

## 1. GENERAL

(a) These Terms and Conditions (**Agreement**) apply to products (**Products**) and to services (**Services**) that the Compressor Technique Division of Atlas Copco Australia Pty Ltd ABN 85 620 125 153 (**us, our and we**) supply to the purchaser (**you**).

## IMPORTANT INFORMATION ABOUT YOUR STATUTORY RIGHTS

(b) Nothing in this Agreement (including clauses 6, 7 and 8) affects any non-excludable statutory rights or remedies that you may have.

## 2. PRICE AND TAXES

(a) The prices do not include taxes. You must pay all taxes arising from, or relating to, this Agreement. Taxes mean all taxes of any kind (including stamp duties) other than taxes on our income.

(b) Without limiting clause (a), you must pay to us an amount equal to any goods or services tax that applies to a supply. We will provide you with a tax invoice.

## 3. DELIVERY AND CHANGES

(a) We will provide the Products and Services by the dates agreed in writing with you.

(b) You must inspect Products on delivery and notify us of any short delivery or transport damage within 5 days after receiving the delivery. Notification does not make us liable for short delivery or damage or oblige us to provide additional or replacement Products.

(c) You must promptly provide the information, access and co-operation we need to meet our obligations under this Agreement.

(d) Without limiting clause (c), if you need to do something by a certain time and you don't do it, then (without limiting any of our other rights or remedies) the time for us to meet our obligations is extended by any delay that this causes.

(e) You cannot cancel or change an order for a Product or a Service (including, to avoid doubt, a delivery date or any specifications or requirements).

## 4. PAYMENT TERMS

(a) Account Customers: payment for machines is due 7 days after invoice date. Payment for all other Products, and payment for Services, is due 30 days after invoice date. Non Account Customers: payment is due before delivery of Product or before commencement of Service.

(b) Without limiting any other right or remedy, we may charge you daily interest, at 1.5% per month, on overdue amounts. If we charge interest, then you must pay it within 7 days after we request payment.

## 5. TITLE AND RISK, INSURANCE & REPOSSESSION

(a) Title to a Product only passes to you when we have been paid in full. Prior to that, you are a bailee only and you do not get any form of interest in the Product (whether legal, equitable or otherwise). Risk in a Product passes to you when we provide it to a carrier, deliver it to a place you nominate or receive payment in full (whichever occurs first). We do not have to give any form of notice that risk or title has passed.

(b) We are not required to have any insurance for Products or Services (including transit, theft, liability or damage insurance).

(c) If you have a Product and title has not passed to you, then: (i) you must store the Product separately and ensure that it is clearly marked as our property; and (ii) you irrevocably authorise us to enter any premises and take possession of and remove the Products if you are (or are about to become) insolvent or subject to any form of administration or insolvency process of any kind (whether voluntary or involuntary). To avoid doubt, doing any of these things does not affect your liability under this Agreement (including your liability if a Product is lost, damaged or stolen or seized).

## COMPRESSOR TECHNIQUE STANDARD TERMS AND CONDITIONS OF SALE

## 6. REFUNDS, EXCHANGES AND RETURNS

Unless otherwise agreed in writing, and subject to clause 1(b), we do not provide refunds, or exchange or accept the return of Products

## 7. WARRANTY

The current version of the Atlas Copco Compressors Australia Products and Services Warranty is incorporated into this Agreement (a copy is available at any time on request).

## 8. LIABILITY

To the maximum extent permitted by law and subject to clause 1(b):

(a) we exclude all implied terms (statutory or otherwise - including implied warranties) of any kind. The United Nations Convention on Contracts for the International Sale of Goods does not apply;

(b) we exclude all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

(c) our total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate for any and all claims: (i) arising from or relating to a Product: to the price of the Product; and (ii) arising from or relating to a Service: to the price of the Service;

(d) our liability is reduced to the extent that it was caused or contributed to by an act or omission by you or by any of your personnel (including subcontractors);

(e) clauses (a) – (d) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Products or the Services); and

(f) if a statute implies a term into this Agreement, and it cannot be excluded, then our liability for breaching it will be limited (at our option) to: (i) for goods: repair, replacement with equivalents or paying the cost of such repair or replacement; and (ii) for services: resupply or paying the cost of resupply. We may choose not to limit our liability in any of these ways.

## 9. FORCE MAJEURE

We will not be in breach of this Agreement if the breach is caused by an event beyond our reasonable control. Without limitation, the following are taken to be events beyond our reasonable control: any form of industrial action, riots, acts of war or terrorism, fires, floods, storms, breakdowns, natural disasters, Acts of God, scarcity, unavailability or delay in obtaining transportation or materials (including deliveries from subcontractors), power restrictions and changes to laws whether any of these things affect us, our suppliers or our Related Bodies Corporate) and whether they occur within or outside Australia.

## 10. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

((a) A party must keep the other party's confidential information confidential and only disclose or use it to meet its obligations under this Agreement. We may disclose confidential information to our Related Bodies Corporate.

(b) Before a party discloses any confidential information to a third party, they must tell them that it is the other party's confidential information and that it must only be used to assist the disclosing party to meet its obligations under this Agreement.

(c) If we give you any material or information of any kind (including manuals and maintenance procedures) (**Our Material**), you can only use it for the purposes of this Agreement. We reserve all other rights in it.

(d) Without limiting clause (c), you must not use (or allow anyone else, including a service provider, to use) any of Our Material to: (i) work on any of our products (including to perform maintenance) other than where the work is permitted by clause (e) below; or (ii) create a document (including a maintenance schedule or a repair manual).

(e) You may use documents that we provide with a Product to perform maintenance or repair work on that Product.

## 11. CUSTOMER TERMS

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## 12. PPSA

(a) You acknowledge and agree that: (i) this Agreement is a security agreement, and creates a purchase money security interest in our favour (**Security Interest**), in accordance with the Personal Property Securities Act 2009 (Cwlth) (**PPSA**); (ii) value has been given to you for the Security Interest or you have done an act by which it has arisen; (iii) we may register a financing statement for the Security Interest; (iv) you waive your right to receive a registration event notice; (v) the collateral is a class ("Other Goods" (non inventory, commercial property)) comprising all goods supplied under this Agreement; and (vi) PPSA Sections 95, 130, 132(3)(d), 132(4), 135 and 143 will not apply.

(b) You: (i) must not do (or fail to do) anything which could (or does) interfere with (or affect) a security interest of ours (including a right to enforce or register one); (ii) must assist us in registering, perfecting, enforcing or otherwise dealing with a security interest of ours or any of our other rights; and (iii) must (if you breach this clause 12(b)) comply with our instructions as to the treatment of any goods provided under this Agreement (including procuring access to third party premises).

(c) Each of clauses 12(a)(i)-(vi) and 12(b)(i)-(iii) are severable without affecting the others in any way. This clause 12 does not affect any other security interests or limit our rights or remedies under the PPSA.

## 13. COMPLETE AGREEMENT & THIRD PARTY RIGHTS

(a) This is the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, arrangements, correspondence and discussions of any kind relating to its subject matter. This Agreement may only be varied written agreement.

(b) This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law.

## 14. ASSIGNMENT AND GOVERNING LAW

(a) You may not deal with (including, to avoid doubt, assign) any of your rights or obligations under this Agreement without our prior written consent and any dealing without that prior written consent is void and of no effect.

(b) We may at any time assign or novate or otherwise transfer all or any part of our rights or liabilities under this Agreement to our Related Bodies Corporate.

(c) This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

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(b) We are not required to have any insurance for Products or Services (including transit, theft, liability or damage insurance).

(c) If you have a Product and title has not passed to you, then: (i) you must store the Product separately and ensure that it is clearly marked as our property; and (ii) you irrevocably authorise us to enter any premises and take possession of and remove the Products if you are (or are about to become) insolvent or subject to any form of administration or insolvency process of any kind (whether voluntary or involuntary). To avoid doubt, doing any of these things does not affect your liability under this Agreement (including your liability if a Product is lost, damaged or stolen or seized).

## POWER TECHNIQUE STANDARD TERMS AND CONDITIONS OF SALE

## 6. REFUNDS, EXCHANGES AND RETURNS

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## 7. WARRANTY

The current version of the Atlas Copco Australia Power Technique Products and Services Warranty is incorporated into this Agreement (a copy is available at any time on request).

## 8. LIABILITY

To the maximum extent permitted by law and subject to clause 1(b):

(a) we exclude all implied terms (statutory or otherwise - including implied warranties) of any kind. The United Nations Convention on Contracts for the International Sale of Goods does not apply;

(b) we exclude all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

(c) our total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate for any and all claims: (i) arising from or relating to a Product: to the price of the Product; and (ii) arising from or relating to a Service: to the price of the Service;

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(e) clauses (a) – (d) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Products or the Services); and

(f) if a statute implies a term into this Agreement, and it cannot be excluded, then our liability for breaching it will be limited (at our option) to: (i) for goods: repair, replacement with equivalents or paying the cost of such repair or replacement; and (ii) for services: resupply or paying the cost of resupply. We may choose not to limit our liability in any of these ways.

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## 4. PAYMENT TERMS

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## 5. TITLE AND RISK, INSURANCE & REPOSSESSION

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## 6. REFUNDS, EXCHANGES AND RETURNS

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## 7. WARRANTY

The current version of the Atlas Copco Rentals Australia Products and Services Warranty is incorporated into this Agreement (a copy is available at any time on request).

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(b) we exclude all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

(c) our total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate for any and all claims: (i) arising from or relating to a Product: to the price of the Product; and (ii) arising from or relating to a Service: to the price of the Service;

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(c) If you have a Product and title has not passed to you, then: (i) you must store the Product separately and ensure that it is clearly marked as our property; and (ii) you irrevocably authorise us to enter any premises and take possession of and remove the Products if you are (or are about to become) insolvent or subject to any form of administration or insolvency process of any kind (whether voluntary or involuntary). To avoid doubt, doing any of these things does not affect your liability under this Agreement (including your liability if a Product is lost, damaged or stolen or seized).

## INDUSTRIAL TOOLS STANDARD TERMS AND CONDITIONS OF SALE

## 6. REFUNDS, EXCHANGES AND RETURNS

Unless otherwise agreed in writing, and subject to clause 1(b), we do not provide refunds, or exchange or accept the return of Products.

## 7. WARRANTY

The current version of the Atlas Copco Industrial Tools Australia Products and Services Warranty is incorporated into this Agreement (a copy is available at any time on request).

## 8. LIABILITY

To the maximum extent permitted by law and subject to clause 1(b):

(a) we exclude all implied terms (statutory or otherwise - including implied warranties) of any kind. The United Nations Convention on Contracts for the International Sale of Goods does not apply;

(b) we exclude all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

(c) our total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate for any and all claims: (i) arising from or relating to a Product: to the price of the Product; and (ii) arising from or relating to a Service: to the price of the Service;

(d) our liability is reduced to the extent that it was caused or contributed to by an act or omission by you or by any of your personnel (including subcontractors);

(e) clauses (a) – (d) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Products or the Services); and

(f) if a statute implies a term into this Agreement, and it cannot be excluded, then our liability for breaching it will be limited (at our option) to: (i) for goods: repair, replacement with equivalents or paying the cost of such repair or replacement; and (ii) for services: resupply or paying the cost of resupply. We may choose not to limit our liability in any of these ways.

## 9. FORCE MAJEURE

We will not be in breach of this Agreement if the breach is caused by an event beyond our reasonable control. Without limitation, the following are taken to be events beyond our reasonable control: any form of industrial action, riots, acts of war or terrorism, fires, floods, storms, breakdowns, natural disasters, Acts of God, scarcity, unavailability or delay in obtaining transportation or materials (including deliveries from subcontractors), power restrictions and changes to laws whether any of these things affect us, our suppliers or our Related Bodies Corporate) and whether they occur within or outside Australia.

## 10. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

(a) A party must keep the other party's confidential information confidential and only disclose or use it to meet its obligations under this Agreement. We may disclose confidential information to our Related Bodies Corporate.

(b) Before a party discloses any confidential information to a third party, they must tell them that it is the other party's confidential information and that it must only be used to assist the disclosing party to meet its obligations under this Agreement.

(c) If we give you any material or information of any kind (including manuals and maintenance procedures) (**Our Material**), you can only use it for the purposes of this Agreement. We reserve all other rights in it.

(d) Without limiting clause (c), you must not use (or allow anyone else, including a service provider, to use) any of Our Material to: (i) work on any of our products (including to perform maintenance) other than where the work is permitted by clause (e) below; or (ii) create a document (including a maintenance schedule or a repair manual).

(e) You may use documents that we provide with a Product to perform maintenance or repair work on that Product.

## 11. CUSTOMER TERMS

None of your terms will apply to or affect this Agreement in any way. This applies even if we accept the terms or they are deemed to have been accepted by us if we do a particular thing (eg provide goods or services, accept an order, accept payment and so on) and we do it.

## 12. PPSA

(a) You acknowledge and agree that: (i) this Agreement is a security agreement, and creates a purchase money security interest in our favour (**Security Interest**), in accordance with the Personal Property Securities Act 2009 (Cwlth) (**PPSA**); (ii) value has been given to you for the Security Interest or you have done an act by which it has arisen; (iii) we may register a financing statement for the Security Interest; (iv) you waive your right to receive a registration event notice; (v) the collateral is a class ("Other Goods" (non inventory, commercial property)) comprising all goods supplied under this Agreement; and (vi) PPSA Sections 95, 130, 132(3)(d), 132(4), 135 and 143 will not apply.

(b) You: (i) must not do (or fail to do) anything which could (or does) interfere with (or affect) a security interest of ours (including a right to enforce or register one); (ii) must assist us in registering, perfecting, enforcing or otherwise dealing with a security interest of ours or any of our other rights; and (iii) must (if you breach this clause 12(b)) comply with our instructions as to the treatment of any goods provided under this Agreement (including procuring access to third party premises).

(c) Each of clauses 12(a)(i)-(vi) and 12(b)(i)-(iii) are severable without affecting the others in any way. This clause 12 does not affect any other security interests or limit our rights or remedies under the PPSA.

## 13. COMPLETE AGREEMENT & THIRD PARTY RIGHTS

(a) This is the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, arrangements, correspondence and discussions of any kind relating to its subject matter. This Agreement may only be varied by written agreement.

(b) This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law.

## 14. ASSIGNMENT AND GOVERNING LAW

(a) You may not deal with (including, to avoid doubt, assign) any of your rights or obligations under this Agreement without our prior written consent and any dealing without that prior written consent is void and of no effect.

(b) We may at any time assign or novate or otherwise transfer all or any part of our rights or liabilities under this Agreement to our Related Bodies Corporate

(c) This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

## STANDARD RENTAL AGREEMENT

### **1. GENERAL**

(a) These Terms and Conditions (**Agreement**) apply to equipment (**Equipment**) that the Rental Division of Atlas Copco Australia Pty Ltd ABN 85 620 125 153 (**us, our and we**) may supply on hire from time to time.

### **IMPORTANT INFORMATION ABOUT YOUR STATUTORY RIGHTS**

(b) Nothing in this Agreement (including clause 8) affects any non-excludable statutory rights or remedies that you may have.

(c) For the avoidance of doubt, this contract only applies to the rental and services provided by Atlas Copco Rental (the rental division of Atlas Copco Australia Pty Ltd) and its transferees or successors.

### **2. FEES AND TAXES**

(a) You must pay the rental fees and the other fees as set out in this Agreement.

(b) If the Equipment is not returned: (i) by the end of the rental term; or (ii) within 24 hours after the Agreement terminates, then the rental fee continues to be payable (in full) up to and including the date that the Equipment is returned.

(c) If we send a technician to repair the Equipment (see clause 4(e) below) and it is not available or not at the site, then an attendance fee is payable. Unless we have agreed a different fee with you, the attendance fee is our then current attendance fee. A copy of our current attendance fees is available at any time on request.

(d) Unless you direct us not to in writing (before the Equipment leaves our premises), we will charge you a damage waiver fee for the Equipment. Unless we have agreed a different fee with you, the damage waiver fee is our damage waiver fee at the time the rental commences. A copy of our current damage waiver fees is available at any time on request.

(e) If an item of Equipment is located between 125km and 500km from the nearest Atlas Copco depot, then we may (at any time on no less than 7 days' notice) increase the rental fee by 5%. If an item of Equipment is located more than 500km from the nearest Atlas Copco depot, then we may (at any time on no less than 7 days' notice) increase the rental fee by 10%.

(f) We may charge you a credit card fee of 2% of the payment amount for payments made by credit card.

(g) If the Equipment is stolen, then (without limiting any of our other rights or remedies) the rental fee continues to be payable (in full) until you notify us in writing of the theft.

(h) Without limiting any other right or remedy of ours, the rental fee continues to be payable (in full) during any period that the Equipment is not operating correctly (or at all) because of anything referred to in clause 4(g) or a failure to comply with clause 4(d).

(i) All fees (including the rental fees) automatically increase on 1 February each year by increases in the consumer price index published by the Australian Bureau of Statistics for Sydney (Capital City) (All Groups) or, if that index is suspended or discontinued, the index substituted for it by the Australian Statistician. To avoid doubt, decreases are not applied and increases apply regardless of when a rental term commenced.

(j) We may increase the rental fees on no less than 30 days' notice. To avoid doubt, increases under this clause apply in addition to increases under other provisions (including increases under clauses 2(e) and 2(i) above).

#### **Taxes**

(k) The fees do not include taxes. You must pay all taxes arising from, or relating to, this Agreement. Taxes mean all taxes of any kind (including stamp duties) other than taxes on our income.

(l) Without limiting clause 2(k), you must pay us the amount of any goods or services tax for a supply. We will provide you with a tax invoice.

### **3. RENTAL TERM**

(a) Unless we have agreed a different time and date with you in writing, the rental term starts on the time and date that the Equipment leaves our premises (Commencement Date).

(b) Unless we have agreed a different time and date with you in writing, the rental term ends on the date that the Equipment has been returned to our branch from which the Equipment was supplied or that branch issues an official 'off-hire' number to you after you correctly confirm that the Equipment is no longer required and is available for collection. If we have not agreed to any fixed term with you in writing, we may terminate the hire at any time

(c) If we do not have:

(i) at the Commencement Date; and

(ii) within 20 business days of this agreement, a registration under the *Personal Property Securities Act 2009* (Cth) (PPS Law) ensuring a perfected first priority security interest in the Equipment, the rental period (including any option for extension of the rental period or the aggregate of consecutive rental periods during which you have or may have substantially uninterrupted possession) shall, despite anything else in this Agreement and any schedule annexed to it, be one day shorter than the applicable threshold period for a PPS lease under the PPS Law in respect of the hire.

### **4. EQUIPMENT**

(a) When we agree to rent you an item of Equipment, a separate agreement, which contains all of the terms and conditions of this Agreement except this clause 4(a), is created for that item.

(b) You may not rent, lease, lend or part with possession of the Equipment unless we have agreed in writing that you may do this. We always own the Equipment. You do not obtain any form of interest (whether legal, equitable or otherwise) in it (even if it is installed on, or is incorporated into, any of your equipment).

(c) Risk in the Equipment passes to you when it leaves our premises and remains with you at all times until it is returned to us.

(d) You must comply with the additional customer obligations in clause 13.

(e) If the Equipment breaks down, then we will (in our absolute discretion): (i) repair or replace it; or (ii) terminate the Agreement and refund any rental fees paid in advance, less any amounts that you owe us.

(f) You must (at your cost) return the Equipment to the depot it was issued from: (i) at the end of the rental term; or (ii) within 24 hours after the Agreement terminates. If (for any reason) the Equipment has not been returned by that time, then: (A) we may recover it; and (B) you must pay all of the costs that we incur in doing this (including legal costs and claims against us by you or a third party).

(g) Subject to clause 5, if (for any reason) the Equipment:

(i) goes missing, is stolen, is seized, is converted or is damaged beyond repair, then you must pay us its full list price; or

(ii) is not working, or is damaged (fair wear and tear excepted), then you must pay us: (A) for the parts and labour to repair it; or (B) its full list price if it cannot be repaired.

(h) Without limiting clause 4(g), if you do not comply with your obligations in clause 4(d), then you must pay us (as the case may be):

(i) to repair any damage that this causes (parts and labour); (ii) to replace any non approved parts or fluids with approved parts and fluids

(parts and labour); and (iii) the cost of cleaning and decontaminating the Equipment.

(i) Amounts under clauses 4(f), 4(g) and 4(h) are payable as a debt within 7 days after we request payment.

### **5. DAMAGE WAIVER**

(a) If there is a Damage Waiver Event (see (b) below) for the Equipment and: (i) you have paid the damage waiver fee; and (ii) you pay us an additional amount equal to the greater of: (A) 10% of the list price of the Equipment; and (B) AUD500,

then subject to clause 5(c) we will waive our right to claim for the cost of repairing the damaged Equipment or for the loss of the stolen Equipment (as the case may be).

(b) For the purpose of this clause 5, a Damage Waiver Event is: (i) the Equipment is damaged by fire, storm, earthquake, collision or accident; or (ii) there is a genuine theft of Equipment.

(c) The damage waiver in (a) does not apply to: (i) tools, accessories, tyres, tubes, batteries or similar items; (ii) fire, storm, earthquake, collision or accident damage caused (for any reason) while the Equipment is located, used, loaded, unloaded, transported on, over or adjoining water (including, without limitation, while located, used, loaded, unloaded or transported over or on wharves, bridges, barges and vessels of all kinds); (iii) fire, storm, earthquake, collision or accident damage caused or contributed to by inadequate storage; (iv) without limiting (ii) or (iii) fire, collision or accident caused by a negligent act or omission (or a wilful act) by you or your personnel; or (v) theft caused by inadequate security.

### **6. PAYMENT TERMS**

(a) Account Customers: all fees: payable in arrears, 30 days from invoice date. Non Account Customers: all fees payable in advance.

(b) Without limiting any other right or remedy, we may charge you daily interest, at 1.5% per month, on overdue amounts. If we charge interest, then you must pay it within 7 days after we request payment.

(c) Without limiting any of our other rights or remedies, we may immediately terminate this Agreement if any amount due under this Agreement remains outstanding for more than 30 days.

### **7. INSURANCE & INSOLVENCY**

(a) You must insure the Equipment at its full list price. The insurance must include cover for loss or damage caused by fire, storm, tempest, theft, burglary, riots, strikes, civil commotion and explosion. The policies must be in your name and in our name.

(b) To avoid doubt, complying with your obligations in clause 7(a) does not affect any of your liability, or any of our liability, and all of the provisions of this Agreement apply with full force and effect.

(c) You must do everything reasonably necessary to protect our right, title and interest in the Equipment. Without limitation, you must:

(i) not encumber it, or allow it to be encumbered, in any way; and

(ii) if someone tries to seize, sell or deal with it, then you must immediately: (A) tell them that it is our property; (B) tell us; and (C) do everything that you can lawfully do to prevent the seizure, sale or dealing.

(d) If you are (or are about to become) insolvent or subject to any form of administration or insolvency process or proceedings of any kind (whether voluntary or involuntary), then without limiting any other rights or remedies: (i) we may immediately terminate this Agreement; and (ii) you irrevocably authorise us to enter any premises and remove the Equipment.

### **8. LIABILITY**

To the maximum extent permitted by law and subject to clause 1(b):

## STANDARD RENTAL AGREEMENT

(a) we exclude all implied terms (statutory or otherwise - including implied warranties) of any kind.

(b) we exclude all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

(c) our total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate as follows:

(i) for liability relating to an item of Equipment, to the lesser of: (A) the fees received for that item of Equipment; and (B) AUD10,000; and

(ii) in all other cases: AUD10,000;

(d) our liability is reduced to the extent that it was caused or contributed to by an act or omission by you or by any of your personnel (including subcontractors);

(e) clauses (a) – (d) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), equity, under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Equipment); and

(f) if a statute implies a term into this Agreement, and it cannot be excluded, then our liability for breaching it will be limited (at our option) to: (i) for goods: repair, replacement with equivalents or paying the cost of such repair or replacement; and (ii) for services: resupply or paying the cost of resupply. We may choose not to do any of these things.

### 9. FORCE MAJEURE

We will not be in breach of this Agreement if the breach is caused by an event beyond our reasonable control. Without limitation, the following are taken to be events beyond our reasonable control: any form of industrial action, riots, acts of war or terrorism, fires, floods, storms, breakdowns, natural disasters, Acts of God, scarcity, unavailability or delay in obtaining transportation or materials (including deliveries from subcontractors), power restrictions and changes to laws whether any of these things affect us, our suppliers or our Related Bodies Corporate) and whether they occur within or outside Australia.

### 10. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

(a) A party must keep the other party's confidential information confidential and only disclose or use it solely to meet its obligations under this Agreement. We may disclose confidential information to our Related Bodies Corporate.

(b) Before a party discloses confidential information to a third party, they must tell them that it is the other party's confidential information and that it must only be used solely to assist the disclosing party to meet its obligations under this Agreement.

(c) If we give you any material or information of any kind (including manuals and maintenance procedures), you can only use it (and you must ensure that your personnel only use it to assist you to use it) solely for the purposes of this Agreement. We reserve all other rights in it.

### 11. CUSTOMER TERMS

None of your terms will apply to or affect this Agreement in any way. This applies even if we accept the terms or they are deemed to have been accepted by us if we do a particular thing (eg provide goods or services, accept an order, accept payment and so on) and we do it.

### 12. PPSA

(a) This clause applies to the extent that our interest under this Agreement is a 'security interest' for the purposes of the PPS Law (**Security Interest**).

(b) We may register any actual impending or likely Security Interest. You may not make a claim or demand against us for any loss or liability action of any kind in respect of any registration, even if it is determined that we should not have made a registration. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of ensuring that our Security Interest is enforceable, perfected, first in priority and otherwise effective under the PPS Law.

(c) Our rights under this Agreement are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under this Agreement, and/or under such other law, as we see fit.

(d) to the extent that Chapter 4 of the PPS Law applies to any Security Interest under this Agreement, you agree to waive any period of, or right to notice that, would otherwise apply under Chapter 4 in your favour in respect of enforcement by us.

(e) In addition to any rights under Chapter 4 you agree that we shall, if there is a default by you, have the right to seize purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under Chapter 4 but also, as additional and independent rights, under this Agreement and you agree that we may do so in any manner we see fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.

(f) You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. This waiver also extends to any verification statement in respect of Security Interests arising or provided for under the security documents prior to the date of this Agreement.

(g) We and you agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. This sub-clause is made solely for the purpose of allowing to us, the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation for breach of this sub-clause.

(h) You must not dispose or purport to dispose of, or create or purport to create or permit to be created any Security Interest in the Equipment other than with our written consent. You must not lease, hire, bail or give possession (**Sub-hire**) the Equipment to anyone else unless we (in our absolute discretion) first consent in writing. If we do consent any such Sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under this Agreement. You may not vary a Sub-hire without our prior written consent (which may be withheld in our absolute discretion)

(i) You must ensure that we are provided at all times with up-to-date information about the Sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the Sub-hire and the location and condition of the Equipment

(j) You must take all steps (including registration under PPS Law) as may be required by us;

(i) to ensure that any Security Interest arising under or in respect of the Sub-hire is enforceable, perfected and otherwise effective under the PPS Law;

(ii) enabling you to gain (subject always to our rights) first priority (or any other priority agreed to by us in writing) for the Security Interest; and

(iii) enabling us and you to exercise our respective rights in connection with the Security Interest.

(k) to assure performance of your obligations under this clause, you hereby give us an irrevocable power of attorney to do anything we consider necessary to protect our interest in the Equipment. We may recover from you the cost of doing anything under this clause, including registration fees

### 13. ADDITIONAL CUSTOMER OBLIGATIONS

#### **Operation by Qualified Personnel**

(a) You must ensure that the Equipment is used and operated in a proper and skilful manner using only competent and properly trained and qualified personnel and by recognised methods and standards of operation.

#### **No Alterations**

(b) You must not alter (including add anything to) the Equipment. To avoid doubt, this includes: (i) removing any signs, labels or our branding from the Equipment; and (ii) placing any signs, labels or your branding on the Equipment.

#### **Location**

(c) If you have notified us of the location that you intend to keep the Equipment at, then you must notify us if you intend to move the Equipment from that location.

#### **Protection, Maintenance and Fluids**

(d) You must protect the Equipment from loss or damage (including by taking steps that a prudent company would take to protect similar equipment).

(e) You must carry out all of the checks and perform all of the tasks, set out in any Equipment documentation (including in maintenance manuals). To avoid doubt, this includes carrying out all scheduled servicing. You must inform us immediately of any leaks, noises or faults that could result in damage (or additional damage) to the Equipment and cease using the Equipment until the leak, noise or fault has been investigated.

(f) Without limiting (e), you must only use parts, and oils and other fluids, that we have approved for use with the Equipment.

#### **Inspection Access**

(g) You must provide us, within 7 days after we ask you, with access to the Equipment so that we can inspect it. To avoid doubt, if we inspect the Equipment this will not affect any of your liability, or any of our liability, and all of the provisions of this Agreement apply with full force and effect.

#### **Return Condition**

(h) Prior to returning the Equipment you must clean it and decontaminate it.

(i) You must ensure that Returned Equipment is free of defects (which, to avoid doubt, includes operating normally and not having any missing parts or missing accessories).

(j) To avoid doubt, complying with your obligations in this clause 13 does not affect any of your liability, or any of our liability, and all of the provisions of this Agreement apply with full force and effect.

(k) To avoid doubt, you must meet all of your obligations under this Agreement (including the obligations in this clause 13) solely at your own cost.

### 14. COMPLETE AGREEMENT & THIRD PARTY RIGHTS

(a) This is the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, arrangements, correspondence and discussions of any kind relating to its subject matter. This Agreement may only be varied by written agreement.

(b) This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law.

**15. ASSIGNMENT AND GOVERNING LAW**

(a) You may not deal with (including, to avoid doubt, assign) any of your rights or obligations under this Agreement without our prior written consent and any dealing without that prior written consent is void and of no effect.

(b) We may assign or novate this Agreement as we see fit and you agree to sign any novation that we reasonably require for that purpose.

(c) This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.