

## Standard Terms and Conditions of Hire

Effective 1<sup>st</sup> July 2015

These Terms and Conditions are incorporated in all Contracts for the supply of Equipment to the Customer by Firequip Pty Ltd ABN 77 003 826 588.

### 1. DEFINITIONS

In these Terms and Conditions the following words have the meanings shown:

- (a) "Company" means Firequip Pty Ltd;
- (b) "Customer" means the person, firm or company hiring equipment from Firequip;
- (c) "Equipment" means all plant, machinery, tools, accessories and parts supplied to the Customer.

### 2. HIRE CHARGES

- (a) Hire charges for Equipment are as set out in the Company's current price list and subject to a minimum hire period of 1 day. The Company reserves the right to alter its hire charges without notice.
- (b) Hire charges are calculated from the time the Equipment leaves the Company's premises (inclusive of weekends and public holidays) until the Equipment is returned to the Company's premises, whichever is the later. Except where the Customer provides the appropriate notification, as Clause 3(b), that the Equipment is ready for collection by the Company in which case charges will apply to the point where such notification is received.
- (c) In the event that the Equipment is not returned by 8.00am on the working day following the last day of the hiring period, the Customer shall be liable for additional fees at the full daily rate if it is returned after 12 noon or ½ day if returned before noon.
- (d) Provided the Customer notifies the Company by 8.00am on the day following any Equipment breakdown, hire charges calculated on an hourly basis will not be charged for the duration that the Equipment is not working, unless such condition is due to negligence or misuse on the part of, or attributable to the Customer. Such notification does not absolve the Customer from their requirement to keep the Equipment in safe custody until repairs are effected or replacement Equipment is supplied by the Company.

### 3. PAYMENT

- (a) Hiring fees must be paid prior to the hiring of the Equipment or in the case of Account Customers within 30 days of the end of the month in which the hire charges are invoiced.
- (b) The Company reserves the right to issue progress invoices where the Equipment is subject to long term hire. A final invoice will be issued on cessation of hire.
- (c) The Customer agrees to reimburse the Company for any additional Government duties, taxes and expenses, which the Company may be liable for in connection with the hire of the Equipment.

### 4. DELIVERY

- (a) Unless the Customer arranges the delivery and return of the Equipment by the Company, the Customer shall be responsible for the collection and return of Equipment. Where at the Customer's request, Equipment is delivered or collected by the Company, the Company shall have absolute discretion as to the mode of delivery and the delivery and collection will be at the Customer's expense.
- (b) Where the Equipment is to be collected the Customer must provide notification to the Company that the Equipment is available for collection, at which point the Company will provide the Customer with an 'Off Hire' number. The notification shall be given by the Customer in time for the Equipment to be collected and returned to the Company's premises by 5.00pm on the day of cessation of hire. Where insufficient notice is provided the Customer will be responsible for the safe keeping of the Equipment until it is collected on the following day and additional ½ day hire may be charged.

### 5. IMPLIED TERMS

- (a) All warranties and conditions expressed or implied by statute, common law, equity, trade, customer usage or otherwise howsoever are to the extent permitted by law expressly excluded from this contract
- (b) The Customer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or undertaking as to the fitness of the equipment for any particular matter. The Customer acknowledges that without relying on the skill and judgement of the Company it has determined that Equipment conforming to the contract description will be fit for its purposes.

### 6. GENERAL CONDITIONS

- (a) The Customer will ensure that a suitably qualified operator only shall use the Equipment in a proper manner and within the capacity for which the Equipment was designed.
- (b) At its own expense the Customer shall service, clean, fuel, lubricate and generally maintain the Equipment in good and substantial repair and condition (reasonable wear and tear excepted, unless caused by negligence or misuse on the part of or attributable to the Customer), except for prearranged major servicing, which will be carried out by the Company during normal working hours.
- (c) The Customer shall clean the equipment upon completion of the hire period or be charged an additional fee for any cleaning undertaken by the Company.
- (d) The Customer accepts full responsibility for the safe keeping of the Equipment, and except as specified thereafter, indemnify the Company for all loss, theft or damage to the Equipment however caused.
- (e) The Customer shall not be entitled to a lien over the Equipment nor without the Company's prior written consent part with possession of the Equipment or assign the benefit of the Hire Agreement, nor remove the Equipment or allow it to be removed from the State.
- (f) The Customer shall not alter, make addition to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- (g) The Customer accepts that waiver charges are automatically included in the Company's hire charges for any Equipment (excluding accessories) where the replacement value of the Equipment exceeds \$100 except upon the Company receiving written advice from the Customer that the waiver cost is not required and that the Customer accepts full replacement or reinstatement costs (whichever is applicable) for any loss, theft or damage to the Company's Equipment.

### 7. COMPANY LIMITATION OF LIABILITY

- (a) Save as expressly provided for in this Agreement the Company shall not be liable to the Customer or its servants or agents for any direct, indirect, incidental or consequential loss, injury or damages of any nature howsoever caused (whether based on tort contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and

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overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this contract, whether resulting from the negligence of the Company, its servants, agents or otherwise.

- (b) The Customer agrees to indemnify and keep indemnified the Company and the Company's servants and agents against any claims actions, suits and demands brought by third parties arising out of the use of the Equipment by the Customer or otherwise arising out of or in connection with this Agreement.
- (c) Certain conditions and warranties may be implied into this Hire Agreement by the Trade Practices Act and State legislation, however the Company and the Customer agree that in the event of the Customer suffering any loss, damage or claim howsoever arising as a result of hiring the Equipment, the liability of the Company is limited to the repair or replacement of the Equipment.
- (d) The person signing this document for or on behalf of the Customer hereby covenants with the Company that he or she has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies the Company against all losses and costs incurred by the Customer arising out of the person so signing this Agreement failing to have such power or authority.

### 8. CUSTOMERS LIMITATION OF LIABILITY

- (a) Where waiver charges have been charged to the Customer, the Company agrees upon prompt submission of a Police Report to waive its claim for loss or damage to the Equipment caused by fire, storm, collision, accident, theft or burglary providing adequate precautions have been taken to safeguard the Equipment. Such waiving of rights is subject to payment by the Customer of an excess of:
  - i) In the event of loss of the Equipment:  
100% of the replacement cost of the Equipment will be charged
  - ii) In the event of damage to the Equipment:  
\$100 per item or 100% of the cost of repairs to the Equipment (whichever is the greater).
- (b) Expressly excluded from the above waiver are loss and damage to the Equipment in the following circumstances:
  - i) Damage due to misuse, abuse or overloading the Equipment;
  - ii) Mysterious disappearance or wrongful conversion of the Equipment;
  - iii) Loss or damage in contravention of the Hire Agreement;
  - iv) Loss or damage from use in violation of any statutory laws and regulations;
  - v) Loss or damage relating to lack of lubrication or other normal servicing of the Equipment;
  - vi) Loss or damage to the Equipment caused by exposure to water;
  - vii) Loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under rated extension leads on electrical powered tools and machines;
  - viii) Theft of the Equipment unless reasonably locked or secured;
  - ix) Loss or damage during transportation, except where transported by the Company.
  - x) Loss or damage to items on which the waiver premium is not charged.

### 9. TERMINATION

- (a) The Company may, notwithstanding the specified period of hire and notwithstanding any waiver of some previous default, forthwith terminate this contract and repossess the Equipment in any of the following events:
  - i) If the Customer fails to pay hiring charges by the due date;
  - ii) If the Customer shall do or permit any act or thing whereby the Company's rights in the Equipment may be prejudiced;
  - iii) If the Customer commits any breach of contract;
  - iv) If the Customer should become or be made insolvent or bankrupt or make any agreement or composition with its creditors or in any case of the Customer being a limited company, should an order be made or a resolution passed for the winding up of such company.
- (b) If such termination occurs the Customer will pay the Company all costs and charges already incurred under this Agreement.
- (c) Upon termination of this Agreement as aforesaid the Company shall be entitled to take possession of the Equipment and for this purpose the Customer authorises the Company or its representatives to enter any land or premises owned by or under the control of the Customer upon which the Equipment is then situated and agrees to indemnify the Company in respect of any claims, damages or expenses arising out of any action taken under this condition.