

**AGGREKO IRELAND LIMITED**  
**GENERAL CONDITIONS OF HIRE 2010**

**1. DEFINITIONS**

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

"**Aggreko**" means Aggreko Ireland Limited having its place of business at Clonminam Industrial Estate, Portlaoise, Ireland.

"**Aggreko's Proposal**" means the proposal set out in Aggreko's proposal form, including the notes thereto.

"**Conditions**" means these General Conditions of Hire.

"**Consumer**" shall have the meaning ascribed to it in the Sale of Goods Acts 1893 and 1980. "**Contract**" shall have the meaning ascribed to it in Clause 2.

"**Hire Period**" means the time from when the Plant leaves Aggreko's depot or place where otherwise despatched until received back at Aggreko's depot or delivered to another place named by Aggreko (acting reasonably). The minimum Hire Period shall in any event be one Week (unless specified otherwise).

"**Hirer**" means the party taking Aggreko's Plant on hire and named as such in the completed Aggreko's Proposal and shall include its successors, assignees or personal representatives.

"**IEE Regulations**" means the regulations published by the Institute of Engineering and Technology in force from time to time.

"**Invoice**" means the invoice or invoices sent by Aggreko to the Hirer on a monthly basis in respect of charges incurred by the Hirer.

"**Force Majeure Event**" means any event of force majeure listed in Clause 31;

"**Normal Working Hours**" means 8 am to 5 pm on each Working Day.

"**Plant**" means all plant and equipment of whatever nature hired by the Hirer from Aggreko, including any replacement thereof supplied pursuant to Clause 17 of these Conditions.

"**Service Guarantee**" means Aggreko's 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.

"**Terrorist Activity**" shall have the meaning given to that term in the Criminal Justice (Terrorist Offences) Act 2005, as amended.

"**Week**" means a period of seven consecutive days.

"**Working Day**" means each of Monday (which is not a public holiday in Ireland), Tuesday, Wednesday, Thursday or Friday.

- 1.2. For the purposes of interpretation the paragraph headings contained herein shall be ignored.
- 1.3. All instructions, notifications, authorisations, and acknowledgements under the Contract shall be in writing and in English.
- 1.4. References to Clauses are to clauses of these Conditions.
- 1.5. Where Aggreko and the Hirer have expressly agreed that the Service Guarantee is not to form part of the Contract, any references in these Conditions to the Service Guarantee shall be deemed not to form part of these Conditions.

## **2. EXTENT OF CONTRACT**

- 2.1. Aggreko's Proposal (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 Aggreko and the Hirer ("the Contract") and no other terms and conditions, or pre-contractual statements or representations, 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 signatory of Aggreko and of the Hirer.
- 2.2. Nothing in this Clause 2 shall, however, operate to limit or exclude any liability for fraud.
- 2.3. In the event of any inconsistency between any of the documents forming part of the Contract, Aggreko's 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 AND UNLOADING**

The Hirer shall be responsible for loading and unloading the Plant at the Site and personnel supplied or contracted by Aggreko 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.

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

- 4.1. The Hirer shall carry out a reasonable visual inspection of the Plant on, or as soon as practicable after, delivery to the Site and shall promptly (and in any

event within 3 Working Days) notify any apparent damage or defects to Aggreko.

- 4.2. Unless notification to the contrary in writing is received by Aggreko within 3 Working Days of the date of delivery of any Plant on Site or (where applicable and if later) completion of installation on Site of any Plant, all Plant will be deemed to have been timeously delivered and (where applicable) installed in good working condition, free from apparent damage or defects, 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 Plant during the Hire Period, 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).
- 5.2. 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 therefrom and (ii) shall (without prejudice to Clause 35 of these Conditions) indemnify, and hereby indemnifies, Aggreko in respect of any loss or damage suffered by Aggreko and against any claims made against Aggreko resulting therefrom.
- 5.3. Should breakdown or damage occur to any of the Plant owing 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 Aggreko for:-
- (i) the full cost of any repairs which Aggreko shall deem necessary or desirable; or
  - (ii) if Aggreko considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Plant; and
  - (iii) Aggreko's hire charges for the Plant (i) while the Plant is idle owing to any such breakdown or damage and (ii) while repairs are being carried out (but without prejudice to Aggreko's right to receive hire charges in respect of the Contract),

and the Service Guarantee shall be amended as follows:-

- (a) Aggreko 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 Aggreko; and

- (b) Aggreko 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), Aggreko shall not be obliged to offer at the end of such period replacement Plant if any Plant is not so operational and Aggreko shall be entitled at its sole discretion either to delay offering replacement Plant or not to offer replacement Plant to the Hirer.

## 6. RECALL NOTICE

Subject always to Clauses 29 and 33, Aggreko may, without incurring any liability to the Hirer in respect of or in connection with such recall so long as there is no material interruption in the service provided to the Hirer (other than a reasonable period to allow for disconnection of the recalled Plant and connection of the substitute Plant), recall any or all Plant and substitute equivalent Plant for such recalled Plant, 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 Plant to Aggreko (to Aggreko's depot or to another place specified by Aggreko (acting reasonably)) on completion of the agreed period of hire. Such Plant shall be returned to Aggreko 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.
- 7.2. 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 Aggreko for:-
  - (i) the full cost of any repairs which Aggreko shall deem necessary or desirable; or
  - (ii) if Aggreko considers that such repairs would not be practicable or cost effective, the whole cost of replacement of such Plant; and
  - (iii) Aggreko's hire charges for the Plant (i) while the Plant is idle owing to any such repairs or, where relevant, until the payment of the costs referred to in Clause 7.2(ii) above (but without prejudice to Aggreko's right to receive hire charges in respect of the Contract).
- 7.3. 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 Aggreko for:-
  - (i) the whole cost of replacement of such Plant; and

- (ii) Aggreko's hire charges in respect of such Plant until payment of the costs referred to in Clause 7.3(i) above.

## **8. OWNERSHIP OF PLANT**

The Plant is and shall at all times remain in the property of Aggreko 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 Aggreko 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 Aggreko 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 Aggreko upon Aggreko's written demand 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 properly incurred legal fees and costs incurred by Aggreko (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 Aggreko under the Contract or (iii) in the defence of any action brought against Aggreko 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.

## **10. ACCESS**

The Hirer shall allow Aggreko's employees, servants, agents and insurers access (including vehicle 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 Aggreko or by Aggreko's 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 Aggreko 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 Aggreko considers is reasonably necessary to take account of such denial of or delay in access.

## **11. ROUTINE MAINTENANCE/SERVICE**

- 11.1. Subject to Clauses 11.2 and 11.3, Aggreko shall, either itself or via a contractor, provide regular maintenance and servicing during the Contract in accordance with Aggreko's standard practice. The Hirer shall make the Plant available to Aggreko for the purpose of carrying out maintenance or service (whether routine or otherwise) within one week of Aggreko advising the Hirer of such maintenance or service being due. During Normal Working

Hours Aggreko 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 Aggreko reserves the right to charge the Hirer for overtime costs.

- 11.2. If Aggreko and the Hirer have agreed in writing that the Hirer will be responsible for routine maintenance and servicing, then Clause 11.1 shall not apply and the Hirer shall at its own cost maintain and service the Plant in accordance with Aggreko's service schedule. Aggreko will in such circumstances provide the Hirer with a copy of such service schedule and any relevant consumables specifications at the same time as the Plant is delivered to the Hirer.
- 11.3. The Hirer shall at its own cost check lubricating oil and coolant levels in the Plant daily and ensure that these are kept at the level required for the proper operation of the Plant in accordance with Aggreko's specification.

## **12. SERVICING**

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

## **13. TIMBER MATS OR EQUIVALENTS**

The Hirer is solely responsible for ground conditions at the Site. 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.

## **14. FUEL, OIL AND LUBRICANTS**

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

## **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 and type specified by Aggreko.

## **16. TRANSPORT**

The Hirer shall bear the cost of (and, if required by Aggreko, arrange) (i) transport of the Plant from the collection place specified by Aggreko 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 is required to be transported for the purpose of repair owing to damage or breakdown, the cost of which is to be met by Aggreko in terms of the Contract, then the cost of such transport shall be met by Aggreko. 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.

## **17. BREAKDOWN**

- 17.1. Subject to Clause 5, 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 by the Hirer in accordance with Clause 4 may, at Aggreko's option, either (i) be repaired at Aggreko's 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 Aggreko until repair is completed (and without prejudice to any other compensation provisions stated in the Service Guarantee) or alternatively (ii) Aggreko may replace the relevant Plant (and without prejudice to any such obligation of Aggreko in the Service Guarantee (where applicable)).
- 17.2. Any other breakdown or defect may, at Aggreko's 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 Aggreko under the Contract until repair is completed) or (ii) alternatively, Aggreko may replace the relevant Plant at the Hirer's cost and expense.
- 17.3. 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 Aggreko 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 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:-

- (i) Aggreko will still meet any stated response time for providing a service engineer on site but, without prejudice to the foregoing provisions of this paragraph (i), 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 Aggreko; and
- (ii) Aggreko 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 (ii), Aggreko shall not be obliged to offer replacement Plant at the end of such period if any Plant is not so operational and Aggreko shall be entitled at its sole discretion either to delay offering replacement Plant or not to offer replacement Plant to the Hirer.

17.5. Any breakdown or the unsatisfactory working of any part of the Plant must be notified immediately to Aggreko and for this purpose no notification shall be effective unless and until it is actually received by Aggreko. 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 Aggreko. If there are stoppages outside Aggreko's control, Aggreko will not accept any relief from hire charges (except to the extent that such stoppages arise as a direct result of a Force Majeure Event) nor any other claims however they arise, provided that notwithstanding the foregoing provisions of this paragraph, 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 Aggreko, make arrangements for such recovery.

## **18. INSPECTION REPORTS**

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

## **19. CONSEQUENTIAL LOSS**

Subject to Clause 21.2, Aggreko shall not in any event be liable to the Hirer for any indirect or consequential loss (including, but not limited to, loss of business and/or profits) suffered by the Hirer whether arising from breach of contract, negligence, tort, delict or otherwise, or any other fault on the part of Aggreko or its employees, servants or agents and whether or not in the contemplation of Aggreko and/or the Hirer at or prior to the commencement of the Contract.

## **20. INFORMATION, ADVICE, ETC.**

The Hirer recognises and accepts that in entering into the Contract Aggreko will rely on any advice, statement, representation or warranty given by the Hirer to Aggreko or its employees, servants or agents, including in relation to

the Plant, its use (whether regarding specification, performance capability or suitability for any purpose) and location. Aggreko shall not be liable to the Hirer to the extent that any breach of contract, negligence, tort, delict or other ground for liability is due to any such advice, statement, representation or warranty being incorrect, incomplete or misleading.

## **21. LIABILITY OF AGGREKO**

21.1. Notwithstanding and without prejudice to any other terms of the Contract Aggreko 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 Aggreko;
- (ii) during erection of the Plant on Site provided such erection is entirely within Aggreko's control;
- (iii) during dismantling of the Plant on Site provided such dismantling is entirely within Aggreko's control;
- (iv) after removal of the Plant from the Site where the Plant is in transit by transport arranged or owned by Aggreko.

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

## **22. SCOPE OF DAMAGES**

Subject to Clause 21.2, Aggreko's liability for damages in respect of the Contract (whether arising from breach of contract, negligence, tort, delict or otherwise) shall in no event exceed the total hire charges, if any, received from the Hirer by Aggreko under the Contract. For the avoidance of doubt, any credit which is due by Aggreko to the Hirer under the Service Guarantee may, at the Hirer's option, either (i) be refunded by Aggreko 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 Aggreko 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 Aggreko under the Contract.

## **23. 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 Aggreko's prior consent in writing.

**24. PRICE**

- 24.1. The initial hire rates for Plant and services are the rates in force at the time of delivery of the Plant. Aggreko reserves the right, upon giving the Hirer at least 4 weeks' notice, to vary the time rates so as to reflect variations in Aggreko's own cost of goods, materials and labour. Aggreko also reserves the right to vary the prices charged for fuel without notice (with reference to Platts Price Index or any similar measure of market fluctuations).
- 24.2. 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.

**25. CHARGING**

The Hirer shall render to Aggreko for each Week an accurate statement of the number of hours the Plant has worked each day. Where the Plant is accompanied by an Aggreko 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.

**26. INSURANCE AND ACCIDENTS**

- 26.1. Unless otherwise agreed in writing with Aggreko, 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, malicious and accidental damage, 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 and shall additionally cover transport where this is the responsibility of the Hirer. Any insurance monies recovered by the Hirer in respect of such risks shall, to the extent deemed necessary by Aggreko, be applied as directed by Aggreko.
- 26.2. Evidence of the Hirer's insurance shall be supplied by the Hirer to Aggreko forthwith on request by Aggreko.
- 26.3. If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to Aggreko by telephone and confirmed in writing and no admission, offer, promise of payment or indemnity shall be made by the Hirer without Aggreko's consent in writing.
- 26.4. The Hirer's attention is specifically drawn to its obligations pursuant to Clauses 5, 7 and 35, which shall apply notwithstanding the provision of insurance by the Hirer or the purchase of Aggreko's insurance obligation waiver, provided that if the Hirer has purchased Aggreko's insurance obligation waiver then (subject to any exceptions applicable to such insurance obligation waiver) the Hirer's liability for loss of or damage to any Plant

under Clauses 5, 7 and 35 shall be limited to €1,150 per incident in respect of each equipment package.

**27. REHIRING, ETC**

Neither the Plant nor any part thereof shall be rehired, sublet, lent or otherwise made available to any third party without the written consent of Aggreko and the Hirer shall indemnify Aggreko against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this clause.

**28. CHANGE OF SITE**

The Plant shall not be moved from the Site without the prior written consent of Aggreko.

**29. INDEFINITE HIRING**

Subject to Clause 33, 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 Aggreko on giving not less than one Working Day's written notice to the other (provided that the same shall not expire prior to the end of any agreed minimum hire period) and in the event of termination of the Contract by either party all Aggreko's 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**

Aggreko 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, Terrorist Activities or suspected Terrorist Activities, threat of Terrorist Activities, 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 Aggreko. For the avoidance of doubt, this Clause 31 shall operate to exclude the liability of Aggreko 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. Aggreko shall have the right to charge interest (both before as well as after judgement) at the rate per annum which is 4% above the base rate of Bank of Ireland from time to time on all overdue sums and late payment shall disentitle the Hirer from any discount to which the Hirer might otherwise be entitled.

**33. DEFAULT**

## 33.1. If:-

- (i) the Hirer fails to make punctual payment of any sums due to Aggreko, whether for hire of Plant under the Contract or otherwise; or
- (ii) shall fail to observe and perform any of the terms and conditions of the Contract; or
- (iii) 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 it or make or propose to make any arrangement (including but not limited to an individual voluntary arrangement or company voluntary arrangement) with its creditors or, being a Company shall go into liquidation (other than for the purposes of reconstruction or amalgamation) or have a receiver or examiner 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
- (iv) the Hirer shall do or cause to be done or permit or suffer any act or thing whereby Aggreko's rights in the Plant may be prejudiced or put into jeopardy; or
- (v) a Force Majeure Event shall have affected the Plant and/or the performance of all or any part of Aggreko's services under the Contract for a continuous period of 14 days,

then Aggreko may terminate the Contract with immediate effect by serving written notice of termination on the Hirer (and notwithstanding that Aggreko may have waived some previous default or matter of the same or a like nature or failed to serve a termination notice at a time when it was entitled to do so) and it shall thereupon be lawful for Aggreko to retake possession of the Plant and for that purpose enter into or upon any premises where the same may be held, at any reasonable time.

- 33.2. The termination of the Contract under this Clause 33 shall not affect any other rights of Aggreko existing as at the date of such termination or the right of Aggreko to recover from the Hirer any monies due to Aggreko under the Contract or damages for breach thereof.

- 33.3. 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.
- 33.4. Aggreko's rights to terminate the Contract shall be enforceable notwithstanding that Aggreko may itself be in breach of the Contract.
- 33.5. If the Hirer is or has been in breach of the Contract it may not make any claim against Aggreko (whether in contract, tort, delict, negligence or otherwise) in respect of any action taken by Aggreko in response to such breach by the Hirer, notwithstanding that such action by Aggreko may be in breach of the Contract.

#### **34. MISCELLANEOUS**

- 34.1. 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;
- 34.2. Any waiver, indulgence or forbearance by Aggreko of any of the terms or rights contained herein shall not affect the enforceability of such terms or rights;
- 34.3. The reliance on or enforcement of any of the terms contained herein shall give no right to the Hirer to cancel the Contract.

#### **35. INDEMNITIES**

- 35.1. Subject to Clause 35.3, the Hirer shall be solely responsible for and shall hold, and hereby agrees to hold, Aggreko 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, and hereby indemnifies, Aggreko 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, common law, or otherwise.
- 35.2. Subject to Clause 35.3, in addition to and without prejudice to the provisions of Clause 35.1 the Hirer shall also indemnify and hold harmless, and hereby agrees to indemnify and hold harmless, Aggreko 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.

- 35.3. The indemnities contained in Clauses 35.1 and 35.2 shall not apply to the extent that the loss, damage or injury arises from any negligence on the part of Aggreko or its employees, servants or agents.

### **36. EXCLUSION OF WARRANTIES**

- 36.1. Aggreko 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 Aggreko's instructions, misuse or alteration or repair of the Plant without Aggreko's prior written approval or breach of any of the terms of the Contract by the Hirer.
- 36.2. Save as explicitly set out in these Conditions or any other document forming part of the Contract, Aggreko 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 the Sale of Goods Acts 1893 and 1980 as to the quality, description, sample, suitability or fitness for purpose of the Plant (or otherwise to the extent permitted by law) are hereby excluded (except where the Contract is concluded with a Consumer).

### **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 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.
- 37.2. For the avoidance of doubt, Clause 37.1 shall apply in particular to any drawings, specifications and other documents to which Aggreko has granted the Hirer access.

### **38. 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 Aggreko which will only be given in exceptional circumstances and shall notwithstanding the foregoing be in the absolute discretion of Aggreko.

**39. GOVERNING LAW**

The ruling law of the Contract and of the relationship of the parties thereto arising out of it shall be Irish Law if the party to it other than Aggreko has (in the case of a company) a registered office in the Republic of Ireland or (in the case of an individual) is resident in the Republic of Ireland, but shall otherwise be English Law. The parties to the Contract submit to the exclusive jurisdiction of the Irish Courts for the purposes of any legal disputes or other proceedings in any way connected with the Contract. Nothing in this Clause 39 shall limit the right of either party to the Contract to seek provisional and/or protective relief in the courts of another jurisdiction.