

## Terms and Conditions of Hire and Sale

### 1. Definitions

"Owner" is Air Powered Services Pty Ltd ABN 63 070 186 159 or any of its Related Bodies Corporate

"Agreement" means the Hire Agreement or Sale Agreement of which these terms and conditions form a part, as the context requires.

"Collateral" means all goods or Equipment supplied by the owner to the Customer, or ordered by the Customer but not yet supplied, and includes any goods or equipment described in a contract, quotation, invoice, purchase order or other document associated with this Agreement, and over which the Owner intends to register a Security Interest

"Equipment" means any equipment supplied by the Owner, including but not limited to, equipment, accessories and parts set out in the Hire Agreement, Sale Agreement or other agreement between the Owner and the Customer governed by these terms and conditions.

"Customer" is the person, firm, organisation, partnership, corporation, trust or other entity hiring or purchasing the Equipment or services from the Owner.

'Damage Waiver' is defined in clause 5

"Environmental Laws" means any schedule, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including without limitation the use or protection of the environment

"Goods" are deemed to any be any parts, materials, labour or services supplied to the customer for the purposes of sale, can be new or second hand.

"Hire Period" means the period of time for the hire specified in clause 3 below.

"Hire Rates" means the document provided to the customer by the Owner which outlines important information, including but not limited to, the Equipment hired, the rate that applies to that Equipment and any other applicable charges.

"Hire Agreement" means the agreement between the Owner and the customer for the hire of Equipment, the terms of which include the terms of any commercial credit application completed by the Customer in relation to the Owner, any Schedule and these terms and conditions.



"Off Hire" means the Customer has notified the Owner that the Equipment is finished with and is ready for collection or return to the Owner.

"Off Hire Date" means the date the Customer advises the Owner the Equipment is no longer required

"PMSI" means Purchase Money Security Interest and has the meaning given by the PPSA.

"PPSA" means the Personal Properties Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of that act.

"PPSR" means the Personal Property Securities Register as defined by the PPSA.

"Related Bodies Corporate" has the meaning it has in the Corporations Act 2001 (Cth)

"Sale Agreement" means the agreement between the Owner and the Customer for the sale of Equipment, the terms of which include the terms of any commercial credit application completed by the Customer in relation to the Owner, any Schedule and these terms and conditions.

"Security Agreement" has the meaning given by the PPSA.

"Schedule" means the Tax Invoice, Contract, Purchase Order, Hire Rates or other document on the obverse side of these terms and conditions or to which these terms and conditions are otherwise attached or incorporated.

"Security Interest" has the meaning given by the PPSA.

## 2. Credit Terms

- 2.1 Payment is due thirty (30) days from date of invoice unless otherwise stated in writing by the Owner.
- 2.2 If the Customer does not pay the invoice in full by the payment due date, the Owner reserves the right to charge, in addition, any other costs involved under these terms and conditions:
- (a) Interest, calculated monthly, on the outstanding balance at a rate of 2% per calendar month; and
  - (b) Any costs, expenses (including any fees payable to any commercial or mercantile agent) and legal costs incurred by the Owner in recovering any unpaid amounts.
- 2.3 The Owner's express or implied approval for extending credit to the Customer may be revoked or withdrawn at any time by the Owner.



- 2.4 If the Owner withdraws credit from the Customer, all amounts outstanding are due payable immediately on receiving written notice from the Owner.
- 2.5 The Owner is entitled to off-set against any money owing to the Customer amounts owed to the Owner by the Customer on any account whatsoever.
3. **Hire of Equipment**
- 3.1 All clauses of these terms and conditions except clauses 20 to 24 apply to any Hire Agreement.
- 3.2 The Owner agrees to hire the Equipment to the Customer for the Hire Period at the Hire Rates set out in the Hire Agreement.
- 3.3 The Customer is to be charged for the Hire Period and the Customer is entitled to use the Equipment for the Hire Period. Any variation to the Hire Period must be agreed to by the Owner in writing
- 3.4 The Owner reserves the right to charge a minimum period of hire for any Equipment. If the Owner decides to charge a minimum period of hire of one (1) day, the Equipment is taken as hired between the hours of 7.00 am and 5.00 pm.
- 3.5 The Hire Period is limited as follows:
- (a) in the case of any Equipment which may be described by serial number in accordance with the PPSA regulations, 89 days;
  - (b) in the case of any other Equipment, 364 days.
- 3.6 The Hire Period may only exceed the period set out in clause 3.4 if upon the inception of this agreement the Owner specifies a longer period in the Schedule.
- 3.7 If the Customer retains the Equipment in excess of the Hire Period, the it must pay as liquidated damages for breach of these terms and conditions a sum equal to the Hire Rates that applied on the hire of the Equipment immediately before the breach, plus whatever reasonable administrative costs the Owner requires to be paid.
- 3.8 The Owner hires the Equipment to the Customer at its absolute discretion and may refuse to hire to the Customer for reasons including but not limited to failing to provide adequate identification and perceived safety risks.



#### 4. Hire Charges

- 4.1 **Hire:** The Customer must pay the Owner the hire charges set out in the Hire Contract and for the full Hire Period. The Owner reserves the right to amend the hire charges in accordance with any change to its standard pricing for the Equipment
- 4.2 Additional hire charges may apply if the Equipment is used more than 8 hours a day or more than 48 hours per week
- 4.3 **Off-Hire:** When the Customer no longer requires the Equipment and it is available for collection by the Owner, it must contact the local branch of the Owner by 9.00am of the Off-Hire Date.
- 4.4 Provided access is granted to enable collection of the Equipment, hire charges will cease from the Off-Hire Date. If access is not granted to the Owner to collect the Equipment, Hire Charges will continue to apply until the Owner is able to collect the Equipment

#### 5. Damage Waiver

- 5.1 The Owner requires the Customer to pay, in addition to the Hire Rates, an additional 12.5% of the gross rental charges as a damage waiver ('**Damage Waiver**').
- 5.2 The Customer must pay the Damage Waiver unless there is prior agreement to the contrary between the Owner and the Customer.
- 5.3 When the Damage Waiver is paid by the Customer in full, then the Owner will waive its rights against the Customer in respect of damage caused to the hired Equipment caused by fire, storm, collision and accident, provided that:
- (a) the Customer can satisfy the Owner's insurer that the Customer has taken adequate precautions to safe guard the Equipment from damage sustained; and
  - (b) the Customer will ensure that a written police report is promptly submitted to the Owner or it's insurers and generally complies with all reasonable requests of the Owner or it's insurers in relation to the submission of information and the application for and assessment of the relevant insurance claim.
- 5.4 The Damage Waiver does not constitute an insurance policy.
- 5.5 The Damage Waiver does not include any waiver by the Owner in respect of loss or theft.



- 5.6 If the Customer does not take up Damage Waiver, they will be liable for all costs of repairs to the Equipment due to damage, irrespective of cause.
- 5.7 Waiver of rights by the Owner upon payment of the Damage Waiver is subject to payment by the Customer of the excess required (if any) payable under the Owner's insurance policy.
- 5.8 Expressly excluded from the waiver under clause 4.3 is:
- (a) damage due to misuse, abuse, or overloading of the Equipment and/or overhead damage to the Equipment;
  - (b) mysterious disappearance or wrongful conversion of the Equipment;
  - (c) loss or damage in contravention of the conditions of the hire agreement
  - (d) loss or damage from use in violation of any statutory laws and regulations;
  - (e) loss of any accessories supplied with and/or fitted to the Equipment;
  - (f) loss or damage resulting from lack of lubrication or prescribed operator maintenance;
  - (g) loss or damage to motors or other electric appliances or devices caused by overloading or artificial electrical current, including use of under rated extension leads or electrical powered tools and machines including automatic voltage regulators;
  - (h) loss or damage to third parties whilst the hirer is driving and/or towing the Equipment with a truck and/or trailer;
- 5.9 The Customer is responsible for ensuring that truck mounted and/or trailer mounted plant is only driven and/or towed by a driver possessing a valid and suitable driving license as applicable.
- 5.10 If the Customer takes up damage waiver and the Customer or Customer's driver is convicted of a driving offence whilst in possession of the Equipment or drives and/or tows the Equipment in a manner causing damage to the plant or a third party then the damage waiver is deemed to be void and any consequential loss or damage that may arise is deemed to be the responsibility of the Customer.
- 6. Insurance**
- 6.1 The Customer shall be responsible for and at its own expense for insuring the Equipment to its full replacement value and itself against all risks arising from the possession of the Equipment.



Any insurance monies recovered by the Customer in respect of such risks shall, to the extent deemed by the Owner, be applied as directed by the Owner.

- 6.2 If the Equipment is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner and in respect for any claim not with the Customer's agreement for indemnity in clause (add number) here of, no admission, offer, promise or payment or indemnity shall be made by the Customer with the Owner's consent in writing.
- 6.3 The Customer is responsible for full replacement of Equipment should it be stolen or mysteriously disappear up until the time when the Equipment is picked up by the Owner or its representatives or returned to the Owner by the Customer.
- 6.4 Off hiring of the Equipment does not absolve the Customer from their responsibility to ensure the Equipment is safe and secure until it is picked up the Owner or its representatives or returned to the Owner by the Customer.
- 6.5 If requested by the Owner, the Customer must provide the Owner with certificates of currency for Equipment hired.

## 7. Additional charges

- 7.1 The Owner may require the Customer to pay additional charges in respect of and calculated as follows:
- (a) Liquidated damages for the return of the Equipment outside of the Hire Period is at the discretion of the Owner as specified in clause 3, or otherwise at the discretion of the Owner;
  - (b) Freight and other charges for the delivery, installation, commissioning, collection or pick up of the Equipment by the Owner;
  - (c) Any cost by the Owner on the cleaning of the Equipment after the Hire Period;
  - (d) The cost of rectifying any damage to the Equipment caused by the Customer's use of the Equipment;
  - (e) All fines and penalties paid or payable by the Owner caused by the Customer's use of the Equipment;
  - (f) All stamp duty or other statutory charges that may arise pursuant to any contract;



- (g) The cost of consumable items supplied by the Owner and used by the Customer;
  - (h) All operating costs of the Equipment during the Hire Period incurred by the Owner;
  - (i) The cost of replacement of any Equipment loss or stolen during the Hire Period;
  - (j) Any setup, folding, stacking, bagging and/or service calls carried out at the Customer's request;
  - (k) The cost of any operational guidance, instructions or training or instruction of the Equipment or other services provided by the Owner at the rates agreed with the Customer;
  - (l) The cost for any additional or special conditions to permit and gain access to the Customers site including but not limited to site inductions;
  - (m) The costs for changing out Equipment and mobilisation and demobilisation costs;
  - (n) The cost of any variations that are necessary or requested by the Customer;
  - (o) The cost passed on by the Owner arising out of a change in law, code, regulation or Customer policy or guideline
- 7.2 Environmental levy. The Customer must pay the amount specified by the Owner in the hire agreement in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the hire Equipment.
- 7.3 Credit Card Payments. The Customer acknowledges that the Owner imposes a charge for accepting payments via credit card.
- 8. Security Deposit**
- 8.1 The Owner may require a security deposit from the Customer prior to and as a condition of the commencement of the Hire Period and shall be permitted to deduct from the security deposit any additional charges or other monies due but unpaid in respect of the use and hire of the Equipment.
- 9. Use of Equipment**
- 9.1 The Customer acknowledges that it has examined the Equipment and the accessories prior to taking possession here under and that it is clean and in good working order and agrees to inspect the Equipment periodically (at least once per day of hire) and to maintain the Equipment in a safe, secure and proper working condition.



- 9.2 The Customer acknowledges that they have received full and adequate instructions from the Owner as to the operation and safe use of the Equipment.
- 9.3 The Customer shall use the Equipment only as follows:
- (a) In a skillful and proper manner and only for the purpose for which it was manufactured and intended;
  - (b) In accordance with all relevant provisions of law and statute;
- 9.4 The Customer shall:
- (a) Be responsible for the safekeeping and protection from loss or theft of the Equipment;
  - (b) Pay all expenses in connection with the use of the Equipment;
  - (c) Return the Equipment properly cleaned and in good working repair at the expiration of the Hire Period;
  - (d) Not operate the Equipment in a careless or negligent manner, at excess speed or whilst intoxicated;
  - (e) Not permit the use of the Equipment by anyone other than the Customer, the Customer's employer or employee and shall ensure that any operator has any license as may be required by statute or otherwise;
  - (f) Agree that the Owner's identifying marks, including logos, trademarks, service marks and trade names be displayed on the Equipment while in use by the Customer.
  - (g) Conduct a job safety analysis prior to using the Equipment at a site
  - (h) Comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Equipment
- 9.5 The Customer is responsible for arranging at its cost the re-testing and re-tagging of any electrical and fire extinguisher and/or suppression units and equipment comprising of the Equipment by the manufacturers agent in accordance with the manufacturer's instructions, relevant law, applicable Australian Standards and regulatory authority requirements. The Owner is able to arrange, at the Customers cost, for such re-testing and re-tagging of the electrical equipment comprising of the Equipment. Any damage resulting from incorrect testing will be at the Customer cost



- 9.6 The Customer must not remove the Equipment from the state or territory in which it was hired without the Owner's prior written consent, if the Owner provides consent; the Customer must still return the Equipment to the original state or territory in which it was delivered.
- 9.7 The Customer consents to the Owner inspecting the Equipment from time to time without prior notice during the Hire Period. In addition, the Customer may arrange a joint inspection with the Owner at the end of the Hire Period.
- 9.8 Whenever the Customer moves the Equipment, the Customer is to ensure that safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturers guidelines. The Customer (or agent or subcontractor) must observe any safety directions advised by the Owner and/or manufacturer of the Equipment to ensure its safe loading and handling.
- 9.9 The Customer agrees that the Equipment will not be used off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without prior written consent, which may be reasonably withheld.
- 9.10 The Customer warrants that they will comply with all environmental laws from time to time and immediately rectify any breach of an environmental law caused by the use of the Equipment.
- 9.11 The Customer agrees that before accepting the Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying upon the skills or judgement of the Owner or any person purporting to act on its behalf. The Customer acknowledges that, to the extent permitted by law, the Owner has not made any representation or warranty (other than as expressly set out in writing) as to the suitability, condition and fitness for purpose of the Equipment or any other matter.
- 9.12 The Customer is responsible for ensuring any Equipment is returned to the Owner with a full tank of fuel, failing which the Customer acknowledges that additional charges will apply to the Hire Charges for fuel.

## 10. Breakdown of Equipment

- 10.1 Obligations of the Customer: In the event that the hire Equipment breaks down or becomes unsafe to use during the Hire Period, the Customer must:
- (a) Immediately stop using the Equipment and notify the Owner;
  - (b) Take all necessary steps to prevent injury occurring to persons or property as a result of the condition of the Equipment;



- (c) Take all necessary steps to prevent further damage to the Equipment; and
  - (d) Not attempt to repair the Equipment without the Owner's prior written consent.
- 10.2 Obligations of the Owner. In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Owner will:
- (a) Repair the Equipment or provide suitable Equipment when reasonably possible after being notified by the Customer and having had the opportunity to assess the status of the Equipment;
  - (b) Not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the associated costs with any repair or replacement of the Equipment; and
  - (c) not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of the Equipment, however caused, including as a result of the Owner requiring time to assess, repair and/or replace the Equipment.
- 11. Delivery / Pick-up**
- 11.1 The Customer may:
- (a) collect from and return to the Owners Premises the Equipment or
  - (b) request the Owner to collect from and deliver to the Customers premises the Equipment
- 11.2 If the Customer wishes the Owner to collect the Equipment, the Customer must notify the Owner of off-hire and provide access for collection of the Equipment
- 11.3 The Owner:
- (a) may decline a request by the Customer to either deliver or collect the Equipment, in which case the Customer must collect from, and return to the Owners Premises, the Equipment
  - (b) agrees to use its reasonable endeavours to collect the Equipment at the time and date specified by the Customer
- 11.4 Delivery times and dates are estimates only. The Owner is not responsible for the failure or delays in delivery or installation due to an Unforeseen Event. If delivery, installation or collection of the Equipment is suspended or delayed due to the Customers action or inaction, the Customer must reimburse the Owner for its loss and expenses for any delay



- 11.5 The Owner will use its reasonable endeavours to promptly notify the Customer of any delay in delivering, collecting or installing the Equipment
- 11.6 The Customer grants that the Owner or its agent or sub-contractor the right to enter any premises for the purpose of delivery, installation, commissioning, pick-up or removal of the Equipment.

## **12. Equipment Ownership**

- 12.1 The Customer acknowledges that in all circumstances the Owner retains the title to the Equipment (even if the Customer goes into liquidation, external administration of any kind, or bankrupt during the Hire Period).
- 12.2 The Customer's rights to use the Equipment are as a bailee only.
- 12.3 Except as defined in clause 12, the Customer is not entitled to offer, sell, assign sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 12.4 At no times is the Equipment to be deemed a fixture.

## **13. PPSA**

- 13.1 This Agreement constitutes a Security Agreement and the Customer gives to the Owner a Security Interest in all Equipment, all other equipment previously supplied by the Owner to the Customer and all equipment that will be supplied to the Customer in the future by, or after-acquired by the Customer from, the Owner to secure its obligations under this Agreement to the Owner.
- 13.2 The Customer agrees to pay all reasonable expenses including any costs, commissions and legal expenses on an indemnity basis whatsoever arising from the collection of overdue monies or registration, maintenance, enforcement or discharge of a Security Interest and such other costs and expenses the Owner may incur. Amounts due under this clause may be collected as a liquidated debt due and owing to the Owner.
- 13.3 The Customer acknowledges that a PMSI is granted in priority to all other creditors by the Customer in favour of the Owner in respect of the equipment subject of the Security Interest as security for the Customer's obligations to the Owner under this Agreement.
- 13.4 The Customer agrees that funds received by the Owner in respect to Equipment supplied to the Customer shall be applied first to any unsecured portion of the debt owed by the Customer to the Owner under this Agreement, second to any secured portion of that debt, third to any secured



non-PMSI liability and then against any PMSI secured liability.

- 13.5 The Customer hereby gives such permission as is necessary under the PPSA for the Owner to take a Security Interest over any Equipment supplied by the Owner pursuant to this Agreement or Equipment identified in the Schedule.
- 13.6 The Customer authorizes the Owner to make any and all checks to satisfy themselves that the information provided by all persons named in the Agreement is accurate. The customer further authorizes the Owner to periodically check the Customer's credit position. The Customer further authorizes the disclosure of information by a secured party to the Owner under section 275(7)(c) of the PPSA in response to any request for information pursuant to section 275(1) of the PPSA.
- 13.7 The Customer agrees to do all such things as are necessary, including to sign all such documents and or provide any further information that is reasonably necessary to enable the Owner to acquire a perfected security interest and, if applicable, a PMSI, in all Equipment supplied by the Owner to the Customer, including:
- (a) register a Financing Statement or Financing Charge Statement in relation to a security interest on the PPSR;
  - (b) register any other document required to be registered by the PPSA;
  - (c) correct a defect in a statement registered under the PPSA.
- 13.8 The Customer agrees to contract out of, waive or exclude such sections of the PPSA as the Owner may require, to the extent and subject to those extensions being capable of exclusion by law. The Customer expressly agrees to:
- (a) contract out of the enforcement provisions of the PPSA referred to at s115(1)(a) to (r);
  - (b) waive its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Owner and/or any verification statement under s157 and/or notice in relation to a registration event under s 175 of the PPSA in respect of the Security Interest created by these terms and conditions;
  - (c) not, without the prior written consent of the Owner, change its name or initiate any change to any documentation registered under the PPSA under this agreement;
  - (d) until all monies owing to the Owner are paid in full, not sell or grant any other Security Interest in the Collateral without the prior written consent of the Owner;



- 13.9 The Owner undertakes to maintain the accuracy of the registered Security Interest and to remove the registration when the account with the Customer closes, provided that all monies owing to the Owner under the Hire Agreement are paid,
- 13.10 The Owner is irrevocably authorised to enter any premises where the Equipment is kept, and to use the name of the Customer and act on its behalf, if necessary, to recover possession of the Equipment in accordance with the PPSA without liability for trespass or any resulting damage.
- 13.11 If any of the provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of the inconsistency.

#### **14. Liability**

- 14.1 The Owner shall not be liable to the Customer in respect of:
- (a) any expenditure, damages and/or loss to the Customer due to break down or failure of Equipment resulting from fair wear and tear, negligence or default on part of the Owner or any reason whatsoever;
  - (b) delay in delivery of the Equipment caused by or in any way incidental to any strike, lock out, trade dispute, union dispute, fire, tempest, break down, riot, theft, crime disturbances, war, act of god, force majeure, legislation, the inability of the Owner to procure the necessary parts or labour due to any of the foregoing clauses, or any other cause beyond the Owner's control;
  - (c) any personal injury or property damage caused by fair wear and tear of the Equipment, unavoidable accident or improper or careless use of the Equipment by the Customer;
  - (d) Any damage resulting from the hire and subsequent use of the Equipment by the Customer that is not covered by the Owner's insurance policy.
- 14.2 The Customer shall maintain liability, property and workers compensation insurance in amounts necessary to fully protect the Owner and its Equipment against claims or damages of whatever nature or type.
- 14.3 The Customer waives any and all claims against the Owner for the loss or damage to property transported in the Equipment.
- 14.4 The Customer is responsible for loading and unloading of any Equipment, the Customer agrees to assume the risk and indemnify the Owner from the property or personal injury, including damages or injuries attributable to the negligence of the Owner, including its employees and officers.



## 15. Indemnity

15.1 The Customer assumes all risks inherent to the operation and the use of the Equipment by the Customer or its agents. The Customer agrees to assume the entire responsibility for the defence of, and to pay indemnity and indemnify and release the Owner from any and all claims for damage to property or bodily injury (including death), consequential claims, including but not limited to the loss of time or inconvenience from the use, operation, or possession of the Equipment, whether or not it can be claimed or found that such damage or injury related in whole or in part from the Owner's negligence, from the defective condition of the Equipment, or from any cause.

## 16 Negation

16.1 The Owner does not warrant that the Equipment hired by the Customer is of merchantable quality or fitness for the purpose required by the Customer, either express or implied, other than as provided by the statute.

16.2 The Owner does not warrant that the Equipment is free from defect.

16.3 The Owner does not warrant anything which extends the description on the face of the hire agreement.

## 17. Permits and Approvals

16.1 The Customer warrants that it holds all licenses, permits and approvals necessary to hire and use the Equipment and that no restriction of any kind prevents the Customer from entering into an agreement or arrangement for the hire of the Equipment.

## 18. Theft

18.1 The Customer shall be liable for the replacement value of the Equipment if it is stolen during the Hire Period.

18.2 Failure, refusal or neglect to return the Equipment after the Hire Period has expired, or presenting false or misleading identification to the Owner may be construed as evidence of an intention to fraudulently covert the Equipment.

## 19. Termination, Repossession and Disputes

19.1 The Owner may terminate the hire agreement and repossess the Equipment if any hire or additional charges are not met by the due date.



- 19.2 The Owner shall be permitted to enter into, in or upon any premises where the Equipment may be held to repossess the Equipment as herein provided for and the Customer indemnifies the Owner in relation to any costs, claims or damages arising out of such entry.
- 19.3 In the event there is a dispute between the parties to this Hire Agreement or the Customer wishes to make a Claim, the Customer must notify the Owner in writing (to the Branch from which the equipment was hired) of the reasons for the dispute or details on the Claim (including reference to any invoice) within 7 Business Days from the date of the Claim or dispute arose (or date of invoice)
- 19.4 The Customer acknowledges and agrees that failure to comply with the timeframe for notification of any Claim or dispute will mean the Customer is barred from raising a Claim or dispute with the Owner after that time has passed.
- 19.5 Within 14 Business Days of notification of any dispute or Claim, representatives of both parties shall meet to endeavor to resolve the Claim or dispute
- 19.6 If the Claim or dispute cannot be resolved, the chief executive officers of each party shall confer within 14 days of any meeting referred to in Clause 19.5 to endeavor to resolve the Claim or dispute
- 19.7 If the parties fail to resolve the Claim or dispute to this clause, and prior to commencing proceedings, the Claim or dispute must first be referred to arbitration and subject to the Institute of Arbitrators and Mediators Australia for the Conduct of Commercial Arbitration
- 19.8 As security for the obligations and liabilities of the Customer under the Hire Agreement, the Customer (and any guarantors) charge for its performance of its obligations and liabilities, all of its legal and equitable interest (both present and future) of whatever nature held in any and all real property and any other assets. The Customer (and its guarantors) agree, on request by the Owner, to execute any documents and do all things necessary required by the Owner to register a mortgage security or other security interest over any real property or other asset. The Customer (and its guarantors) must indemnify the Owner against all costs and expenses incurred by the Owner in connection with the preparation and registration of any such mortgage or security documents. The Customer (and its guarantors) also consents unconditionally to the Owner lodging a caveat or caveats noting its interest in any caveatable property
- 19.9 The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including in the Purchase Order) apply to the hire of the Equipment unless agreed in writing by the Owner

## 20. Quotations and Pricing



**Air Powered Services Pty Ltd - Melbourne**  
22 Tullamarine Park Road, Tullamarine Victoria 3043  
T 1800 247 769 T 03 8319 9000 F 03 8317 0166  
[www.airpoweredservices.com.au](http://www.airpoweredservices.com.au) ABN 63 070 186 159

**Air Powered Services Pty Ltd - Darwin**  
26 Graffin Crescent, Winnellie Northern Territory 0820  
PO Box 36069, Winnellie Northern Territory 0820  
T 1800 247 769 T 08 8947 4542 F 08 8947 1393

- 20.1 Prices charged for goods will be according to a current quotation for those goods. Otherwise, they will be determined by the Owner by reference to its standard prices in effect from the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order).
- 20.2 The Owner will endeavor to notify the Customer of any price changes but accepts no liability in respect to this.
- 20.3 Any quotation by the Owner shall not constitute an offer. Quotations remain valid for thirty (30) days from the date of quotation.
- 20.4 Any quotation, acceptance of quotation, purchase order or other document which requires a signature may be signed in electronic form, and such shall be binding upon the person affixing that signature.
- 20.5 Unless otherwise specified by the Owner, the prices exclude:
- (a) Any statutory tax, including GST, duty or impost levied in respect of the goods and which has not been allowed for by the Owner in calculating the price;
  - (b) Costs and charges in relation to insurance, packing, crating, delivery and export of goods.

## **21. Delivery and Supply – Goods**

- 21.1 Any times quoted for the delivery and/or supply are estimates only and the Owner shall not be liable for the failure to deliver/supply. The Customer shall not be relieved of any obligation to accept or pay for the goods, by reason of any delay in delivery/supply or dispatch. The Owner reserves the right to stop supply at any time if the Customer fails to comply with the terms and conditions.
- 21.2 The Owner may refuse to supply any order by the Customer for goods in its absolute discretion and may make acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 21.3 If the Customer directs that the delivery of goods be staggered across different times or different or to different addresses from those specified in the credit application, the Customer:
- (a) Shall be liable for any additional cost, charge and expense incurred by the Owner in complying with the Customer's direction; and



- (b) Shall pay for the whole of the invoiced value of the goods notwithstanding the staggered delivers;
  - (c) Such action shall be deemed to be delivery to the Customer.
- 21.4 The Customer is deemed to accept delivery of the goods where it is either delivered to the Customer's premises or when the Owner notifies the Customer that the goods are available for collection.
- 21.5 If the Customer is unable is unable or fails to accept delivery of the goods, the Owner may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place determined by the Owner. Such action shall be deemed to be delivery to the Customer. The Customer will be liable for all cost, charges and expenses incurred by the Owner on account of storage, detention, double cartage/delivery or similar causes.

## 22. Property

- 22.1 In addition to any lien to which the Owner may, by statute or otherwise, be entitled, the Owner shall in the event of the Customer's insolvency, bankruptcy, or winding up, be entitled to a general lien over all property or goods belonging to the Customer in the Owner's possession (although all or some such goods or property may have been paid) for the unpaid price of any goods sold or delivered to the Customer under any invoice or contract.

## 23 Returns, Cancellations and Claims

- 23.1 The Customer shall not return any goods to the Owner without obtaining prior authorisation from the Owner. No returns will be accepted unless a copy of the relevant invoice is enclosed with the goods. A list of goods returned including product descriptions, quantity, date of return and the Customer's details must also be enclosed.
- 23.2 Freight charges must be paid for by the Customer.
- 23.3 All goods must be returned in their original packaging and the Customer is responsible for all damage incurred during return shipment. A credit note will be issued by the Owner only after the goods returned are either collected by the Owner's authorised representative or returned to the Owner by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to the Owner but must receipt of a credit note.
- 23.4 All goods returned must be of a merchantable and reasonable quality such that the goods are complete in their original packing, not shop-spoiled, are not price ticketed and are still listed in the current price list.



- 23.5 If the Owner accepts the return of any goods that have been ordered, the Owner may charge the Customer twenty percent (20%) of the invoice price as a restocking fee with freight costs and risk remaining with the Customer.
- 23.6 No cancellations or partial cancellation of an order by the Customer shall be accepted by the Owner unless it has first consented in writing to such cancellation or partial cancellation and unless a restocking fee has been paid which, as determined by the Owner, will indemnify the Owner against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.
- 23.7 All complaints, claims or notification of hire charges lost goods, incomplete goods, goods damaged in transit or goods that do not comply with the Customer's purchase order or acceptance must be submitted by the Customer to the Owner in writing within seven (7) business days of the date of the invoice rendered for the supply of the goods/services or hire. Otherwise, the Customer shall be deemed to have accepted the goods/services or hire charges and shall not refuse to pay for the goods/services or hire charges on the basis that they were lost, incomplete, damaged in transit, disputed or do not comply with the Customer's purchase order.
- 23.8 Clauses 23.9 and 23.10 only apply if the Customer is deemed a 'Consumer' for the purposes of Section 3 of the Australian Consumer Law (ACL)
- 23.9 The Owners Equipment comes with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure
- 23.10 To the extent the Owners Equipment is not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Owner may limit its liability to repair or replacement of the Equipment or the payment of the cost of repairing or replacing the Equipment, or supplying services again or payment for the cost of supplying services again, in accordance with section 64A of the Australian Consumer Law.

## 24. Personal Property Security Interest - Sale Agreements

- 24.1 This clause applies to Agreements that are also Sale Agreements relating to goods supplied by the Owner. The provisions of this clause are in addition to clause 12, and where there is inconsistency, this clause prevails.
- 24.2 The Customer warrants that the goods are not purchased for personal, domestic or household purposes.



- 24.3 Until the Customer has paid all money owing to the Owner the Customer shall at all times ensure that:
- (a) all goods supplied by the Owner, while in the Customer's possession can be readily identified and distinguished and/or;
  - (b) all proceeds (in whatever form) that the Customer received from the sale of any goods are readily identifiable and traceable.
- 24.4 Where the goods are purchased by the Customer and held as inventory, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Apart from the foregoing, until the Customer has paid all monies owing to the Owner the Customer shall not sell or grant a security interest in the goods with the Owner's written consent.

## 25. Privacy

- 25.1 To enable the Owner to assess a Customer's application for credit, the Customer authorise the Owner:
- (a) to obtain from a credit reporting agency, a consumer or a commercial credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1) of the *Privacy Act*, and
  - (b) To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and
  - (c) To give to a credit reporting agency information including identity particulars and application details
- 25.2 In accordance with Section 18N(1) of the *Privacy Act* the Customer authorises the Owner to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.
- 25.3 The Customer understands that information can be used for the purpose of assessing its application for credit (Section 18L(4) *Privacy Act*), assisting it to avoid defaulting on its credit



obligations, assessing credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these terms.

## **26. Execution and Variation of Terms and Conditions**

- 26.1 A person signing on behalf of the Customer warrants that they either are the Customer or are duly and properly authorised to act as an agent for the customer (and such persons may include an employee or contractor of the customer). The Owner may request proof of identity from the customer.
- 26.2 These terms and conditions can only be varied by the Owner's consent.
- 26.3 The Owner may at any time vary these Terms and Conditions of Hire and Sale which will come into effect 14 days after notice is given to the Customer where possible by email or otherwise by notice through the Owners website. Any other variation of the Hire Agreement must be agreed to in writing by the Owner and the Customer
- 26.4 This edition of the Terms and Conditions of Hire and Sale replaces and supersedes all previously issued terms and conditions by the Owner.

## **27. Acceptance of Terms and Conditions**

- 27.1 The Customer acknowledges that it has read and accepted these terms and conditions.

