

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.

## STANDARD TERMS OF RENTAL

### 1. DEFINITIONS AND FORMATION OF CONTRACT

In these terms:

“**Agreement**” means the terms and conditions of the agreement between the Customer and Atlas Copco for the provision of Hire Equipment as evidenced in any quote issued by Atlas Copco, these Rental Conditions, and except for any inconsistencies, Atlas Copco’s Standard Terms and Conditions of Supply.

“**Atlas Copco**” means Atlas Copco Australia Pty Ltd, ABN 85 620 125 153.

“**Customer**” means the person or entity who has provided Atlas Copco with a Purchase Order or other document seeking Hire Equipment.

“**Hire Equipment**” means materials, equipment, tooling or other property belonging to Atlas Copco, which has been made available to the Customer for hire and may otherwise be referred to as Equipment in these Rental Conditions.

“**Full List Price**” means the market value of any equipment, parts and/or consumables, as is determined by Atlas Copco, from time to time, that is chargeable to the Customer in accordance with the terms of this Agreement with respect to any Hire Equipment, equipment or related parts and/or consumables.

“**Purchase Order**” means the Customer’s purchase order.

“**PPS Law**” means the Personal Property Security Act 2009 (Cth) and any associated rules and regulations.

“**Rental Conditions**” means the terms and conditions set out herein.

“**Services**” means the services described in a Purchase Order.

“**Specification**” means the specifications for the Hire Equipment as set out or referenced in any Quote issued by Atlas Copco, and thereafter in the respective Purchase Order.

“**terms and conditions**” mean this and other documents comprising of the Agreement.

### 2. GENERAL

2.1 Atlas Copco’s rental of Hire Equipment to the Customer is expressly conditioned upon the Customer’s agreement to these Rental Conditions. Any acceptance by the Customer of an offer by Atlas Copco with respect to Hire Equipment is expressly limited to the Customer’s acceptance of these Rental Conditions.

2.2 Any terms and conditions submitted by the Customer which add to, vary from or conflict with these Rental Conditions are hereby expressly rejected unless there is a written agreement covering rental terms and conditions which has been negotiated and mutually executed by authorised representatives of Atlas Copco and the Customer, and such agreement is applicable to the particular Hire Equipment, whereby such written agreement shall take precedence (to the extent of inconsistencies) and these Rental Terms will be supplemental to such agreement.

2.3 Any quote provided to the Customer may be withdrawn at any time prior to the Customer’s acceptance is provided to Atlas Copco in writing.

2.4 For the avoidance of doubt, these Rental Conditions only apply to the rental services provided by Atlas Copco, and all other goods and services provided by Atlas Copco are provided to the Customer pursuant to Atlas Copco’s Standard Terms and Conditions of Supply, which can be found at <https://www.atlascopco.com/en-au> (“the Atlas Copco Standard Terms of Supply”).

### 3. RENTAL PERIOD

3.1 Unless Atlas Copco have agreed to a different time and date with the Customer in writing, the rental term of the Hire Equipment starts on the time and date that the Hire Equipment leaves Atlas Copco’s premises (Commencement Date).

3.2 Unless Atlas Copco have agreed a different time and date with the Customer in writing, the rental term of the Hire Equipment ends on the date that the Hire Equipment has been returned to the branch from which the Hire Equipment was supplied or that branch issues an official ‘off-hire’ number to the Customer after the Customer correctly confirms that the Hire Equipment is no longer required and is available for collection. If Atlas Copco and the Customer have not agreed to any fixed term in writing,

3.3 Atlas Copco may terminate the hire at any time

3.4 Unless otherwise agreed, a daily rental shall be twenty-four (24) hours, a weekly rental shall be seven (7) consecutive days and a monthly rental shall be twenty-eight (28) consecutive days.

3.5 If Atlas Copco do not have:

3.5.1 at the Commencement Date; and

3.5.2 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 Hire Equipment, the rental period (including any option for extension of the rental period or the aggregate of consecutive rental periods during which the Customer has or may have substantially uninterrupted possession) shall, despite anything else in these Rental Conditions and

### 4. FEES AND TAXES

4.1 The Customer must pay to Atlas Copco the rental fees and the other fees associated with any Hire Equipment as set out in any quote issued by Atlas Copco which has subsequently been accepted within thirty (30) days by the Customer. If no quote has been issued, the Customer shall pay the relevant rental fees associated with the Hire Equipment as may be set out by Atlas Copco on its standard schedule of fees, as amended from time to time.

4.2 If the Hire Equipment is not returned by the Customer to Atlas Copco: (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 Hire Equipment is returned to Atlas Copco.

4.3 If Atlas Copco sends a technician to repair the Hire Equipment (see clause 5.6 below) and the Hire Equipment is not available or not at the agreed site, then an attendance fee is payable by the Customer. Unless Atlas Copco have agreed a different fee with the Customer, the attendance fee shall be Atlas Copco’s then current attendance fee. A copy of Atlas Copco’s current attendance fees is available at any time on request.

4.4 Unless the Customer directs Atlas Copco not to, in writing, (and before the Hire Equipment leaves Atlas Copco’s premises), Atlas Copco will charge the Customer a damage waiver fee for the Hire Equipment. Unless Atlas Copco have agreed a different fee with the Customer, the damage waiver fee is Atlas Copco’s damage waiver fee at the time the rental commences. A copy of Atlas Copco’s current damage waiver fees is available at any time on request.

4.5 Atlas Copco may, at its absolute discretion, charge the Customer a credit card fee of up to 1.5% of the payment amount for any payments made by the Customer by credit card.

4.6 If the Hire Equipment is stolen whilst in the Customer’s care, possession or control, then (without limiting any of Atlas Copco’s other rights or remedies) the rental fee continues to be payable (in full) until the Customer notifies Atlas Copco, in writing, of the theft.

4.7 Without limiting any other right or remedy of Atlas Copco, the rental fee continues to be payable (in full) during any period that the Hire Equipment is not operating correctly (or at all) because of anything referred to in clause 5.9 or a failure to comply with clause 5.5.

4.8 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 Bureau of Statistics. To avoid doubt, decreases are not applied, and increases apply regardless of when a rental term commenced.

4.9 Atlas Copco 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 **Error! Reference source not found.** and 4.8 above).

#### Taxes

4.10 The fees referenced in any quote or agreement do not include taxes. The Customer must pay all taxes arising from, or relating to, this Agreement in addition to any fees quoted or otherwise provided. Taxes mean all taxes of any kind (including stamp duties) other than taxes on Atlas Copco’s income.

4.11 Without limiting clause 4.10, the Customer must pay Atlas Copco the amount of any goods or services tax for a supply. Atlas Copco will provide the Customer with a tax invoice.

### 5. EQUIPMENT

5.1 When Atlas Copco agrees to rent the Customer an item of Hire Equipment, a separate agreement, which contains all of the terms and conditions of this Agreement, except this clause 5.1, is created for that item.

5.2 The Customer may not rent, lease, lend or part with possession of the Hire Equipment unless Atlas Copco has agreed, in writing, that the Customer may do so.

5.3 Notwithstanding any other term, condition or provisions to the contrary, Atlas Copco will always own all right, title and interest in the Hire Equipment. The Customer does not in any way and shall not obtain any form of interest (whether legal, equitable or otherwise) in the Hire Equipment (even if such Hire Equipment is installed on, or is incorporated into, any of the Customer’s equipment).

5.4 Risk in the Hire Equipment passes to the Customer when it leaves Atlas Copco’s premises and remains with the Customer at all times until it is returned to Atlas Copco.

5.5 The Customer must comply with the additional customer obligations in clause 11.

5.6 The Customer acknowledges that Hire Equipment is in a used condition.

5.7 If the Hire Equipment breaks down, then Atlas Copco will (in its absolute discretion), upon being promptly notified by the Customer of the breakdown in writing: (i) repair or replace the relevant item of Hire

Equipment; or (ii) terminate the Agreement and refund any rental fees paid in advance, less any amounts that the Customer owes Atlas Copco for the rental term in which the Hire Equipment was operational.

- 5.8 The Customer must (at the Customer's cost) return the Hire Equipment to the Atlas Copco branch/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 Hire Equipment has not been returned by that time, then: (A) Atlas Copco may recover it; and (B) the Customer must pay all of the costs that Atlas Copco incur in doing this (including legal costs (on an indemnity basis) and claims against Atlas Copco by the Customer or a third party).
- 5.9 Subject to clause 6, if (for any reason) the Hire Equipment (or any part of the Hire Equipment):
- 5.9.1 goes missing, is stolen, is seized, is converted or is damaged beyond repair, then the Customer must pay Atlas Copco its Full List Price; or
- 5.9.2 at no fault of Atlas Copco, is not working or is damaged (fair wear and tear excepted), then the Customer must pay us: (A) for the parts and labour to repair it; or (B) its Full List Price, if it cannot be repaired.
- 5.10 Without limiting clause 5.9, if the Customer does not comply with the Customer's obligations in clause 5.5, then the Customer must pay Atlas Copco (as the case may be): (i) to repair any damage that such acts or omissions cause (including all parts and labour); (ii) to replace any non-approved parts or fluids with approved parts and fluids (including all parts and labour); and (iii) the cost of cleaning and decontaminating the Hire Equipment.
- 5.11 Amounts under clauses 5.8, 5.9 and 5.10 are payable as a debt due and payable by the Customer within 7 days after Atlas Copco requests payment.

## 6. DAMAGE WAIVER

- 6.1 If there is a Damage Waiver Event (see 6.2 below) for the Hire Equipment and:
- 6.1.1 the Customer has paid the damage waiver fee; and
- 6.1.2 the Customer pays Atlas Copco an additional amount equal to the greater of: (A) 10% of the list price of the relevant Hire Equipment; and (B) AUD500,
- then subject to clause 6.3, Atlas Copco will waive its right to claim for the cost of repairing the damaged Hire Equipment or for the loss of the stolen Equipment (as the case may be).
- 6.2 For the purpose of this clause 5, a Damage Waiver Event is agreed to be: (i) damage that occurs when the Hire Equipment is damaged by fire, storm, earthquake, collision or accident; or (ii) loss that occurs when there is a genuine theft of Equipment.
- 6.3 The damage waiver in 6.1 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 Hire Equipment is located, used, loaded, unloaded, transported on land, or 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 the Customer or the Customer's personnel; or (v) theft caused by inadequate security.

## 7. PAYMENT TERMS

- 7.1 For Customers who have opened an account with Atlas Copco and appropriately completed an application for an account, all fees shall be payable in arrears, 30 days from the relevant invoice date.
- 7.2 For any Customer who does not hold a valid account with Atlas Copco, all fees shall be payable in advance.
- 7.3 Without limiting any other right or remedy, Atlas Copco may charge the Customer daily interest, at 1.5% per month, on all overdue amounts. If Atlas Copco charge interest, then the Customer must pay such interest charge within 7 days after Atlas Copco request payment of the same. Together with any interest charges, the Customer will be liable to pay all costs and expenses, including all legal fees and costs (on an indemnity basis), incurred by Atlas Copco in collecting or otherwise recovering overdue amounts from the Customer.
- 7.4 Without limiting any of Atlas Copco's other rights or remedies, Atlas Copco may immediately terminate this Agreement if any amount due under this Agreement remains outstanding for more than 30 days.

## 8. INSURANCE & INSOLVENCY

- 8.1 The Customer must do all acts and things to insure (and keep insured until its return to Atlas Copco) with a reputable insurer the Hire Equipment at its Full List Price during the rental period at its sole expense. The insurance must include cover for loss or damage caused by fire, storm, tempest, theft, burglary, riots, strikes, civil commotion and explosion. The relevant insurance policies must be in the Customer's name note Atlas Copco's interest as an additional insured.
- 8.2 In the event of a loss, the Customer shall cooperate with Atlas Copco and the Customer's insurer in any investigation, prosecution and the defence of any claim, action or suit, and the Customer must not do anything to impair or invalidate the required insurance coverage.

- 8.3 To avoid doubt, complying with the Customer's obligations in clauses 8.1 and 8.2 do not affect or otherwise limit or reduce any of the Customer's liability, or otherwise affect any of Atlas Copco's liability, and all of the provisions of this Agreement will apply with full force and effect.

- 8.4 The Customer must do everything reasonably necessary to protect Atlas Copco's right, title and interest in the Hire Equipment. Without limitation, the Customer must:

- 8.4.1 not encumber the Hire Equipment (or any part of the Hire Equipment), or allow it to be encumbered, in any way; and
- 8.4.2 if someone tries to seize, sell or deal with the Hire Equipment (or any part of the Hire Equipment), then the Customer must immediately: (A) tell that person/entity that the Hire Equipment is Atlas Copco's property; (B) notify Atlas Copco; and (C) do everything that the Customer can lawfully do to prevent the seizure, sale or dealing of the Hire Equipment.

- 8.5 If the Customer is (or is 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) Atlas Copco may immediately terminate this Agreement; and (ii) the Customer irrevocably authorises Atlas Copco to enter any premises and remove the Hire Equipment.

## 9. PPSA

- 9.1 This clause applies to the extent that Atlas Copco's interest under this Agreement is a 'security interest' for the purposes of the PPS Law (Security Interest).
- 9.2 Atlas Copco may register any actual pending or likely Security Interest. The Customer may not make a claim or demand against Atlas Copco for any loss or liability action of any kind in respect of any registration, even if it is determined that Atlas Copco should not have made a registration. The Customer must do anything (such as obtaining consents and signing documents) which Atlas Copco requires for the purposes of ensuring that Atlas Copco's Security Interest is enforceable, perfected, first in priority and otherwise effective under the PPS Law.
- 9.3 Atlas Copco's rights under this Agreement are in addition to and not in substitution for Atlas Copco's rights under other law (including the PPS Law) and Atlas Copco may choose whether to exercise rights under this Agreement, and/or under such other law, as Atlas Copco sees fit.
- 9.4 to the extent that Chapter 4 of the PPS Law applies to any Security Interest under this Agreement, the Customer agrees to waive any period of, or right to notice that, would otherwise apply under Chapter 4 in the Customer's favour in respect of enforcement by Atlas Copco.
- 9.5 In addition to any rights under Chapter 4 the Customer agrees that Atlas Copco shall, if there is a default by the Customer, 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 the Customer agrees that Atlas Copco may do so in any manner Atlas Copco sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 9.6 The Customer waives any and all of the Customer's 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.
- 9.7 Atlas Copco and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on the Customer's 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 Atlas Copco the benefit of section 275(6)(a) and Atlas Copco shall not be liable to pay damages or any other compensation for breach of this sub-clause.
- 9.8 The Customer must not dispose or purport to dispose of or create or purport to create or permit to be created any Security Interest in the Hire Equipment other than with Atlas Copco's written consent. The Customer must not lease, hire, bail or give possession (Sub-hire) the Hire Equipment to anyone else unless Atlas Copco (in Atlas Copco's absolute discretion) first consents in writing. If Atlas Copco does consent, any such Sub-hire must be in writing, in a form acceptable to Atlas Copco and must be expressed to be subject to Atlas Copco's rights under this Agreement. The Customer may not vary a Sub-hire without Atlas Copco's prior written consent (which may be withheld in Atlas Copco's absolute discretion).
- 9.9 The Customer must ensure that Atlas Copco is 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 Hire Equipment.
- 9.10 The Customer must take all steps (including registration under PPS Law) as may be required by Atlas Copco; (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 the Customer to gain (subject always to Atlas Copco's rights) first priority (or any other priority agreed to by Atlas Copco in writing) for the Security Interest; and  
(iii) enabling Atlas Copco and the Customer to exercise Atlas Copco's respective rights in connection with the Security Interest.

9.11 To assure performance of the Customer's obligations under this clause, the Customer hereby gives Atlas Copco an irrevocable power of attorney to do anything Atlas Copco considers necessary to protect Atlas Copco's interest in the Hire Equipment. Atlas Copco may recover from the Customer the cost of doing anything under this clause, including registration fees

## 10. LIABILITY

10.1 Nothing in these Rental Conditions (including clause 10.2) affects any non-excludable statutory rights or remedies that the Customer may have.

10.2 To the maximum extent permitted by law and subject to clause 10.1:

10.2.1 Atlas Copco excludes all implied terms (statutory or otherwise - including implied warranties) of any kind.

10.2.2 Atlas Copco excludes 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);

10.2.3 Atlas Copco's total liability for loss or damage of any kind not excluded by other provisions in these Rental Conditions is limited in aggregate as follows:

(i) for liability relating to an item of Hire 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;

10.2.4 Atlas Copco's liability with respect to these Rental Conditions is reduced to the extent that the liability was caused or contributed to by an act or omission by the Customer or by any of the Customer's personnel (including agents and subcontractors);

10.2.5 Clauses 10.2.1 – 10.2.4 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 the Rental Conditions, this Agreement (including arising from or related in any way to the Hire Equipment); and

10.2.6 If a statute implies a term into these Rental Conditions or this Agreement, and it cannot be excluded, then Atlas Copco's liability for breaching it will be limited (at Atlas Copco's 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. Atlas Copco may choose not to do any of these things.

## 11. ADDITIONAL CUSTOMER OBLIGATIONS

### Operation by Qualified Personnel

11.1 The Customer warrants and represents that the Hire Equipment is and shall be 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

11.2 The Customer must not alter (including add anything to or remove anything from) the Hire Equipment. To avoid doubt, this includes: (i) removing any signs, labels or Atlas Copco's branding from the Hire Equipment; and (ii) placing any signs, labels or the Customer's branding on the Hire Equipment.

### Location

11.3 If the Customer has notified Atlas Copco of the location that the Customer intends to keep the Hire Equipment at, then the Customer must notify Atlas Copco immediately and at least seven (7) days before the Customer intends to move the Hire Equipment from that location.

### Protection, Maintenance and Fluids

11.4 The Customer warrants and represents that it will protect the Hire Equipment from loss or damage (including by taking steps that a prudent company or individual would take to protect similar equipment).

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

11.6 Without limiting 11.5, the Customer must only use parts, and oils and other fluids, that Atlas Copco has approved for use with the relevant Hire Equipment.

### Inspection Access

11.7 The Customer must provide Atlas Copco, within the 7-day period after Atlas Copco asks the Customer to access the Hire Equipment, with access to the Hire Equipment so that Atlas Copco can inspect it. To avoid doubt, if Atlas Copco inspect the Hire Equipment this will not affect, limit or reduce any of the Customer's liability, or any of Atlas Copco's liability, and all of the provisions of this Agreement apply with full force and effect.

### Return Condition

11.8 Prior to returning the Hire Equipment the Customer must clean the Hire Equipment and decontaminate it.

11.9 The Customer must ensure that returned Hire Equipment is free of defects (which, to avoid doubt, means that the Hire Equipment operating normally and does not any missing parts or missing accessories).

11.10 The Hire Equipment will be supplied with all fluids (fuels, oils, additives) at maximum levels. The Customer will be responsible for, and further warrants and represents that it shall ensure that the Hire Equipment is returned with all fluids (fuels, oils and additives) at maximum levels. The cost for filling returned equipment fluids to their maximum levels will be charged at Full List Price.

11.11 To avoid doubt, complying with the Customer's obligations in this clause 11 does not affect, limit or reduce any of the Customer's liability, or otherwise affect any of Atlas Copco's liability, and all of the provisions of this Agreement apply with full force and effect.

11.12 To avoid doubt, the Customer must meet all of the Customer's obligations under this Agreement (including the obligations in this clause 11) solely at the Customer's own cost.

## 12. COMPLETE AGREEMENT & THIRD-PARTY RIGHTS

12.1 This Agreement 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.

12.2 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.

## 13. ASSIGNMENT AND GOVERNING LAW

13.1 The Customer may not deal with (including, to avoid doubt, assign) any of the Customer's rights or obligations under this Agreement without Atlas Copco's prior written consent and any dealing without that prior written consent is void and of no effect.

13.2 Atlas Copco may assign or novate this Agreement as Atlas Copco sees fit and the Customer agrees to sign any novation that Atlas Copco reasonably requires for that purpose.

13.3 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.