

STANDARD EQUIPMENT RENTAL AGREEMENT – NEW ZEALAND

Version: November 2017

1. GENERAL

(a) These Terms and Conditions (**Agreement**) apply to the supply of all equipment (**Equipment**) that the Rental Division of Atlas Copco Australia Pty Ltd or Atlas Copco (N.Z.) Ltd (as applicable) or their respective transferees or successors (**us, our and we**) may supply on hire in New Zealand from time to time to the renter of the Equipment (**you**).

(b) Nothing in this Agreement (including clause 8) affects any non-excludable statutory rights or remedies that you may have including, without limitation, under the *Consumer Guarantees Act 1993 (CGA)*, the *Fair Trading Act 1986 (FTA)* and the *Contract and Commercial Law Act 2017* (except to the extent permitted by those Acts).

You agree that: (i) you are engaged in trade and the Equipment supplied to you under this Agreement is provided for the purposes of a business, such that the CGA does not apply to this Agreement; (ii) that before accepting any Equipment you will examine the Equipment to satisfy yourself on your own judgement as to the condition of the Equipment and its suitability for your purposes and you do not rely on the representations or other conduct of us or our employees or agents, and that you and we expressly contract out of the FTA to the maximum extent possible; and (iii) it is fair and reasonable that the parties are bound by this clause.

(c) This Agreement applies only to the rental of Equipment and ancillary services provided by Atlas Copco Rental (our rental division). Other terms and conditions will apply if we supply other products and services to you.

(d) We comply with the *Privacy Act 1993* and the Privacy Principles set out in that Act. We may collect and use personal information for supplying the Equipment (including for our administrative requirements), for debt collection, for enforcing any rights under this Agreement, and to provide you with information about products or services we think might be of interest to you. You have the right to access and request correction of any personal information we hold about you.

(e) If we or any of our employees, contractors, agents or representatives are required to attend a location under your control (which may not be your sole control) in connection with this Agreement, then you will provide a safe work environment in accordance with all applicable laws, including the *Health and Safety at Work Act 2015*.

2. FEES AND TAXES

(a) You must pay the rental fees and the other fees as set out in this Agreement and in the relevant rental schedule for the whole of the term.

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

(f) 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.

(g) 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).

(h) 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.

Taxes

(i) 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, other than taxes on our income.

(j) 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.

Reimbursement on demand

(k) You agree to repay to us on demand any costs or expenses we may incur to make good any failure by you to company with any of your obligations under this Agreement, or incurred by us in the enforcement or protection of our rights in the Equipment.

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 a registration on the New Zealand Personal Property Securities Register under the *Personal Property Securities Act 1999 (PPS Law)* ensuring a perfected first priority security interest in any Equipment within 10 working days of you taking possession of that Equipment, the rental period (including any option for renewal or 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 the lesser of (i) the specified rental period and any possible renewal or extension terms; and (ii) one year only (being one day short of the applicable threshold period for a lease for a term of under the PPS Law), without any ability to renew or extend the rental period.

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 is delivered to your 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 it within 24 hours; or (ii) replace it if equipment is available.

(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.

(k) We guarantee that the Equipment will be of acceptable quality, free from any material defects and fit for any purpose which you make known to us.

(l) We guarantee that any services we provide to you will be provided with due care and skill and in a timely, professional manner in accordance with your reasonable directions, and will be fit for any purpose which you make known to us.

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) Not applicable (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 representatives; or (v) theft caused by inadequate security.

6. PAYMENT TERMS

(a) Except as otherwise agreed in writing: *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 owing under undisputed invoices (or any undisputed part of a disputed invoice). If we charge you 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 or subject to a security interest (as defined in the PPS Law), 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, 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):

(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 (whether in tort (including negligence), for breach of contract, statute, or common law or otherwise) 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 by us from you in connection with that item of Equipment; and (B) NZ100,000; and (ii) in all other cases: NZ100,000;

(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 contractors, subcontractors or agents);

(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 Equipment); and

(f) if a statute implies a term into this Agreement, and it cannot be excluded, then our liability (whether in tort (including negligence), for breach of contract, statute, or common law or otherwise) 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.

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 companies (as defined in the Companies Act 1993) and whether they occur within or outside New Zealand.

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 companies.

(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 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 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. PPS LAW

(a) You grant to us a 'security interest' for the purposes of the PPS Law (**Security Interest**) in the Equipment as security for the performance of your obligations (including payment obligations) under this Agreement. The Security Interest is a continuing interest irrespective of whether there may be monies or other obligations owing by you to us at a particular time. You will not permit the Equipment to become an accession (as defined in the PPS Law) or affixed to any land or premises.

(b) We may register any actual impending or likely Security Interest over the Equipment and all proceeds of the Equipment. 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. You will meet on demand all costs and expenses we may incur in filing a financing statement or financing change statement under the PPS Law or in maintaining that registration.

(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 maximum extent possible, you agree to waive any period of, or right to notice that, would otherwise apply under the PPS Law in your favour in respect of enforcement by us.

(e) In addition to any rights we have under the PPS Law, you agree that under this Agreement 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, 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) In accordance with section 107 of the PPS Law (*permitted contracting out*) you waive your rights as a debtor under sections 114(1)(a), 116, 120(2), 121, 125 - 127, 129, and 131 - 134 of the PPS Law, and under section 148 of the PPS Law you waive your right to receive a verification statement confirming registration of a financing statement or the filing a financing change statement (and 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 any information relating to the amounts due under, the payment terms of, or obligations secured by, this Agreement except as required for the performance of our respective obligations under this Agreement, as permitted by this Agreement, as required by law, or where disclosure is required to our funders or assignees.

Sub-hire

(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 (and each of our directors) 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, together with each applicable rental schedule for the supply of any Equipment, 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 be updated by us at any time with written notice to you, and this Agreement, as amended, will apply to each current agreement for the rental of Equipment you have with us from the date of that notice.

(b) This Agreement does not confer any rights or benefits upon any third parties (except our related companies, as expressly provided in this Agreement) 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

(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. A change in your control or beneficial ownership will be deemed to be an assignment.

(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.

16. ENFORCEMENT OF AGREEMENT AND GOVERNING LAW

(a) This Agreement is governed by the laws of New Zealand.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any matter arising out of or in connection with this Agreement.

(c) Our failure to enforce any term of this Agreement will not be construed as a waiver of any of our rights.