

Conditions for the Supply of Generator Services

1. Definitions

In these Conditions, the following definitions apply:

- 1.1. **"Call Out Service"** has the meaning ascribed to it in the Service Proposal.
- 1.2. **"Commencement Date"** has the meaning set out in Clause 2.2 (Basis of Contract).
- 1.3. **"Conditions"** means these terms and conditions.
- 1.4. **"Contract"** means the contract between Greenshields JCB and the Customer for the supply of Services comprising the Service Proposal, the Order, the acknowledgement of Order and these Conditions.
- 1.5. **"Customer"** means the person or firm purchasing the Services and where relevant the Spare Parts from Greenshields JCB.
- 1.6. **"Customer Default"** has the meaning set out in Clause 5.2 (Customer's Obligations).
- 1.7. **"Generator"** means the Customer's Generator and associated equipment identified in the Service Proposal on which Greenshields JCB shall perform the Services.
- 1.8. **"Greenshields JCB"** means Greenshields JCB Limited trading as Broadcrown Power Engineering (a company incorporated in England with company number 03235098).
- 1.9. **"Initial Term"** means the term specified in clause 2.8.
- 1.10. **"Order"** means the Customer's order for the Services.
- 1.11. **"Service Proposal"** means Greenshields JCB's written service proposal submitted to the Customer detailing the Services.
- 1.12. **"Services"** means the services specified in the Service Proposal in connection with the Generator and 'Servicing' shall be construed accordingly.
- 1.13. **"Service Warranty"** has the meaning set out in Clause 3.4 (Supply of Services).
- 1.14. **"Replacement Parts"** means any replacement or additional parts, or components required for the Generator as part of the Services.

2. Basis of Contract

- 2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. Where the Customer places an Order with Greenshields JCB verbally, including for any Call Out Service, it shall confirm such Order promptly, and in any event within 48 hours of such call, in writing with a purchase order provided always that a failure to provide written confirmation will not relieve the Customer of its obligations under these Conditions. Greenshields JCB may, in its sole discretion, provide an acknowledgement of Order to confirm the Customer's verbal Order, notably, but not exclusively, in relation to Call Out Services. Service Proposals are submitted, and Orders are accepted only in accordance with these Conditions.
- 2.2. An Order shall only be deemed to be accepted when Greenshields JCB issues a written

acknowledgement of the Order at which point, and on which date the Contract shall come into existence ("**Commencement Date**").

- 2.3. The Contract constitutes the entire agreement between the parties. The Customer warrants and undertakes that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Greenshields JCB which is not set out in the Contract.
- 2.4. Any samples, drawings, descriptive matter or advertising issued by Greenshields JCB, and any descriptions or illustrations contained in Greenshields JCB's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5. These Conditions shall apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or may be implied by trade, custom, practice or course of dealing.
- 2.6. Any quotation given by Greenshields JCB shall not constitute an offer and is only valid for a period of thirty (30) working days from its date of issue or such other period as is expressly stated in the Service Proposal.
- 2.7. The Customer shall not be entitled to cancel in whole or in part any Order which Greenshields JCB has acknowledged save where such cancellation is accepted by Greenshields JCB and upon payment of cancellation charges which the parties shall agree and which will not exceed the total price of the Contract.
- 2.8. This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 8, until the third anniversary of the Commencement Date.
- 2.9. Save as provided in Clause 8, unless the Customer (or Greenshields JCB) gives written notice of termination of this Contract prior to the end of the Initial Term, or any successive term, this Contract shall automatically renew for an additional one-year term at which anniversary a price rise of 5% shall be applied to the price.

3. Supply of Services

- 3.1. Greenshields JCB shall supply the Services to the Customer in accordance with the Service Proposal.
- 3.2. Greenshields JCB shall use reasonable endeavours to meet any performance dates specified in the Service Proposal for performance of the Services, but any such dates shall be estimates only and, save as set out in clause 6.3.2, time shall not be of the essence for performance of the Services.
- 3.3. Greenshields JCB shall have the right to make any changes to the Services which are necessary, at the sole discretion of Greenshields JCB, to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Greenshields JCB shall notify the Customer in any such event.
- 3.4. Greenshields JCB warrants to the Customer that the Services will be provided using reasonable care and skill (the "**Service Warranty**").
- 3.5. If Greenshields JCB breaches the Service Warranty, Greenshields JCB shall promptly remedy the Services in accordance with this Contract at no additional cost to the Customer. The Customer acknowledges and agrees that this remedy shall be the

Customer's sole and exclusive remedy against Greenshields JCB for any breach of the Service Warranty, excepting that the Customer may be entitled to terminate the Contract in accordance with Clause 8 (Termination).

4. Excepted Services

- 4.1. The charges in respect of Servicing covers all labour and parts used by Greenshields JCB in providing the routine Servicing other than the cost of:
 - 4.1.1. additional work due to the Customer's failure to undertake the daily checks or operate the Generator as recommended by the manufacturer or as stated in the Manufacturer's Operating and Maintenance Manual;
 - 4.1.2. any Servicing due to alteration, modification or maintenance of the Generator by any person other than Greenshields JCB;
 - 4.1.3. any Call Out Services;
 - 4.1.4. any specialist works including but not limited to fuel services, load Bank testing and borescope surveys.
- 4.2. The Servicing of the Generator outside of Greenshields JCB's normal hours of 08.00 - 16.30 (Monday - Friday excluding Bank Holidays). Out of hours Servicing is available for an additional charge.
- 4.3. The provision of top up fluids as required for routine daily maintenance.

5. Customer's obligations

- 5.1. The Customer shall:
 - 5.1.1. ensure that the terms of the Order and any information it provides are complete, accurate and up to date;
 - 5.1.2. co-operate with Greenshields JCB in all matters relating to the Services;
 - 5.1.3. make payment to Greenshields JCB in accordance with this Contract;
 - 5.1.4. provide Greenshields JCB, its employees, agents, consultants and subcontractors, with timely access to the Generator, the Customer's premises, office accommodation and other facilities as reasonably required by Greenshields JCB to perform the Services;
 - 5.1.5. provide Greenshields JCB with such information and materials as Greenshields JCB may reasonably require in order to supply the Services and ensure that such information is accurate;
 - 5.1.6. ensure that the Generator is in an area which is safe and suitable for Greenshields JCB to provide the Services;
 - 5.1.7. carry out, at the Customer's expense, routine daily maintenance of the Generator in accordance with the Manufacturer's instructions contained in the Manufacturer's Operating and Maintenance Manual, (and not provided by us pursuant to this Agreement), including (but not limited to) the provision of grease, fuel and water. The Customer shall ensure that the correct engine, hydraulic and cooling system levels are maintained and must protect the Generator from damage by frost using suitable antifreeze mixture. You must notify us to advise us when a service is due in accordance

with the intervals detailed in the Manufacturer's Operating and Maintenance Manual;

- 5.1.8. notify Greenshields JCB immediately of any defects or reduction in the Generator's performance and any alarm or system alert, warning or other indicator (including in respect of any of the Generator's operating systems) that there is any fault or performance issue with the Generator; and
- 5.1.9. ensure that the Generator's hour meter (where fitted) is not tampered with and notify Greenshields JCB immediately upon becoming aware of any malfunction of the meter.
- 5.2. If Greenshields JCB's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
 - 5.2.1. Greenshields JCB shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations;
 - 5.2.2. Greenshields JCB shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations; and
 - 5.2.3. the Customer shall reimburse Greenshields JCB on written demand for any costs or losses sustained or incurred by Greenshields JCB arising directly or indirectly from the Customer Default.
- 5.3. Where Greenshields JCB and the Customer have agreed a date and time for performance of the Services, the Customer may only re-arrange or cancel such appointment by giving Greenshields JCB at least 48 hours prior notice on working days. If the Customer fails to provide notice or prevents Greenshields JCB from carrying out Services at a pre-arranged appointment, then the Customer shall reimburse Greenshields JCB on written demand the greater of either £400 plus VAT or the actual costs or losses sustained or incurred by Greenshields JCB arising directly or indirectly from this cancelled visit. Where any inspections or tests are to be carried out or conducted at Greenshields JCB's (or a third-party supplier's) premises and the Customer fails to attend an arranged inspection or test then Greenshields JCB shall be entitled to proceed in the Customer's absence at the Customer's cost on an indemnity basis, and the Customer shall be deemed to have accepted the results of such inspections or tests.
- 5.4. Any breach by the Customer of an obligation listed in this clause 5 shall be deemed a material default.

6. Charges and payment

- 6.1. The charges for the Services shall be on a time and materials basis and as set out in the Service Proposal. In addition, Greenshields JCB shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Greenshields JCB engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses; the cost of services provided by third parties and required by Greenshields JCB for the performance of the Services; and, the cost of any Replacement Parts or other materials or consumables.
- 6.2. Greenshields JCB shall invoice the Customer in accordance with the payment profile set out in Greenshields JCB's written acknowledgement of Order.

- 6.3. The Customer shall pay each invoice submitted by Greenshields JCB in GB Pound Sterling (or such other currency as may be agreed by Greenshields JCB in writing):
- 6.3.1. within thirty (30) days of the date of the invoice; and
- 6.3.2. in full and in cleared funds to a bank account nominated in writing by Greenshields JCB, and time for payment shall be of the essence of the Contract.
- 6.4. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Greenshields JCB to the Customer, the Customer shall, on receipt of a valid VAT invoice from Greenshields JCB, pay to Greenshields JCB such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.5. If the Customer fails to make any payment due to Greenshields JCB under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per cent per annum above base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.6. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.7. Greenshields JCB reserves the right to apply an inflationary factor to the Contract, should the Consumer Price Index (CPI), as measured by the Office for National Statistics, exceed 3% in any one year.

7. Extent of liability

- 7.1. The liability of Greenshields JCB under or in connection with the Contract whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be governed by this Clause 7 (Extent of Liability).
- 7.2. Nothing in the Contract shall limit or exclude the liability of either party for:
- 7.2.1. death or personal injury resulting from negligence; or
- 7.2.2. fraud or fraudulent misrepresentation; or
- 7.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (as may be amended or replaced) or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (as may be amended or replaced); or
- 7.2.4. any other act or omission, liability for which may not be limited or excluded under applicable law.
- 7.3. Save as expressly provided in this Contract or to the extent as cannot be excluded at law, Greenshields JCB makes no warranty, representation or condition of any kind concerning the Services and/or the Replacement Parts and all warranties, representations, conditions, obligations and liability of any kind whatever, whether in contract or tort (including negligence) or restitution, implied by law in respect of the Services and/or Replacement Parts are expressly excluded.

- 7.4. Subject to Clause 7.2, Greenshields JCB shall not be liable to the Customer for:
- 7.4.1. direct or indirect loss or damage constituting wasted time or expenditure, any loss of actual or anticipated profit, loss of use, loss of business revenues or anticipated savings, loss of production or business or any damage to goodwill;
 - 7.4.2. any liability by way of indemnity;
 - 7.4.3. direct or indirect loss of or damage to other equipment or property;
 - 7.4.4. any liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
 - 7.4.5. any indirect or consequential loss or damage.

even if Greenshields JCB is advised in advance of the possibility of any such losses or damages and the Customer acknowledges and agrees that Greenshields JCB does not assume any liability under or in connection with the Contract for such loss or damage.

- 7.5. Subject to Clause 7.2 and Clause 7.4, Greenshields JCB's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the price paid or payable by the Customer for the relevant Services and/or Replacement Parts to which the liability relates.
- 7.6. Greenshields JCB shall be discharged of all liability to which these conditions apply unless proceedings are commenced and served within twelve (12) months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.

8. Termination

- 8.1. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one (1) months' prior written notice.
- 8.2. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 8.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;
 - 8.2.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 8.2.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 8.2.4. a petition is filed, a notice is given, a resolution is passed, or an order is made,

- for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 8.2.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 8.2.6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
 - 8.2.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 8.2.8. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 8.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 8.2.10. any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or like any of the events mentioned in Clause 8.2.2 to Clause 8.2.9 (inclusive);
 - 8.2.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 8.2.12. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
 - 8.2.13. the other party repeatedly breaches any of the terms of this 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 the terms of this Agreement.
- 8.3. Without limiting its other rights or remedies, Greenshields JCB may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 8.3.1. the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within seven (7) days after being notified in writing to do so; or
 - 8.3.2. the Customer's financial position deteriorates to such an extent that in Greenshields JCB's sole opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.4. Without limiting its other rights or remedies, Greenshields JCB may suspend provision of the Services under the Contract or any other contract between the Customer and Greenshields JCB if the Customer becomes subject to any of the events listed in Clause 8.2 or Clause 8.3, or Greenshields JCB reasonably believes that the Customer is about to become subject to any of them.

9. Consequences of termination

9.1. On termination of the Contract for any reason:

- 9.1.1. the Customer shall immediately pay to Greenshields JCB all of Greenshields JCB's outstanding unpaid invoices together with interest thereon and, in respect of Services supplied but for which no invoice has been submitted, Greenshields JCB shall submit an invoice, which shall be payable by the Customer immediately upon receipt.
- 9.1.2. where the Customer has terminated the Contract without any Service visits being carried out then Greenshields JCB reserves the right to charge, and the Customer shall pay Greenshields JCB's administrative costs incurred in setting up the Contract and making the call out Services available to the Customer which costs shall be the greater of the actual costs incurred by Greenshields JCB or an additional 50% of the total fee due under this Contract;
- 9.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 9.1.4. clauses which expressly or by implication survive termination shall continue in full force and effect.

10. Force majeure

- 10.1. Greenshields JCB shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond Greenshields JCB's control including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities and/or fuel supplies, supply of labour, materials, power or supplies, strike, lockout or labour dispute (whether or not at Greenshields JCB's factory or works), illness, epidemic, pandemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency and the time for performance shall be extended by the period of any such delay.

11. General

- 11.1. Greenshields JCB shall have no liability for any advice, opinion or information furnished by Greenshields JCB, its servants or agents unless given in writing by an authorised representative of Greenshields JCB in response to a written request by the Customer referring to the Contract.
- 11.2. Where Greenshields JCB prepares drawings, designs or other data on the basis of materials provided or suggestions given by the Customer, all intellectual property rights therein (including copyright and design rights) and all materials, tools, patterns or other items prepared by Greenshields JCB shall, unless otherwise agreed in writing, be Greenshields JCB's property and the Customer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.
- 11.3. The Customer shall indemnify and hold harmless Greenshields JCB against any and all claims, proceedings, costs, damages, liabilities and expenses which may be incurred or suffered by Greenshields JCB arising from any instructions, data, drawings, specifications, goods, services or other items supplied by or on behalf of the Customer to Greenshields JCB or from any failure to supply the same or from any infringement or

alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trade mark, copyright, design right, breach of confidence or otherwise howsoever resulting from Greenshields JCB's use of any of the foregoing items. Greenshields JCB shall have no liability for any inaccuracy or inadequacy of such items and shall be entitled to charge extra for any costs resulting therefrom.

- 11.4. Greenshields JCB may at its discretion sub-contract all or any of its obligations under the Contract, but the Contract shall not be assigned by the Customer without Greenshields JCB's prior written consent.
- 11.5. Greenshields JCB shall have a lien on any Generator (or parts thereof) in Greenshields JCB's possession for all sums due at any time from the Customer on any account and shall be entitled to keep possession of or at its option sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of such sums on twenty-eight (28) days written notice to the Customer.
- 11.6. The Customer shall be responsible for obtaining and maintaining in force any import or export licences, visas, work permits or the like and the payment of any duties taxes or other charges in connection with the employment overseas of any of Greenshields JCB's personnel and in particular Greenshields JCB shall be entitled to charge extra for any costs incurred by it as a result of such failure.
- 11.7. The subject matter of the Contract and any technical information supplied thereunder is confidential and the Customer shall not without Greenshields JCB's prior written consent make any disclosure or unauthorised use thereof except as regards any technical information to the extent that the same is or becomes published otherwise than in breach hereof. The Customer acknowledges that, in the event of a breach of this clause, damages would not be an adequate remedy.
- 11.8. Any notice given in writing if sent by electronic mail generators@gjcb.co.uk or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the date of transmission of the electronic mail (if receipt is confirmed in writing) or 2 working days (or 7 working days in the case of Customers outside of the United Kingdom) following the date of posting.
- 11.9. All headings in this agreement are for reference purposes only and shall not affect the interpretation of the particular clause.
- 11.10. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.11. In the event that any provision in these terms and conditions is declared by a judicial or other competent authority to be void, voidable, illegible or unenforceable for any reason, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality and the remaining provisions of these terms and conditions shall remain in full force and effect.
- 11.12. The Customer authorises Greenshields JCB to carry out checks (including enquiries relating to directors and other individuals) with credit reference agencies and to keep a record of that search and to make available to such agencies information relating to the conduct of the Customer's account and the Customer acknowledges that the agencies concerned may keep and store the information and supply it to other businesses in assessing applications for credit and/or fraud prevention.
- 11.13. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall

constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.14. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Greenshields JCB.

12. Law and jurisdiction

- 12.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to the Contract except to the extent Greenshields JCB (at its election) involves the jurisdiction of the courts of any other country.