

**GENAIR UK LIMITED**  
**TERMS AND CONDITIONS OF HIRE**

**1. Definitions**

The following definitions shall apply to these terms and conditions of hire:

- 1.1 **Business Day** – any day other than a Saturday, Sunday or public holiday when banks in England are open for business.
- 1.2 **Business Hours** - the period from 9.00 am to 5.00 pm on any Business Day.
- 1.3 **Charges** – the Hire Charges, Transport Charges, Fuel Charges and Service Charges (as applicable).
- 1.4 **Customer** – the person, firm or company with whom Genair contracts (including its successors, assignees or personal representatives) that is hiring the Equipment and/or purchasing the Services, as specified in the Quotation.
- 1.5 **Deposit** – any advance payment specified in the Quotation, collected by Genair from the Customer in relation to the delivery of Equipment or supply of Services (as applicable), which is to be held by Genair in accordance with these terms and conditions.
- 1.6 **Delivery Site** - the location as specified in the Quotation (or otherwise as agreed by the parties in writing), to which the Equipment will be delivered.
- 1.7 **Equipment** – the equipment detailed in the Quotation, and any accessories hired by the Customer, including all substitutions, replacements or renewals of such equipment, including any Spare Parts provided by Genair, and all related Specifications, accessories, manuals and instructions in respect of such Equipment.
- 1.8 **Fuel Charges** – the charges payable by the Customer for the supply of fuel, as set out in the Quotation.
- 1.9 **Genair** – Genair UK Ltd, with company number 06210837 and its registered office address at Marston House 5, Elmdon Lane, Marston Green, Solihull, West Midlands, England, B37 7DL.
- 1.10 **Hire Agreement** – these terms and conditions together with the Quotation and the Order Confirmation (if any).
- 1.11 **Hire Charges** – the charges payable by the Customer for the hire of the Equipment, as set out in the Quotation.
- 1.12 **Hire Period** – the period commencing on the On Hire Date and ending when the Equipment is re-delivered to, or collected by, Genair.
- 1.13 **Intellectual Property Rights** – all intellectual property rights, whether registered or unregistered and including applications, including but not limited to patents, rights to inventions, copyright, moral rights, trade marks, business names, rights in designs and confidential information (including know how and trade secrets).
- 1.14 **Manufacturer** – the manufacturer or supplier of any Equipment.
- 1.15 **On Hire Date** – the on hire date set out in the Quotation.

- 1.16 **Order Confirmation** – Genair's written confirmation of the Customer's order.
- 1.17 **Quotation** – the quotation issued by Genair setting out the Equipment and / or Services to be supplied, the applicable Charges, the Delivery site and any other relevant commercial terms, which the Customer accepts.
- 1.18 **Services** – the services performed by Genair in conjunction with the hire of the Equipment including but not limited to any associated delivery, collection, servicing or maintenance, as set out in the Quotation.
- 1.19 **Services Charges** – the charges payable by the Customer for Services to be provided by Genair, as set out in the Quotation.
- 1.20 **Spare Parts** – parts or components for the Equipment which are suitable for and compatible with the Equipment and which are the same as or of a similar make or model, quality and value to or improved or advanced versions of any parts or components for the Equipment.
- 1.21 **Specification** - the specification of the Equipment to be hired and/or any Services to be provided (as applicable), as provided by Genair and also available from Genair on request.
- 1.22 **Transport Charges** – the charges payable by the Customer for delivery and / or collection of Equipment by Genair, as set out in the Quotation.
- 1.23 All references to including in these terms and conditions shall be read as 'including, without limitation'.

## **2. Basis of the Hire Agreement**

- 2.1 Subject to and in accordance with these terms and conditions, Genair agrees to hire the Equipment and provide the Services (if any) to the Customer, and the Customer agrees to pay the Charges.
- 2.2 A Quotation or tender provided by Genair shall not constitute a contractual offer, nor a guarantee of Equipment availability. A binding Hire Agreement shall only be formed on Genair's issue of an Order Confirmation.
- 2.3 These terms and conditions, the Quotation and the Order Confirmation shall together exclusively govern the hire of Equipment and the provision of Services by Genair to the Customer. All other terms and conditions, pre-contractual correspondence and representations, warranties and assurances (written or otherwise), along with any terms and conditions which the Customer may purport to apply under any order, other document or communication are all hereby expressly excluded.
- 2.4 No contract shall be concluded between Genair and the Customer on these terms or otherwise except by authority of a Director of Genair.
- 2.5 Any variation of these terms and conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless expressly set out in a Quotation with express reference to varying the terms and conditions, or otherwise so expressly agreed in writing by a Director of Genair.
- 2.6 Where the delivery of the Equipment is by instalments, each instalment may be deemed at Genair's discretion to be a separate and distinct Hire Agreement, and no default by Genair in respect of any one or more instalment shall entitle the Customer to reject or withhold payment in respect of any other instalments.

- 2.7 Unless expressly stated in the Quotation, all consumables (including fuel, oil, lubricants, coolant, refrigerants, chilled water treatment, chemicals and filters) shall be supplied by Genair and sold as-is as set out in a Quotation. Should Genair provide prior written consent to the Customer providing any of the same, the Customer will at all times use such consumables that are of a grade and specification selected by Genair. Unless otherwise specified in the Quotation, the party who has supplied the consumables shall be responsible for disposal of all related waste including used consumables, drums and hazardous waste, in accordance with applicable law.

### **3. Customer's Responsibilities**

#### 3.1 The Customer shall:

- 3.1.1 provide Genair (including its employees, personnel, sub-contractors and representatives) with: (a) access to the Delivery Site, the Equipment, the Customer's employees and personnel and representatives as required from time to time; and (ii) any information, facilities and assistance; in all cases as required to enable Genair to perform its obligations and exercise its rights under the Hire Agreement;
- 3.1.2 take all reasonable and proper care of the Equipment and keep and maintain it in good working order and condition (fair wear and tear only excepted);
- 3.1.3 inspect the Equipment (including all connection points) promptly on receipt, and unless written notification to the contrary is received by Genair within five (5) Business Days of completion of delivery (or installation, where applicable), Equipment shall be deemed to be accepted and compliant with the Hire Agreement, including the Warranties (as defined below) and as to Equipment condition (excluding latent defects) and time of delivery;
- 3.1.4 on a daily basis, in accordance with Genair's reasonable instructions: (a) visually inspect the Equipment, including all connection points; (b) carry out leak identification checks; and (c) check consumable levels in the Equipment (including fuel, oil and lubricant, coolant, refrigerant and chilled water treatment chemicals (as applicable)), and ensure that they remain at the level required for proper operation (as set out in the Specification, or as instructed by Genair);
- 3.1.5 ensure that the Equipment is used and operated: (a) only for the lawful purposes of the Customer's business and for the purpose for which the Equipment is designed or supplied; (b) by suitably trained and competent persons; (c) in a skilful and proper manner and with due care; (d) in accordance with applicable laws (including any permits, consents, health and safety requirements and any improvement or prohibition notice); (e) in accordance with the Specification and Genair and Equipment manufacturer instructions, manuals and recommendations; and (f) without exceeding the Equipment's rated capacity, or in any manner likely to cause deterioration beyond fair wear and tear;
- 3.1.6 obtain, effect and keep effective all permissions, licences and permits which may from time to time be required in connection with the business of the Customer and the use of the Equipment at the Delivery Site;
- 3.1.7 not make or cause or permit to be made any alteration, amendment, modification, removal or addition to the Equipment or any of its component parts, nor attempt any without Genair's prior written consent. Any such thing done contrary to the foregoing shall belong to and become the property of Genair with immediate effect;
- 3.1.8 not remove, deface or cover any marking on the Equipment indicating that Genair owns it, nor affix or cause to be affixed to the Equipment (or any part of it) any marking indicating that it is the property of Genair or any third party;

- 3.1.9 keep the Equipment free from distress, confiscation, seizure, execution or other legal process and not underlet, lend, sell, assign, transfer, charge, encumber, dispose of or otherwise deal with or part with the possession or control of the Equipment (including for repair or maintenance, without Genair's express prior written consent);
  - 3.1.10 ensure that insofar as the Equipment is affixed to any land or building it shall be capable of being removed without material injury to that land or building, take such steps as may be necessary to ensure that title to the Equipment shall not pass to the owner of any such land or building;
  - 3.1.11 permit Genair (or procure that Genair is permitted) to enter upon any land or buildings where the Equipment is located in order to sever the Equipment from land if affixed to it. If the Equipment becomes a fixture (as defined by Section 173 of the Capital Allowances Act 2001) then, on request and in such form as Genair or its inspector of taxes may prescribe, the Customer shall sign and deliver to Genair an election that Section 177 of the Capital Allowances Act 2001 shall apply or an election in any other form and under any other authority or provision (statutory or otherwise) in response to which Genair's inspector of taxes will treat the Equipment to like effect for all maintenance purposes as belonging to Genair;
  - 3.1.12 keep Genair fully informed of all material matters relating to the Equipment and, specifically, Customer shall notify Genair immediately if the Equipment is lost, stolen, destroyed or damaged or breaks down or does not operate immediately providing full particulars of the particular circumstances;
  - 3.1.13 not attempt to remedy any fault, damage or breakdown of the Equipment or carry out any repairs either itself or through a third party unless the Customer has obtained the prior written consent of Genair; and
  - 3.1.14 at expiry of the Hire Period, or otherwise on such date as Genair requires in accordance with these terms and conditions, either: (a) deliver the Equipment to an address nominated by Genair; or (b) permit Genair or its subcontractors, employees and representatives to access any premises where the Equipment is located for the purposes of collecting and removing the Equipment. If the Customer fails to deliver or make available the Equipment in accordance with this clause for any reason, then the full cost of new replacement equivalent Equipment at the manufacturer's list price shall become immediately due and payable by the Customer to Genair.
- 3.2 The Customer acknowledges that Genair shall not be responsible for any loss or damage to the Equipment during the Hire Period arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer, its officers, employees, agents and contractors or other third parties.
- 3.3 The Customer shall indemnify Genair in full against all liabilities, costs, expenses, damages and losses (including any direct or consequential loss, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Genair arising out of or in connection with any: (a) failure by the Customer to comply with the obligations in this clause 3; and (b) loss, injury or damage suffered by a third party due to any act or omission of the Customer (including in its use or possession of the Equipment) save where such loss, injury or damage was directly caused by Genair's negligence.

#### **4. Payment Provisions**

- 4.1 The amount of any Charges (and Deposit, if any) is set out in the Quotation. Unless expressly stated otherwise in a Quotation: (a) Hire Charges are calculated on the basis of a minimum one week hire with daily charges applied pro rata thereafter; and (b) 0-50 hour weekly hires will be charged on a five day week basis, and unlimited operation contracts will be charged on a seven day week basis.
- 4.2 Any Deposit shall be paid by the Customer in advance of the commencement of the Hire Period and in cleared funds to a bank account nominated in writing by Genair. The Deposit is a deposit against default by the Customer of payment of any Charges and/or any loss or damage caused to the Equipment. If the Customer fails to make any payment of the Charges or other sums payable under this Hire Agreement (including clause 11.5), or causes any loss or damage to the Equipment (in whole or in part), Genair shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to Genair any sums that Genair has had to deduct from the Deposit in accordance with this clause within ten (10) Business Days of a demand for the same. The Deposit (or balance of the Deposit) shall be refunded by Genair as soon as reasonably practicable after the Customer has paid all sums due to Genair in connection with the Hire Agreement and any other Hire Agreements between the parties in force at the relevant time.
- 4.3 For the purposes of calculating the Hire Charges, the Hire Period shall be deemed to end at such time that Genair has possession of the Equipment and has provided the Customer with a receipt confirming that the Equipment is in a good and serviceable condition.
- 4.4 If Genair is unable to deliver or collect the Equipment, or the Customer has failed to deliver the Equipment on the date agreed, in each case due to an act or omission of the Customer, then the Customer shall continue to pay the Charges in accordance with the Hire Agreement until such time as Genair is able to collect the Equipment or the Customer is able to return it and Genair may recover from the Customer its costs and expenses associated with the delay.
- 4.5 Where Genair, acting in its sole discretion, determines that the Equipment is not in a good and serviceable condition upon Genair's receipt of the Equipment at the end of the Hire Period and either no Deposit has been paid or the value of the loss or damage exceeds any Deposit paid and retained by Genair in accordance with clause 4.2, Genair shall invoice, and the Customer shall pay, all costs incurred by Genair including: (a) the cost of any repairs that Genair considers necessary (acting in its sole discretion), or where Genair, acting in its sole discretion, considers repairs to be impracticable or not cost efficient, the full cost of new replacement equivalent Equipment at the manufacturer's list price; and (b) refuelling the Equipment or replacing consumables where Genair provided the Customer with instructions regarding refuelling and / or replacing consumables prior to end of the Hire Period and the Customer failed to comply with these.
- 4.6 Unless specified otherwise in a Quotation, Genair shall invoice the Customer for the Charges monthly in arrears.
- 4.7 All sums due in respect of any invoice will be paid by the Customer within 30 days of the date of receipt of an invoice without any deduction, set-off, counterclaim or abatement by the Customer and time for payment shall be of the essence. Genair may specify which currency and method of payment it requires the Customer to use. The Charges do not include VAT or any similar sales tax, impost or custom duties which will be paid additionally by the Customer at the then prevailing rate.
- 4.8 The Charges do not include carriage, packing or insurance unless expressly stated in a Quotation and such sums may be added by Genair to the Charges.
- 4.9 No act or omission of the Customer which prevents Genair from delivering the Equipment and/or providing the Services or continuing to perform the Hire Agreement or to perform it according to

any agreed time-scale shall prevent Genair from requiring payment of any sum which would otherwise have been payable by the Customer in accordance with this clause 4.

- 4.10 If the Customer fails to make any payment within the time specified in this Hire Agreement, Genair may take any, some or all of the following steps: (a) immediately invoice the balance of the Charges that have accrued in respect of the Hire Agreement; (b) by notice, terminate the Hire Agreement in accordance with clause 11.1.6 and terminate any other contracts between Genair and the Customer; (c) charge the Customer interest (both before and after any judgment) on the amount unpaid at the compound rate of 5% per annum above the Barclays Bank Plc base lending rate from time to time (but at 5% per annum for any period when that base rate is below 0%) until payment in full is made, accruing each day and also charge the Customer for all costs and expenses (including legal costs) incurred by Genair in the collection of any overdue amount; (d) appropriate any payment made by the Customer and set-off any monies due by Genair to the Customer, whether under this Hire Agreement, any other hire agreement or otherwise (including any VAT applicable), to or against the unpaid invoice or invoices; and (e) refuse to deliver any further equipment and/or to provide any further services, whether under this Hire Agreement, any other hire agreement or otherwise.
- 4.11 In the event that Genair provides to the Customer fuel or fuel management Services, Genair may, acting in its sole discretion, vary the Fuel Charges specified in the Quotation upon written notice to the Customer with reference to movements in a relevant fuel index or similar measure of market functions. For the avoidance of doubt, any variation shall have immediate effect from the date on which the Customer is notified of such variation.
- 4.12 Genair may adjust the Hire Charges, Transport Charges and/or Service Charges once every twelve (12) months, at its discretion. The first adjustment may occur on the first anniversary of the date of the Quotation and then on each subsequent anniversary of that date. At those dates, the Hire Charges, Transport Charges and Service Charges will be adjusted upwards by a percentage equal to the percentage increase over that same twelve (12) month period in the UK Consumer Prices Index. Should that index decrease, the Charges shall not be changed.

## **5. Equipment**

- 5.1 The Equipment shall be at the Customer's risk, and the Customer will be responsible for insuring the Equipment, at all times during the Hire Period. The Equipment shall remain the property of Genair and the Customer shall have no right, title or interest in it other than the rights of use set out in these terms and conditions.
- 5.2 In the event that: (a) the Customer fails to pay any sums due to Genair at the time required by the Hire Agreement; or (b) acting in good faith, Genair has doubts about the solvency of the Customer or its ability or likeliness to pay such sums; the Customer shall on request deliver up the Equipment to Genair (or at Genair's option, make it available for collection). If the Customer fails to do so, Genair may without prior notice enter upon any premises owned, occupied or controlled by the Customer (or the premises of a third party) where the Equipment is situated and repossess the Equipment.
- 5.3 The Customer's obligation to insure the Equipment referred to in clause 5.1 shall require the Customer to at its own expense insure and keep insured the Equipment under the following policies:
- 5.3.1** a comprehensive hired in plant insurance policy against all usual risks of loss, damage or destruction by fire, theft or accident and other such risks as Genair may nominate in writing, such policy to have a value of not less than the full new replacement value of the Equipment at the manufacturer's list price;

- 5.3.2** a policy to cover any third party or public liability risk of whatever nature and howsoever arising out of ownership, use, possession or presence of the Equipment, such policy to have a value of not less than an amount that a prudent owner or operator of the Equipment would insure for; and
- 5.3.3** a policy against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Genair may from time to time consider reasonably necessary and advise to the Customer in writing.
- 5.4 The Customer shall: (a) on request produce a copy of the insurance policy certificates for the policies at clause 5.3 above; (b) ensure that such policies name Genair as a loss payee in relation to any claim relating to the Equipment insured; (c) punctually pay all deductibles and premiums payable under the said policies; and (d) do everything necessary to maintain the policies in full force and effect and not do or omit to do anything whereby any policy could be vitiated.
- 5.5 Without prejudice to the other rights of Genair, if the Customer fails to effect or maintain insurance in accordance with clause 5.3, Genair may, but shall not be obliged to effect and maintain insurance in accordance with this clause at the Customer's expense and the Customer will pay any sums so expended to Genair as a debt upon demand.
- 6 Delivery, collection and installation / commissioning services**
- 6.1 Genair will be responsible at the Customer's cost for the delivery of the Equipment to the Delivery Site and for collecting the Equipment from the Delivery Site at the end of the Hire Period (as applicable).
- 6.2 If Genair agrees that the Customer can collect the Equipment from its premises and/or deliver the Equipment to Genair at the end of the Hire Period any delivery charge will be waived and the Customer shall be responsible for the costs of transporting the Equipment, transport periods shall form part of the Hire Period and accordingly the Customer shall be obliged to insure the Equipment in transit, including in accordance with clause 5.3.
- 6.3 Save where the Quotation specifies that installation, commissioning, de-commissioning and / or de-installation (as applicable) of the Equipment is to be carried out by Genair as part of the Services (in which case clause 6.4 shall apply), the Customer shall ensure that the installation, commissioning, de-installation and / or de-installation is carried out in in compliance with clause 3, and shall carry out the termination at any connection point between the Equipment and Genair's network / systems in accordance with all applicable laws, regulations and health and safety standards.
- 6.4 Where the Quotation provides that Genair will carry out installation, commissioning, de-commissioning and / or de-installation (as applicable) of the Equipment as part of the Services, the Customer shall procure that a duly authorised representative of the Customer is present at installation and at its sole expense, ensure that Genair has access to all the requisite materials, facilities, access points and suitable working conditions to enable the relevant Services to be performed safely and expeditiously.
- 6.5 Genair may recall any or all Equipment at any time, and substitute it for at least equivalent Equipment on giving two (2) Business Days notice to the Customer, provided there is no material detriment to the service.
- 7 Timescales**
- 7.1 Genair will use all reasonable endeavours to deliver the Equipment at the Delivery Site and to perform any Services on the dates set out in the Quotation (or otherwise as agreed between the

parties in writing), but these dates will be target dates only and time will not be of the essence. At the conclusion of Equipment hire, Genair shall use reasonable endeavours to collect Equipment within three (3) to five (5) Business Days, provided that time shall not be of the essence and the Hire Period (and Customer's insurance obligations) shall not cease until the actual time of collection by or re-delivery to Genair.

- 7.2 Genair reserves the right by giving notice to the Customer at any time before delivery of the Equipment or performance of any Services to change the dates specified in the Hire Agreement if the Customer causes any delay or fails to give Genair adequate or accurate information, instructions or facilities.
- 7.3 The Customer shall make such arrangements as are necessary to take delivery of the Equipment at the Delivery Site on any agreed date or on such other date as Genair notifies the Customer that delivery will be made, including providing all requisite materials, facilities, access and suitable working conditions to enable delivery to be carried out safely and expeditiously.
- 7.4 If the Customer changes any agreed date for delivery of the Equipment or fails to take delivery on the date the Equipment is ready for delivery or indicates to Genair that it will not accept delivery on any date agreed or notified under clause 7.2, Genair shall be entitled:
- 7.4.1** at the Customer's risk and expense to store the Equipment at Genair's premises and to demand payment as if they had been delivered; and
- 7.4.2** to add a financing and stocking charge to the Charges in respect of the period from that date to the actual date of delivery at the rate of 5% per annum above the Barclays Bank Plc base rate from time to time.

## **8 Acceptance and Defects**

- 8.1 After Equipment acceptance as described in clause 3.1.3, whether deemed or otherwise, the Customer shall not be entitled to reject the Equipment nor to have any defects in the Equipment or Services remedied by Genair, whether or not they comply with any of Specifications as may be provided from time to time.
- 8.2 Genair shall use reasonable endeavours to correct any defect arising under normal use and due solely to faulty design, materials or workmanship (except where supplied by or on behalf of the Customer or any third party acting on the Customer's behalf), which is notified to it within a reasonable time of receiving such notification, and may at its discretion:
- 8.2.1** carry out such work as is necessary to remedy the defect;
- 8.2.2** take such part of the Equipment as is necessary away from the Delivery Site at the Customer's risk and expense to examine the Equipment or carry out repair work;
- 8.2.3** replace all or any part of the Equipment; or
- 8.2.4** refund the Hire Charges or Service Charges (as applicable) or such part of them as relate to the defective Equipment or Services.
- 8.3 The Customer's obligations at Clause 3 shall apply in relation to the provision of maintenance and/or replacement parts under this clause 8.
- 8.4 Genair may invoice the Customer for the cost of any work, equipment, supplies or materials brought about by the Customer's notification of any non-conformity with the Warranties where

such non-conformity is not attributable to any act or omission of Genair or fair wear and tear, or otherwise is attributable to:

**8.4.1** misuse of the Equipment by the Customer;

**8.4.2** failure to comply with the applicable Specifications and/or follow Genair's instructions as to the use and maintenance of the Equipment; and/or

**8.4.3** any modification made to the Equipment by the Customer or by third parties without the prior written consent of Genair.

8.5 For the avoidance of doubt, where Genair is notified of a non-conformity with the Warranties caused by any of the circumstances set out at clause 8.4, any remedial work or materials provided by Genair shall be at Genair's sole discretion.

8.6 If any unauthorised modification is made to the Equipment Genair shall not be obliged to correct any defects or provide any replacement services under this Hire Agreement.

## **9 Warranties**

9.1 Genair warrants that:

**9.1.1** the Equipment and/or Services will comply in all material respects with Genair Specifications for the relevant Equipment as may be provided by Genair from time to time; and

**9.1.2** the Equipment and Services will comply with all applicable legislation from time to time in force.

9.2 The Customer shall be responsible for ensuring that the Equipment is fit for its own purposes. The Customer covenants that the Equipment will only be used for purposes for which they are sufficient and suitable and in accordance with Specifications and any Genair instructions.

9.3 Other than as expressly set out herein, the Customer warrants that it has not relied on any representations, conditions, warranties, undertakings or stipulations of any kind made by or on behalf of Genair in respect of the Equipment and/or Services.

## **10 Limitation of Liability**

10.1 Genair shall not be responsible for any defects in the Equipment and/or Services which are not notified in writing to it within the time limits set out at clause 3.1.3 above (excluding fair wear and tear and latent defects), nor for any defects which are the fault of the Customer or any third party.

10.2 Save as provided within this Hire Agreement, all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any goods or services under or in connection with the Hire Agreement including (without limitation) as to the condition, quality, performance or fitness for purpose of any Equipment or Services or the standard of care used in the provision of the Services are hereby expressly excluded from the Hire Agreement (to the fullest extent permitted by law).

10.3 Subject to clause 10.4, Genair shall not be liable (whether in contract, tort (including negligence) breach of statutory duty, misrepresentation or otherwise) for any:

**10.3.1** direct or indirect:

- i. loss of production,;
- ii. loss of business;
- iii. loss or corruption of data, software or information;
- iv. loss of profits (including loss of anticipated savings);
- v. loss of contracts;
- vi. loss of opportunity;
- vii. loss of revenue;
- viii. loss of operation time;
- ix. loss of goodwill or damage to reputation;
- x. wasted expenditure or similar; or

**10.3.2** any indirect or consequential loss;

in all cases whether or not foreseeable.

10.4 Nothing in these terms shall limit or exclude:

**10.4.1** liability for death or personal injury caused by negligence;

**10.4.2** liability for fraud or fraudulent misrepresentation; or

**10.4.3** any other liability that cannot legally be limited.

10.5 Subject to clauses 10.3 and 10.4, Genair's aggregate liability to the Customer (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise arising from or in connection with this Hire Agreement shall not exceed the total Hire Charges and Service Charges paid and payable by the Customer under this Hire Agreement.

10.6 Genair shall not be liable for any change to Genair's specifications for the Equipment if the variation does not materially affect the characteristics of the Equipment and the substituted materials (if any) are of comparable quality to the originals.

10.7 The Customer acknowledges and agrees that the allocation of risk contained in this clause 10 is reflected in the Charges and is a recognition of the fact that the Equipment cannot be tested in every possible combination and therefore Genair does not warrant that the operation of the Equipment will be uninterrupted or error free.

## **11 Termination**

11.1 Without affecting any other right or remedy available to it, Genair may terminate this Hire Agreement and / or suspend its performance hereunder with immediate effect on written notice if:

**11.1.1** the Customer commits a material breach of this Hire Agreement which is irremediable or, in the case of a breach capable of remedy, the Customer fails to remedy it within 5 Business Days of receipt of written notice from Genair;

- 11.1.2** the Customer repeatedly breaches any of the terms of this Hire Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to its obligations under this Hire Agreement;
  - 11.1.3** the Customer (a) ceases or threatens to cease to carry on its business or becomes insolvent, (b) a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the Customer, (c) the Customer makes any arrangement for the benefit of its creditors or (d) the Customer goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
  - 11.1.4** there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010);
  - 11.1.5** the Customer refuses to take delivery of the Equipment or any part of it, or collect it on the delivery date(s) specified in the Hire Agreement or on such later date as they are ready for delivery; or
  - 11.1.6** the Customer defaults in paying the Charges or any part of them in accordance with the timescales set out in this Hire Agreement.
- 11.2 In the event of a suspension or termination by Genair in accordance with clause 11.1, Genair shall be entitled to demand pre-payment of any part of the Charges not yet due for payment as a condition of re-commencing its performance (if applicable and in addition to the sums set out at 11.5).
  - 11.3 Genair may terminate this Hire Agreement at its discretion at any time by giving fourteen (14) days' notice in writing to the Customer.
  - 11.4 On the termination of this Hire Agreement for any reason or upon its expiry, the Customer shall no longer be entitled to be in possession of the Equipment with the consent of Genair, and the Customer shall at its own expense be solely responsible for ensuring the insurance, safe-keeping, supervision and custody of the Equipment until it is returned to or repossessed by Genair.
  - 11.5 Upon the expiry or termination of this Hire Agreement for whatever cause the Customer shall pay to Genair: (a) all monies due to Genair at that date, including all arrears of the Charges which shall then become payable; (b) any sums invoiced by Genair in accordance with clause 4.5; and (c) any costs and expenses incurred by Genair in recovering (or attempting to recover) the Equipment.
  - 11.6 Upon termination or expiry of this Hire Agreement for any reason the parties shall return or destroy the other parties' confidential information promptly.
  - 11.7 Termination of this Hire Agreement shall not affect any rights, remedies, obligations or liabilities of the parties accrued to them up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
  - 11.8 Any provision of this Hire Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Hire Agreement shall remain in full force and effect.

## **12 Confidential Information**

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, provided that either party may disclose the other party's confidential information:

**12.1.1** to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Hire Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.1.1; and

**12.1.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2 Neither party may use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Hire Agreement.

### **13 Intellectual Property**

The parties agree that Genair owns all Intellectual Property Rights in the Equipment and Services, and none of Genair's Intellectual Property Rights in the Equipment and Services shall be transferred to the Customer.

### **14 Force Majeure**

14.1 Subject to clause 14.2, neither party shall be liable for any delay in performing or failing to perform any of its obligations under this Hire Agreement due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party ("**Force Majeure Event**").

14.2 The party claiming the force majeure event will promptly notify the other of it and will take all reasonable steps to minimise its effect. Any costs associated with such event shall be borne by the party incurring those costs. Notwithstanding the foregoing, where a Force Majeure Event prevents or limits the Customer's ability to use the Equipment, unless the Equipment is returned into the possession of Genair, the Customer must continue to pay the Charges for the duration of the Force Majeure Event.

### **15 General**

15.1 Genair may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any of its rights under the Hire Agreement and / or in respect of the Equipment itself. Genair may sub-contract its obligations under this Hire Agreement at its sole discretion.

15.2 The Customer may not assign, mortgage, charge, declare a trust over or deal in any other manner with any of its rights under the Hire Agreement, nor sub-contract any of its obligations thereunder, without the prior written consent of Genair.

15.3 Any notice given to a party under or in connection with this Hire Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

15.4 Any notice submitted in accordance with clause 15.3 shall be deemed to have been received:

**15.4.1** if delivered by hand, at the time the notice is left at the proper address; or

**15.4.2** if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable or other method of dispute resolution.

- 15.5 No delay or failure by Genair to exercise any of its powers, rights or remedies under this Hire Agreement will operate as a waiver of them and any waiver, to be effective, must be in writing.
- 15.6 If any provision or part-provision of this Hire Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Hire Agreement.
- 15.7 Nothing in this Hire Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15.8 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 15.9 This Hire Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Hire Agreement.
- 15.10 This Hire Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Hire Agreement and supersedes all previous communications, representations and other arrangements, written or oral.
- 15.11 This Hire Agreement will be construed in accordance with and governed by the laws of England and each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with this Hire Agreement or its subject matter or formation (including non-contractual disputes or claims).

## USE OF YOUR INFORMATION

In considering whether to enter into this agreement we will search your record at credit reference agencies. They will add, to their record about you, details of our search and your application and this will be seen by other organisations that make searches. This and other information about you and those with whom you are linked financially may be used to make credit decisions about you and those with whom you are financially linked. We may use a credit scoring or other automated decision making system.

We will also add to your record with the credit reference agencies details of your agreement with us, any payments you make under it and any default or failure to keep to its terms. These records will be shared with other organisations and may be used and searched by us and them to:

- consider applications for credit and credit related services, such as insurance, for you and any associated person;
- trace debtors, recover debts, prevent or detect money laundering and fraud, and to manage your account(s). It is important that you provide us with accurate information. We may check your details with fraud prevention agencies and if you provide false or inaccurate information or we suspect fraud, this information may be recorded. Fraud prevention agency records will be shared with other organisations to help make decisions on credit, motor, household, life and other insurance proposals or claims for you and members of your household.

We will use personal information about you which we acquire in connection with any application you make to us, or any agreement you enter into with us, to manage your agreement and for statistical or market research purposes. Any personal data that we process will be processed in accordance with the Genair Privacy Policy [<https://compressor-rental.co.uk/privacy-statement-uk/>].

Please call or write to us at the telephone number/address stated overleaf if you want to have details of the credit reference agencies or any other agencies from whom we obtain, and to whom we pass, information about you. You have a legal right to these details. You have a right to receive a copy of the information we hold about you. A fee may be payable.

## USE OF ASSOCIATED RECORDS

Before entering into this agreement we may search records at credit reference agencies, which may be linked to your spouse/partner, or other persons with whom you are linked financially. For the purposes of any application or this agreement you may be treated as financially linked and you will be assessed with reference to "associated records".

Where any search or application is completed or agreement entered into involving joint parties, you both consent to us recording details at credit reference agencies. As a result an 'association' will be created which will link your financial records and your associate's information may be taken into account when a future search is made by us or another lender unless you file a "disassociation" at the credit reference agency.