

TGC International Ltd.



# GENERAL CONDITIONS OF HIRE

POWERHIRE IS A DIVISION  
OF TGC INTERNATIONAL  
LTD.

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**REVISION: 02**

# GENERAL CONDITIONS OF HIRE

## 1. DEFINITIONS

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

<b>"Owners"</b>	means TGC International Ltd or any trading division of TGC International Ltd including; Powerhire, The Generator Company, CVS Diesel and CVS PentaPower
<b>"Conditions"</b>	means these General Conditions of Hire
<b>"Consumer Contract"</b>	shall have the meaning ascribed to it in the Unfair Contract Terms Act 1977
<b>"Contract"</b>	shall have the meaning ascribed to it in Clause 2 below.
<b>"Day"</b>	eight hours unless otherwise specified.
<b>"Hire Period"</b>	means the time from when the Plant leaves TGC International Ltd depot or place where last issued until received back at TGC International Ltd depot or delivered to another place named by TGC International Ltd. The minimum Hire Period shall in any event be not less than 8 hours (unless specified otherwise) in respect of a loadbank.
<b>"Hirer"</b>	means the party taking TGC International Ltd Plant on hire and named as such in the Contract, whether an individual, firm, company, unincorporated association, public authority or other body and shall include its successors, assignees or personal representatives.
<b>"IEE"</b>	means the regulations of the Institute of Electrical Engineers in force from time to time. "IEE"
<b>"Invoice"</b>	means the invoice or invoices sent by TGC International Ltd to the Hirer on a monthly basis in respect of charges incurred by the Hirer.
<b>"Normal Working Hours"</b>	means 8am to 5pm on each of Monday, Tuesday, Wednesday, Thursday or Friday.
<b>"Plant"</b>	means all plant, equipment, cable, cable drums, trailers, fuel tanks, machinery and accessories of whatever nature hired by the Hirer from TGC International Ltd, including any replacement thereof supplied pursuant to Clause 17 of these Conditions.
<b>"Service Guarantee"</b>	means TGC International Ltd Service Guarantee as published and applicable from time to time
<b>"Site"</b>	means the site to which the Plant specified by the Hirer is delivered to (or to be delivered to) on the Hirer's instructions.
<b>"Week"</b>	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 Contract shall be in writing and in English.
- 1.5 References to Clauses are to clauses of these Conditions.
- 1.6 Where TGC International Ltd and the Hirer have expressly agreed that the Service Guarantee is not to form part of the Contract, all references in these Conditions to the Service Guarantee shall be deemed not to form part of these Conditions.

## **2. EXTENT OF CONTRACT**

The TGC International Ltd contract (including the Hirer's acceptance thereof), delivery note, invoice, off hire collection note and return note, these Conditions and the Service Guarantee comprise the entire contract, agreement and understanding between TGC International Ltd and the Hirer ("the Contract") and no other terms and conditions shall form part of the Contract. The Contract supersedes any previous agreement between the parties relating to the subject matter of the Contract. No variation of the Contract shall be effective unless specifically agreed in writing by an authorised officer of TGC International Ltd and of the Hirer.

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

In the event of any inconsistency between any of the documents forming part of the Contract, the TGC International Ltd hire contract 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 AND UNLOADING**

- 3.1 The Hirer shall be responsible for loading and unloading the Plant at the Site and personnel supplied by TGC International Ltd 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 Plant in its required position.
- 3.2 Any person supplied by the Owners to assist in the loading and unloading shall be under the Hirers control and shall comply with all the directions of the Hirer who alone shall be responsible for any damage caused to the Plant as a result of such loading and unloading.

## **4. UNAUTHORISED CHANGE OF SITE**

The Plant must not be removed from the site to which it was delivered, or specified by the Hirer on the commencement of hire, without written authority of the Owners.

## **5. UNAUTHORISED RE-HIRING OF EQUIPMENT**

The Plant or any part thereof shall not be re-hired, sublet or lent to any third party without the written authority of the Owners.

## **6. CONDITION OF PLANT ON RECEIPT**

Unless notification to the contrary in writing is received by TGC International Ltd within 3 working days of the date of delivery of any Plant on Site or (where applicable and if later) completion of construction on Site of any Plant, all Plant will be deemed to have been timely delivered and (where applicable) constructed in good working condition and to the Hirer's satisfaction.

## **7. CARE OF PLANT**

7.1 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 Plant during the Hire Period, for the maintenance of the Plant in good condition in accordance with TGC International Ltd specification, for the lubrication of the Plant and changing the lubrication oil in accordance with TGC International Ltd instructions, for the use of the Plant in conformity with its specification and current IEE Regulations, and any other relevant laws or regulations and the Hirer shall ensure that the Plant is not operated for any purpose beyond its rated capacity or in a manner likely to result in deterioration of the Plant (except normal wear and tear). The Hirer shall check lubricating oil and coolant levels in the Plant daily and ensure that lubricating oil and coolant are kept at the level required for the proper operation of the Plant in accordance with TGC International Ltd specification.

7.2 The Hirer shall keep himself acquainted with the condition of the Plant and shall not operate it after it has become defective, damaged or in a dangerous state or in a 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 Plant in such condition then the Hirer (i) shall be solely responsible for any damage, loss or accidents resulting there from and (ii) shall (without prejudice to Clause 35 of these Conditions) indemnify TGC International Ltd in respect of any loss or damage suffered by TGC International Ltd and against any claims made against TGC International Ltd resulting there from.

7.3 Should breakdown or damage occur to any of the Plant due to (i) failure by the Hirer to observe any terms of the Contract, (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 TGC International Ltd for:-

- (i) the full cost of any repairs which TGC International Ltd shall deem necessary or desirable; or
- (ii) if TGC International Ltd considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Plant; and
- (iii) TGC International Ltd hire charges for the Plant (i) while the Plant is idle due to such breakdown or damage and (ii) while repairs are being carried out (but without prejudice to TGC International Ltd right to receive hire charges in respect of all other periods when the Plant is not off hire), and the Service Guarantee shall be amended as follows:-
  - a) TGC International Ltd 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 TGC International Ltd; and

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

## **8. RECALL NOTICE**

Subject always to Clauses 29 and 33, TGC International Ltd may, without incurring any liability to the Hirer in respect of or in connection with such recall, recall any or all Plant upon giving Thirty (30) days' written notice to the Hirer.

## **9. DUTY TO RETURN**

7.1 The Hirer shall be entirely responsible for the return of all Plant to TGC International Ltd on completion of the agreed period of hire. Such Plant shall be returned to TGC International Ltd in good working condition, fair wear and tear excepted, and when Plant includes cable, the Hirer shall be responsible for recoiling cable on drums supplied.

If the Hirer returns any of the Plant 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 TGC International Ltd for:-

- (i) the full cost of any repairs which TGC International Ltd shall deem necessary or desirable; or
- (ii) if TGC International Ltd considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Plant; and
- (iii) TGC International Ltd hire charges for the Plant (i) while the Plant 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 TGC International Ltd right to receive hire charges in respect of all other periods when the Plant is not off hire).

7.2 If the Hirer fails to return any of the Plant 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 TGC International Ltd for:-

- (i) the whole cost of replacement of such Plant; and
- (ii) TGC International Ltd hire charges in respect of such Plant until payment of the costs referred to in Clause 7.2 (i) above.

## **10. OWNERSHIP OF PLANT**

The Plant is and shall at all times remain in the property of TGC International Ltd and the Hirer shall have no right, title or interest in the Plant. The Hirer shall not remove or deface any plate or marking on the Plant identifying TGC International Ltd as the owner of the Plant. The Hirer shall keep the Plant free

and clear of any and all diligence, distress, execution, seizure, attachment, levies, liens, security interests and encumbrances of any kind and shall give TGC International Ltd prompt notice of any encumbrance, charge, lien, attachment, diligence, judicial process or any similar event to any of the foregoing affecting the Plant. Without prejudice to Clause 35, the Hirer shall indemnify TGC International Ltd against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this Clause.

#### **11. LEGAL EXPENSES**

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

#### **12. ACCESS**

The Hirer shall allow TGC International Ltd employees, servants, agents and insurers access to the Plant 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 Plant and shall be liable for all loss or damage suffered by TGC International Ltd or by TGC International Ltd employees, servants, agents or insurers as a result of the Hirer's failure to provide or delay in providing such safe and proper access. If access is denied or delayed any obligation of TGC International Ltd 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 TGC International Ltd considers is reasonably necessary to take account of such denial of or delay in access.

#### **13. ROUTINE MAINTENANCE/SERVICE**

TGC International Ltd shall, either itself or via a contractor, provide regular maintenance and servicing during the Contract as considered required by TGC International Ltd. The Hirer shall make the Plant available to TGC International Ltd for the purpose of carrying out maintenance or service (whether routine or otherwise) within one day of TGC International Ltd advising the Hirer of such maintenance or service being due.

During Normal Working Hours TGC International Ltd will make no charge to the Hirer for any routine maintenance or service but if the Hirer can only make the Plant available for this purpose outside Normal Working Hours then TGC International Ltd reserves the right to charge the Hirer for overtime costs.

#### **14. SERVICING**

Notwithstanding the terms of Clauses 7 and 13 the Hirer shall notify TGC International Ltd when the Plant has operated for 50 hours since it was last serviced by TGC International Ltd or since the start of the Hire Period, whichever is later. If any routine service is carried out by TGC International Ltd within one week of such notice being received by TGC International Ltd, the costs of such service will normally be met by TGC International Ltd.

If a service is not carried out within one week of the Plant having operated for 100 hours and the Hirer has failed to notify TGC International Ltd as provided in this clause then the Hirer shall compensate TGC International Ltd for additional wear, tear and damage to the Plant by paying the full cost of both the next service and any consequent repairs. If TGC International Ltd fails to service the Plant 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 TGC International Ltd.

**15. TIMBER MATS OR EQUIVALENTS**

If the ground at the Site is soft or unsuitable for the Plant 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 Plant to travel over or work on.

**16. FUEL, OIL AND LUBRICANTS**

Fuel, oil, lubricants, and any other service or maintenance items shall, when supplied by the Hirer, be of a grade and type specified by TGC International Ltd.

**17. COOLANT**

Coolant, when supplied by the Hirer, shall be a mixture of clean fresh water and antifreeze in a proportion and of a grade and type specified by TGC International Ltd.

**18. TRANSPORT**

The Hirer shall bear the cost of (and, if required by TGC International Ltd, arrange) (i) transport of the Plant from the collection place specified by TGC International Ltd to the Site and (ii) the subsequent return of the Plant 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 the place of collection, the place and time of delivery shall be the place and time agreed for the collection of the Plant. 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 TGC International Ltd in terms of the Contract, then the cost of such transport shall be met by TGC International Ltd. In the event that the cost of such repair is to be met by the Hirer in terms of the Contract, then the cost of such transport shall be met by the Hirer. The cost of transporting replacement Plant to the Site shall be borne by the relevant party on the same basis.

**19. BREAKDOWN**

19.1 Breakdowns or defects in any Plant resulting from proper 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 TGC International Ltd option, either (i) be repaired at TGC International Ltd 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 TGC International Ltd until repair is completed (and without prejudice to any other compensation provisions stated in the Service Guarantee) or alternatively (ii) TGC International Ltd may replace the relevant Plant (and without prejudice to any such obligation of TGC International Ltd in the Service Guarantee (where applicable)).

19.2 Any other breakdown or defect may, at TGC International Ltd option (and notwithstanding any provision in the Service Guarantee relating to breakdowns, which (except in respect of any breakdown or defect falling within Clause 19.1) 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 TGC International Ltd under the Contract until repair is completed) or (ii) alternatively, TGC International Ltd may replace the relevant Plant at the Hirer's cost and expense.

19.3 However notwithstanding the foregoing provisions of this Clause 17 and the terms of the Service Guarantee, if repair is impracticable and if replacement Plant is not available TGC

International Ltd may terminate the hiring forthwith and will not have any liability whatever to the Hirer for such termination or any consequences of such breakdown, defect or termination (except as provided in the Service Guarantee (where applicable) where the breakdown or defect is of a type specified in Clause 19.1).

19.4 In the case of any breakdown not falling within Clause 19.1, the provisions relating to breakdown set out in the Service Guarantee shall be modified as follows:-

- (a) TGC International Ltd 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, in either case stated in the Service Guarantee, will be made by TGC International Ltd; and
- (b) TGC International Ltd will use reasonable endeavours to ensure that the Plant is operational within any repair period stated in the Service Guarantee but, without prejudice to the foregoing provisions of this paragraph (b), TGC International Ltd shall not be obliged to offer replacement Plant at the end of such period if any Plant is not so operational and TGC International Ltd shall be entitled at its sole discretion either to delay offering replacement Plant or not to offer replacement Plant to the Hirer.

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

Neither relief from hire charges nor any claims will be accepted by TGC International Ltd for stoppages due to causes out of TGC International Ltd 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 Plant from soft ground and shall, where required to do so by TGC International Ltd, make arrangements for such recovery.

## **20. INSPECTION REPORTS**

Inspection reports which TGC International Ltd are obliged by law to possess, or a copy thereof, shall be supplied to the Hirer if requested and returned by the Hirer to TGC International Ltd at the end of the Hire Period.

## **21. CONSEQUENTIAL LOSS**

TGC International Ltd 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 23.2) consequential physical loss suffered by the Hirer whether or not arising from breach of contract, negligence or any other fault on the part of TGC International Ltd or its employees, servants or agents and whether or not in the contemplation of TGC International Ltd and/or the Hirer at or prior to the commencement of the Contract.

## **22. INFORMATION, ADVICE, ETC.**

The Hirer recognises and accepts that in entering into the Contract it has not relied on any advice, statement representation or warranty given by TGC International Ltd or its employees, servants or agents, to the Hirer in relation to the Plant or its use whether regarding specification performance capability or suitability for any purpose.



## **23. LIABILITY OF TGC INTERNATIONAL LTD**

21.1 Notwithstanding and without prejudice to any other terms of the Contract TGC International Ltd shall accept liability for (subject to Clauses 19 and 22) damage, loss or injury to the Plant arising:-

- (i) prior to delivery of the Plant to the Site where the Plant is in transit by transport arranged or owned by TGC International Ltd;
- (ii) during erection of the Plant on Site provided such erection is entirely within TGC International Ltd control;
- (iii) during dismantling of the Plant on Site provided such dismantling is entirely within TGC International Ltd control;
- (iv) after removal of the Plant from the Site where the Plant is in transit by transport arranged or owned by TGC International Ltd.

21.2 Nothing in this Contract shall operate to exclude or limit TGC International Ltd liability for the death or personal injury of any person caused by the negligence of TGC International Ltd or its employees, servants or agents.

## **24. SCOPE OF DAMAGES**

Except where TGC International Ltd 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 TGC International Ltd liability for damages shall in no event exceed the total hire charges, if any, received from the Hirer by TGC International Ltd for the Plant which is the subject of any claim or dispute. For the avoidance of doubt, any credit which is due by TGC International Ltd to the Hirer under the Service Guarantee may, at the Hirer's option, either be (i) refunded by TGC International Ltd 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 TGC International Ltd 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 TGC International Ltd under the Contract..

## **25. OPERATION OF THE PLANT**

Where an operator is provided with the Plant, he shall work under the supervision and instructions 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 Plant without TGC International Ltd prior consent in writing.

## **26. PRICE**

The initial hire rates for Plant and services are the rates in force at the time of delivery of the Plant but in the case of long term hires TGC International Ltd reserves the right, upon giving the Hirer at least 4 weeks' notice, to vary the time rates so as to reflect variations in TGC International Ltd own cost of goods, materials, fuel and labour. All prices stated in the Contract are exclusive of an amount equal to Value Added Tax, which shall be payable in addition by the Hirer.

## **27. CHARGING**

The Hirer shall render to TGC International Ltd for each Working Week an accurate statement of the number of hours the Plant has worked each Day. Where the Plant is accompanied by a TGC International Ltd 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.

## **28. INSURANCE AND ACCIDENTS**

The Hirer shall be responsible at its own expense for insuring the Plant and itself against all and any risks in respect of the Plant, including for the avoidance of doubt, theft, vandalism, fire, flood any risks arising from the presence or operation on or at the Site of, the Plant (including, without prejudice to the generality of the foregoing, legal liabilities to third parties arising from the operation of, or in connection with, the Plant). Such insurance shall be maintained from the time when the Plant is delivered to the Site until the Plant 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 TGC International Ltd, be applied as directed by TGC International Ltd.

Evidence of the Hirer's insurance shall be supplied by the Hirer to TGC International Ltd forthwith on request by TGC International Ltd.

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to TGC International Ltd 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 TGC International Ltd consent in writing.

## **29. INDEFINITE HIRING**

In the case where the hiring which is the subject of the Contract is an indefinite hiring and is not for an agreed period, the Contract may be terminated by either the Hirer or TGC International Ltd on giving not less than 5 days written notice to the other and in the event of termination of the Contract by either party all TGC International Ltd rights under the Contract as at the date of such termination will remain and are 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 Plant, which without prejudice to the foregoing generality shall include the current IEE Regulations.

## **31. FORCE MAJEURE**

TGC International Ltd 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 Contract 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 TGC International Ltd. For the avoidance of doubt, this Clause 31 shall operate to exclude the liability of TGC International Ltd for such delay or failure by the occurrence of the relevant circumstance 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 of their date**. TGC International Ltd shall have the right to charge interest at the rate of 1½% per calendar month on all overdue sums and late payment shall disentitle the Hirer from any discount to which the Hirer might otherwise be entitled.

## **35. DEFAULT**

35.1 If the Hirer fails to make punctual payment of any sums due to TGC International Ltd, whether for hire of Plant under the Contract or otherwise or shall fail to observe and perform the terms and conditions of the Contract, 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 his 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 TGC International Ltd rights in the Plant may be prejudiced or put into jeopardy, the Contract shall forthwith terminate (without any requirement for any notice or other act on the part of TGC International Ltd and notwithstanding that TGC International Ltd may have waived some previous default or matter of the same or a like nature) and it shall thereupon be lawful for TGC International Ltd to retake possession of the Plant and for that purpose enter into or upon any premises where the same may be and the termination of the Contract under this Clause 33 shall not affect any other rights of TGC International Ltd existing as at the date of such termination or the right of TGC International Ltd to recover from the Hirer any monies due to TGC International Ltd under the Contract or damages for breach thereof.

35.2 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 under the Contract.

## **36. MISCELLANEOUS**

- (i) if any provision of the Contract 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 TGC International Ltd of any of the terms or rights contained herein shall not affect 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 Contract.

## **37. INDEMNITIES**

The Hirer shall be solely responsible for and shall hold TGC International Ltd fully indemnified against any loss or damage arising to or in connection with the Plant or as a result of the use or situation of the Plant or from any failure on the part of the Hirer to return any of the Plant timeously at the termination of the Contract or agreed period of hire (howsoever caused). The Hirer shall fully and completely indemnify TGC International Ltd 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 Plant 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 arises from the negligence of TGC International Ltd 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 TGC International Ltd 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 Plant, whether or not caused or contributed to by the negligence of TGC International Ltd or its employees, servants or agents, except in the case where the Contract is a Consumer Contract in which case the foregoing indemnity shall not apply where such costs, fines, penalties, damages and/or expenses arise from the negligence of TGC International Ltd or its employees, servants or agents.

### **38. EXCLUSION OF WARRANTIES**

TGC International Ltd warrants that the Plant shall be free from any defects in design, workmanship and material which would affect the proper and safe operation of the Plant 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 Plant has arisen from any drawing, design or specification supplied by the Hirer, wilful damage, negligence, abnormal working conditions, failure to follow TGC International Ltd instructions, misuse or alteration or repair of the Plant without TGC International Ltd prior written approval or breach of any of the terms of the Contract by the Hirer.

Save as explicitly set out in these Conditions or any other document forming part of the Contract, TGC International Ltd makes no representations and gives no warranties - statutory, implied or other - either as to the Plant itself, or as to the quality and condition of the Plant, 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 Contract where the Contract is a Consumer Contract).

### **39. CONFIDENTIALITY**

39.1 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 Contract 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 Contract, should any breach of this Clause come to its attention.

39.2 For the avoidance of doubt, Clause 37.1 shall apply in particular to any drawings, specifications and other documents to which TGC International Ltd has granted the Hirer access.

### **40. ASSIGNMENT**

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

**41. GOVERNING LAW**

The ruling law of the Contract and of the relationship of the parties thereto arising out of it shall be English Law.