering prompt notice of any encumbrance, charge, lien attachment, diligence, judicial process or any other similar event to any of the foregoing affecting the Generator. Without prejudice to Clause 35, the Hirer shall indemnify Ian Webb Engineering against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this Clause.

9 LEGAL EXPENSES

The Hirer shall be responsible for all costs, charges and expenses including reasonable legal fees incurred by Ian Webb Engineering (i) in recovering possession of the Generator or (ii) in the collection of any sums which may be due and owing by the Hirer to Ian Webb Engineering under the Agreement or (iii) in the defence of any action brought against Ian Webb Engineering in respect of any costs, loss, damages or other expenses caused directly or indirectly by or in connection with the operation of the Generator to any person while the Generator is in the possession or under control of the Hirer

10 ACCESS

The Hirer shall allow Ian Webb Engineering employees, servants, agents and insurers access to the Generator 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 both for such purposes and for delivery and collection of the Generator and shall be liable for all loss or damage suffered by Ian Webb Engineering or by Ian Webb Engineering's employees, servants or agents or insurers as a result of the Hirer's failure to provide or delay in providing such safe & proper access. If access is denied or delayed any obligation of Ian Webb Engineering under the Service Guarantee either to provide a service engineer on site and/or to remedy any fault, in each case within a specified period, shall be modified by extending the relevant period stated in the Service Guarantee by such time as Ian Webb Engineering considers is reasonably necessary to take account of such denial in access.

11 ROUTINE MAINTENANCE/SERVICE

Ian Webb Engineering shall, either itself or via an agreement or, provide regular maintenance and servicing during the Agreement in accordance with Ian Webb Engineering standard practice. The Hirer shall make the Generator available to Ian Webb Engineering for the purpose of carrying out maintenance or service (whether routine or otherwise) within one week of Ian Webb Engineering advising the Hirer of such maintenance or service being due. During Normal Working Hours Ian Webb Engineering will make no charge to the Hirer for any routine maintenance or service but if the Hirer can only make the Generator available for this purpose outside Normal Working Hours then Ian Webb Engineering reserves the right to charge the Hirer overtime costs.

12 SERVICING

Notwithstanding the terms of Clause 5 and 11 the Hirer shall notify Ian Webb Engineering when the Generator has operated for 250 hours since it was last serviced by Ian Webb Engineering or since the start of the Hire Period, whichever is later. If any routine service is carried out by Ian Webb Engineering within one week of such notice being received by Ian Webb Engineering, the costs of such service will normally be met by Ian Webb Engineering. If a service is not carried out within one week of the Generator having operated for 300 hours and the Hirer has failed to notify Ian Webb Engineering as provided in Clause then the Hirer shall compensate Ian Webb Engineering for additional wear, tear and damage to the Generator by paying the full cost of both the next service and any consequent repairs. If Ian Webb Engineering fails to service the Generator within one week of receipt of notification by the Hirer as provided in this clause then the cost of both the next service and any consequent repair costs will be met by Ian Webb Engineering.

13 TIMBER MATS OR EQUIVALENTS

If the ground at the Site is soft or unsuitable for the generator to work on or travel over without timbers or equivalents, the Hirer shall at its own cost supply and lay suitable timbers or equivalents in a suitable position for the Generator to travel over or work on.

14 FUEL, OIL AND LUBRICANTS

Fuel, oil and lubricants shall when supplied by the Hirer, be of a grade and type specified by Ian Webb Engineering.

15 COOLANT

Coolant, when supplied by the Hirer, shall be a mixture of clean fresh water and antifreeze in a proportion and of a grade type specified by Ian Webb Engineering.

16 TRANSPORT

The Hirer shall bear the cost of (and, if required by Ian Webb Engineering, arrange) (i) transport of the Generator from the collection place specified by Ian Webb Engineering to the Site and (ii) the subsequent return of the generator to a collection place so specified in accordance with Clause 7. For the purposes of the Service Guarantee, where the Hirer is to arrange transport from place of collection, the place & time of delivery shall be the place and time agreed for the collection of the Generator.

In the event that the Plant requires to be transported for the purpose of repair due to damage or breakdown, the cost of which is to be met by Ian Webb Engineering in terms of the Agreement, then Ian Webb Engineering shall meet the cost of such transport. In the event that the cost of such repair is to be met by the Hirer in terms of the Agreement, then the cost of such transport shall be met by the Hirer. The cost of transporting replacement Generator to the Site shall be born by the relevant party on same basis.

17 BREAKDOWN

17.1 Breakdowns or defects in any Generator resulting from 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 Ian Webb's Engineering option. Either (i) be repaired at Ian Webb's Engineering expense and with the least reasonably practicable delay (and without prejudice to any time periods stated in the Service Guarantee (if applicable), in which case the Hirer shall not be charged from its notification of a breakdown to Ian Webb Engineering until repair is completed (and without prejudice to any other compensation provisions stated in the Service Guarantee) or alternatively (ii) Ian Webb Engineering may replace the relevant Generator (and without prejudice to any such obligation of Ian Webb Engineering in the Service Guarantee (where applicable)).

17.2 Any other breakdown or defect may, at Ian Webb's Engineering option (and notwithstanding any provision in the Service Guarantee relating to breakdowns, which (except in respect of any breakdown or defect falling within Clause 17.1) shall be amended as set out in Clause 17.4), either (i) be repaired at the Hirer's expense (and without prejudice to the obligation of the Hirer to pay any sums due to Ian Webb Engineering under the Agreement until repair is completed) or (ii) alternatively, Ian Webb Engineering may replace the relevant Generator at the Hirer's cost & expense.

17.3 However notwithstanding the foregoing provisions of this Clause 17 and the terms of the Service Guarantee, if risk impracticable and if replacement Generator is not available Ian Webb Engineering may terminate the hiring forthwith and will not have any liability whatever to the Hirer for such termination or any consequence of such breakdown, defect or termination (except as provided in the Service Guarantee (where applicable) where the breakdown or defect is of type specified in Clause 17.1)

17.4 In the case of any breakdown not falling within Clause 17.1 the provisions relating to breakdown set out in the Service Guarantee shall be modified as follows:-

- (a) Ian Webb Engineering will meet any stated response time for providing a service engineer on site, but without prejudice to the foregoing provisions of this paragraph (a), if any such response time is not met then no refund of hire charges or other credit or payment, in either case stated in the Service guarantee, will be made by Ian Webb Engineering

- (b) Ian Webb Engineering will use reasonable endeavours to ensure that the Generator is operational within any repair period stated in the Service Guarantee but, without prejudice to the foregoing provisions of this paragraph (b) Ian Webb Engineering shall not be obliged to offer replacement Generator at the end of such period if any Generator is not so operational and Ian Webb Engineering shall be entitled at its sole discretion either to delay offering replacement generator or not to offer replacement generator to the Hirer.

Any breakdown or the unsatisfactory working of any part of the Generator must be notified immediately to Ian Webb Engineering and for this purpose no notification shall be effective unless and until it is actually received by Ian Webb Engineering. The Hirer shall not attempt to effect repairs himself or to engage any third party to carry out any repairs except with the express authority of Ian Webb Engineering

Ian Webb Engineering will accept no relief from hire charges or any claims for stoppages due to causes out with Ian Webb Engineering control including (without prejudice to the foregoing generality) weather and/or ground conditions. The Hirer shall be solely responsible for the costs and expenses of recovering any Generator from soft ground and shall, where required to do so by Ian Webb Engineering, make arrangements for such recovery.

18 INSPECTION REPORTS

Inspection reports which Ian Webb Engineering are obliged by law to possess, or a copy thereof, shall be supplied to the Hirer if requested and returned by the Hirer to Ian Webb Engineering at the end of the Hire period.

19 CONSEQUENTIAL LOSS

Ian Webb Engineering shall not in any event be liable to the Hirer for any economic loss (including, but not limited to, Loss of business and/or profits) or (subject to Clause 21.2) consequential physical loss suffered by the Hirer whether or not arising from breach of agreement, negligence or any other fault on the part of Ian Webb Engineering or its employees, servants or agents and whether or not in the contemplation of Ian Webb Engineering and/or the Hirer at or prior to the commencement of the Agreement

20 INFORMATION, ADVICE, ETC

The Hirer recognises and accepts that in entering into the Agreement it has not relied on any advice, statement representation or warranty given by Ian Webb Engineering or its employees, servants or agents, to the Hirer in relation to the Generator or its use whether regarding specification performance capability or suitability for any purpose

21 LIABILITY OF IAN WEBB ENGINEERING

21.1 Notwithstanding and without prejudice to any other terms of the Agreement Ian Webb Engineering shall accept liability for (subject to Clauses 19 & 22) damage, loss or injury to the Generator arising:-

- (i) Prior to delivery of the Generator to the Site where the Generator is in transit by transport arranged or owned by Ian Webb Engineering;
- (ii) During erection of the generator on Site provided such erection is entirely with Ian Webb Engineering control;

- (iii) During dismantling of the Generator on Site provided such dismantling is entirely within Ian Webb Engineering control;
- (iv) After removal of the Generator from the Site where Generator is in transit arranged or owned by Ian Webb Engineering

21.2 Nothing this Agreement shall operate to exclude or limit Ian Webb Engineering liability for the death or personal injury of any person caused by the negligence of Ian Webb Engineering or its employees, servants or agents

22 SCOPE OF DAMAGES

Except when Ian Webb Engineering is liable for the death of or personal injury to any person as a result of its negligence or that of any of its employees, servants or agents Ian Webb Engineering liability for damages shall in no event exceed the total hire charges, if any received from the Hirer by Ian Webb Engineering for the Generator which is the subject of any claim or dispute. For the avoidance of doubt, any credit which is due by Ian Webb Engineering to the Hirer under the Service Guarantee may, at the Hirer's option, either be (i) refunded by Ian Webb Engineering to the Hirer, provided that such credits shall not be refundable to the extent that the amount of the credit exceeds the amount of hire charges actually received by Ian Webb Engineering as at the date when the credit becomes due or (ii) to the extent that any credit is not so refunded, such credit may be set off against sums payable in the future by the hirer to Ian Webb Engineering under the Agreement.

22 OPERATION OF THE PLANT

Where an operator is provided with the Generator, he shall work under the supervision and instruction of the Hirer or its representatives and, for the Hire Period, the operator shall be deemed to be an employee of the Hirer, who shall be responsible for his acts and omissions (including negligent acts and omissions) as if he were in the Hirer's direct employment. The Hirer shall not permit any other person to operate the Generator without Ian Webb Engineering prior consent in writing.

23 PRICE

The initial hire rates for the Generator and services are the rates in force at the time of delivery of the Generator but in the case of long term hires Ian Webb Engineering reserves the right, upon giving the Hirer at least 4 weeks notice, to vary the times rates so as to reflect variations in Ian Webb Engineering own cost of goods, materials, fuel & labour.

All Prices stated in the Agreement are exclusive of an amount equal to Value Added Tax, which shall be payable in addition by the Hirer.

24 CHARGING

The Hirer shall render to Ian Webb Engineering for each Working Week an accurate statement of the number of hours the Generator has worked each day. Where the Generator is accompanied by an Ian Webb Engineering operator, the Hirer or its representative shall sign the operator's Time Record Sheets daily or weekly and the signature of the Hirer shall bind the Hirer or its representative to accept the hours shown on the Time Record Sheets.

25 INSURANCE AND ACCIDENTS

The Hirer shall be responsible at its own expense for insuring the generator and itself against all and any risks in respect of the Generator, including for the avoidance of doubt, theft, vandalism, fire, flood and risks arising from the presence or operation on or at the Site, of the generator (including, without prejudice to the generality of the foregoing, legal liabilities to

third parties arising from the operation of, or in connection with the Generator). Such insurance shall be maintained from the time when the Generator is delivered to the Site until the Generator is subsequently uplifted from the Site. Any insurance monies recovered by the Hirer in respect of such risks shall, to the extent deemed necessary by Ian Webb Engineering, be applied as directed by Ian Webb Engineering.

The Hirer to Ian Webb Engineering shall supply evidence of the Hirer's insurance forthwith on request by Ian Webb Engineering.

If the Generator is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to Ian Webb Engineering by telephone and confirmed in writing and in respect of any claim not within the Hirer's agreement for indemnity in Clause 35 hereof, no admission, offer, promise of payment or indemnity shall be made by the Hirer without Ian Webb Engineering consent in writing.

26 REHIRING, ETC

The Generator or any part thereof shall not be rehired, sublet, lent or otherwise made available to any third party without the written consent of Ian Webb Engineering and the Hirer shall indemnify Ian Webb Engineering against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this clause.

27 CHANGE OF SITE

The Generator shall not be moved from the Site without prior written consent of Ian Webb Engineering

28 INDEFINITE HIRING

In the case where the hiring which is the subject of the Agreement is an indefinite hiring and is not for an agreed period, the Agreement may be terminated by either the Hirer or Ian Webb Engineering on giving not less than 5 written days notice to the other end in the event of termination of the Agreement by either party all Ian Webb Engineering rights under the Agreement as at the date of such termination will remain reserved

30 COMPLIANCE WITH LAW

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

31 FORCE MAJEURE

Ian Webb Engineering shall have no liability for, nor for any direct or indirect consequence of, any delay or failure on its part in carrying out any or all of, or any part of any of, its obligations under the Agreement if such delay or failure is attributable to the failure of any part, component or item of equipment or machinery caused by or occurring in connection with any change of date and/or electronic date recognition, strike, lock out, riot, civil commotion, insurrections, act of war (whether or not officially declared or civil war, war like action, act of any Parliament, government, agency or department (whether local or national), natural calamity, fire, flood, storm, tempest, earthquake, volcanic eruption or any other circumstances beyond the reasonable control of Ian Webb Engineering. For the avoidance of doubt, this Clause 31 shall operate to exclude the liability of Ian Webb Engineering for such delay or failure by the occurrence of the relevant circumstances and no notice shall be required to be given by or to either party.

32 PAYMENT TERMS

Invoices are due for payment in full within 30 days from date of Invoice. Ian Webb Engineering shall have the right to charge interest at the rate of one & a half % per calendar month on all overdue sums & late payments shall disentitle the Hirer from any discount to which Hirer might otherwise be entitled.

33 DEFAULT

33.1 If the Hirer fails to make punctual payment of any sums due to Ian Webb Engineering, whether for hire of the Generator under the Agreement or to otherwise or shall fail to observe and perform the terms and conditions of the Agreement, or if the Hirer shall cease to carry on business or shall be unable to pay its debts as they fall due for payment or if the Hirer shall suffer any diligence, distress or execution to be used or levied against him or make or propose to make any arrangement with its creditors or being a Company, or shall go into liquidation (other than for the purposes of reconstruction or amalgamation) 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 suffer the equivalent of any of the foregoing in any other jurisdiction or shall do or cause to be done or permit or suffer any act or thing whereby Ian Webb Engineering rights in the Generator may be prejudiced or put into jeopardy, the Agreement shall forthwith terminate (without any requirement for any notice or other act on the part of Ian Webb Engineering and notwithstanding that Ian Webb Engineering may have waived some previous default or matter of the time or a like nature) and it shall thereupon be lawful for Ian Webb Engineering to retake possession of the Generator and for that purpose enter into or upon any premises where the same may be and the termination of the Agreement under this Clause 33 shall not effect any other rights of Ian Webb Engineering existing as at the date of such termination or the right of Ian Webb Engineering to recover from the Hirer any monies due to Ian Webb Engineering under the Agreement or damages for breach thereof.

33.2.1 Except to the extent specified in these Conditions, the Service Guarantee shall not apply while the Hirer is in breach of any of its obligations.

34 MISCELLANEOUS

- (i) If any provision of the Agreement is rendered void by legislation or declared void by court decree or order or is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, the remaining provisions shall be severable and shall not thereby be altered and shall remain in full force and effect;
- (ii) Any waiver, indulgence or forbearance by Ian Webb Engineering of any of the terms or rights contained herein shall not effect the enforceability of such terms or rights;
- (iii) The reliance on or enforcement of any of the terms contained herein shall give no right to the Hirer to cancel the Agreement

35 INDEMNITIES

The Hirer shall be solely responsible for and shall hold Ian Webb Engineering fully indemnified against any loss or damage arising to or in connection with the Generator or as a result of the use of situation of the Generator or from any failure on the part of the Hirer to return any part of the Generator timeously at the termination of the Agreement or agreed period of hire (howsoever caused). The Hirer shall fully and completely indemnify Ian Webb Engineering 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 Generator 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, except in the case where the loss, damage or injury from the negligence of Ian Webb Engineering or its employees servants or agents in which case the foregoing indemnities shall not apply.

In addition to and without prejudice to the foregoing the Hirer shall also indemnify and hold harmless Ian Webb Engineering from and against any and all costs, fines, penalties, damages, assessments and/or expenses, levied, assessed, incurred or awarded by reason of any violation of any applicable environmental laws, rules or regulations in connection with the discharge, release and/or disposal of any hazardous materials or hazardous substances in the course of the operation, use, handling or transportation of the Generator, whether or not caused or contributed to by the negligence of Ian Webb Engineering or its employees, servants or agents, except in the case where the Agreement is a Consumer Agreement in which case the foregoing indemnity shall not apply where such costs, fines, penalties, damages and/or expenses arise from the negligence of Ian Webb Engineering or its employees, servants or agents.

- 36** Ian Webb Engineering warrants that the Generator shall be free from any defects in design, workmanship and material which would effect the proper and safe operation of the Generator and shall remedy, in accordance with the provisions of Clause 17, any such defects that become apparent or occur during the Hire Period, PROVIDED that such warranty and obligation to remedy will not apply where any defect in the generator has arisen from any drawing, design or specification supplied by the Hirer, wilful damage, negligence, abnormal working conditions, failure to follow Ian Webb Engineering's instructions, misuse or alteration or repair of the Generator without Ian Webb Engineering's prior written approval or breach of any of the terms of the Agreement by the Hirer.

Save as explicitly set out in these Conditions or any other document forming part of the Agreement, Ian Webb Engineering makes no representation and gives no warranties – statutory, implied or other – either as to the Generator itself, or as to the quality and condition of the Generator, or as to its suitability for any particular or general purpose. In particular, without prejudice to the generality of the foregoing and for the avoidance of doubt, any implied warranties under Sections 13 and 14 of the Sale of Goods Act 1979 and Sections 4, 5, 8, 9, 10, 11C, 11D, 11E, 11H, 11I, 11J, and 11K and part II of the Supply of Goods and Services Act 1982 are hereby excluded (except in respect of the Agreement where the Agreement is a Consumer Agreement)

37 CONFIDENTIALITY

37.1 All information obtained by one party concerning the operations of the other shall be confidential and shall not be divulged to third parties either during the period of this Agreement or any time thereafter. Each party shall take the strictest possible steps to enforce this Clause and the aggrieved party has the right to take whatever action at law it deems necessary, including the immediate termination of this Agreement, should any breach of this Clause come to its attention

37.2 For the avoidance of doubt, Clause 37.1 shall apply in particular to any drawings, specifications and other documents by which Ian Webb Engineering has granted the Hirer access.

38 ASSIGNMENT

The Hirer shall not assign the Agreement or any part of it or any benefit or interest in or under it without the previous written agreement of Ian Webb Engineering which only will be given in exceptional circumstances and shall notwithstanding the foregoing be in the absolute discretion of Ian Webb Engineering.

39 GOVERNING LAW

The ruling law of the Agreement and of the relationship of the parties thereto, arising out of it shall be Scots Law if the party to it other than Ian Webb Engineering has (in the case of a company) a registered office in Scotland or (in the case of an individual) is resident in Scotland, but shall otherwise be English Law.