

Terms & Conditions of Hire

Rev0 May 2016

1. HIRE AGREEMENT BETWEEN YOU AND US

These Terms of Hire, together with:

- (a) each Hire Schedule provided to You by Us, whether signed or not; and
- (b) any Special Conditions specific to the type of Equipment You have hired,

set out the terms of the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. Any terms contained in any document supplied by You, including any terms on Your purchase order, will not form part of the Hire Agreement.

2. DEFINITIONS

When We refer to the following terms in this document:

"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

"Equipment" means any equipment provided by Us to You under the Hire Agreement, including any associated or attached tools, accessories and parts available for hire.

"Expected Off Hire Date" means the date that You expect the Hire Period to end. This date is set out in the Hire Schedule.

"Hire Charge" or "Hire Charges" means the rates and charges payable by You for the hire of the Equipment.

"Hire Period" means the period described in clause 4.

"Hire Schedule" means the document provided by Us to You which includes details of the Equipment You have hired, the Hire Charge, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment.

"Long Distance Location" is a location in excess of 20km from Our Smithfield Headquarters.

"Non Excludable Provision" has the meaning set out in clause 14.3.

"Off Hire Date" has the meaning set out in clause 5.5.

"PMP" is the preventive maintenance programme operated by Us for all Equipment. The PMP involves regular attendance on site by Our service team to conduct routine Equipment servicing and general maintenance requirements.

"Regulatory Authority" means any public authority or government agency responsible for regulating the performance of electrical works.

"Relevant Documents" means: (a) the Credit Application; and (b) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us.

"We/Us/Our" means Jones & Rickard Pty Limited (ABN 76 000 074 135) .

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

3. OUR HIRE COMMITMENT TO YOU

We agree to hire the Equipment to You and will:

- (a) provide the Equipment to You in good working order; and
- (b) subject to clause 8.6, allow You to exclusively use the Equipment during the Hire Period.

4. THE HIRE PERIOD

4.1 The Hire Period commences on the earlier of the following:

- (a) when You take possession of the Equipment; OR
- (b) if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address in the Hire Schedule.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our control or possession.

4.3 The Hire Period includes weekends and public holidays.

4.4 A minimum Hire Period may apply in respect of certain items of Equipment ("Minimum Hire Period"). We will advise you at the time of hiring if a Minimum Hire Period applies. If You return the Equipment to Us before the expiration of the Minimum Hire Period, You are required to pay all Hire Charges in respect of the Minimum Hire Period.

5. HOW WE CALCULATE YOUR HIRE CHARGES

5.1 You will pay Us for the hire of the Equipment at the Hire Charge set out in the Hire Schedule.

5.2 The Hire Schedule will specify the type of rate which will apply to You and the method of calculation.

5.3 You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date. This obligation survives termination of the Hire Agreement.

5.4 Hire Charges will commence from the Hire Period and continue until the date You notify Us that the Equipment will be available for collection (the "Off Hire Date"). For the avoidance of doubt, the Expected Off Hire Date is not considered to be Your notice to Us that the Equipment is available for collection.

6. OTHER CHARGES

In addition to the Hire Charges, You agree to pay:

- (a) for any consumables, fuel or trade materials We supply to You;
- (b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You.
- (c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (d) a charge for refilling water or fuel tanks;
- (e) any stamp duty or GST arising out of this Hire Agreement;
- (f) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
- (g) if You request operational guidance or training on the use of the Hire Equipment, the cost for the provision of these services at rates agreed with Us;
- (h) any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours.

7. PAYMENT

7.1 You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.

7.2 If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:

- (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
- (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

7.3 We are entitled to set off against any amount We owe You any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.

8. YOUR OBLIGATIONS TO US

8.1 This Hire Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.

8.2 You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer.

8.3 You must:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- (b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
- (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
- (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol; (e) conduct a job safety analysis prior to using the Equipment;
- (e) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.

8.4 You must:

- (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
- (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
- (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment; and
- (d) not remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when You return the Equipment;

8.5 At all times during the Hire Period, You must store the Equipment safely and securely.

8.6 You will allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during normal working hours. If We cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.

8.7 Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

8.8 You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.

8.9 You warrant that You 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.

8.10 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 8.9, You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment is not capable of being decontaminated, You will be charged for the replacement cost of the Equipment.

8.11 If, at Your request, We supply an operator to operate the Equipment ("Operator"):

- (a) the Operator will be under Your direction and control during the Hire Period and will comply with Your reasonable directions;
- (b) We will not, while the Operator is working under Your direction and control in accordance with clause 8.11(a), seek to direct or supervise any of the work undertaken by Operator;
- (c) We will not be liable to You for any acts or omissions of the Operator where they are acting under your direction and control during the Hire Period; and
- (d) You will not allow any other person to operate the Equipment without Our prior written consent.

9. OWNERSHIP OF THE EQUIPMENT

9.1 Except as detailed in clause 9.4, You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.

9.2 You are 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.

9.3 In no circumstances will the Equipment be deemed to be a fixture.

9.4 You acknowledge that We may hire or lease Equipment from a third party if we cannot provide the Equipment to You ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third Party Owner.

10. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by Our actions.

11. RETURN OF EQUIPMENT

11.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment, We will charge You a cleaning cost in accordance with clause 6(c).

11.2 Except in the circumstances set out in clause 11.3 below, it is Your responsibility to return the Equipment to the Jones & Rickard Group office You hired it from during normal business hours.

11.3 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

12. WHAT TO DO IF EQUIPMENT BREAKS DOWN

12.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:

- (a) immediately stop using the Equipment and notify Us;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) take all steps necessary to prevent any further damage to the Equipment itself; and
- (d) not repair or attempt to repair the Equipment without Our written consent.

12.2 Except if clause 13.1 applies, upon receiving notice from You under clause 12.1, We will:

- (a) take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
- (b) not impose a Hire Charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

13. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

13.1 If the Equipment has broken down or become unsafe to use as a result of Your acts or omissions, (or the acts or omissions of Your employees or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:

- (a) any costs incurred by Us to recover and repair or replace the Equipment; and
- (b) the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.

13.2 Provided that You pay the costs and charges described in clause 13.1, We will return or replace the Equipment, and You must continue to pay the Hire Charges for the remainder of the Hire Period.

14. INDEMNITIES AND EXCLUSION OF LIABILITIES

14.1 Subject to clause 14.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

14.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.

14.3 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):

(a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so);

or

(b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

14.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.

14.5 Subject to clauses 14.3 and 14.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

14.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of: (a) personal injury; (b) damage to property; or (c) a claim by a third party, in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

14.7 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

14.8 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

15. TERMINATION OF HIRE AGREEMENT

15.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:

(a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 7 days of written notification of the breach; or

(b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

15.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.

15.3 We may terminate the Hire Agreement immediately if You or any third party has made a false statement in, or breached any provision of the Relevant Documents.

15.4 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

16. RECOVERY OF THE EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 15, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

17. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION

If You collect or receive the Equipment and find that it is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

18. LONG DISTANCE MAINTENANCE

18.1 This clause 18 applies if You hire Equipment for use at a Long Distance Location.

18.2 The PMP for all Equipment located at a Long Distance Location will be subject to a per kilometre charge both to and from the premises nominated by You. There will be no charge for the first 20 km either way.

18.3 The PMP for multiple items of Equipment which are located at the Long Distance Location will only be charged as one call out.

18.4 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Equipment in accordance with clause 8, including but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.), checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

18.5 If the Equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.

19. PRIVACY

19.1 We will comply with the Australian Privacy Principles in all dealings with You.

20. FORCE MAJEURE

20.1 Subject to clause 20.2, neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

20.2 Nothing in clause 20.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

21. SEVERABILITY

If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

22. GOVERNING LAW

The Hire Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

23. ENTIRE AGREEMENT

The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with clause 24.

24. VARIATION

From time to time, We may wish to vary this Hire Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Hire Agreement must be agreed in writing by You and Us.

25. SIGNING THIS HIRE AGREEMENT

25.1 The person signing any document which forms part of the Hire Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.

25.2 The person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

26. CLAIM FOR PAYMENT

This Hire Agreement is a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry Security of Payment Act 2002 (VIC), the Building and Construction Industry Payments Act 2004 (QLD), the Building and Construction Industry Security of Payment Act 2009 (SA), the Construction Contracts Act 2004 (WA), the Building and Construction Industry (Security of Payment) Act 2009 (ACT), the Building and Construction Industry Security of Payment Act 2009 (TAS), and/or the Construction Contracts (Security of Payments) Act 2009 (NT).

27. POWER GENERATION

When You hire a Power Generator from Us, these additional Special Conditions of Hire form part of Your Hire Agreement. Terms used in these Special Conditions have the same meaning as those used in the Terms of Hire unless indicated otherwise.

27.1 Definitions (a) "Power Generator" means a device or combination of devices that converts mechanical energy, chemical reaction or photovoltaics to produce electrical energy (also known as a generator set or power source).

27.2 You acknowledge that We have made the manufacturer's operating and safety instructions for the Power Generator You have hired available to You to read.

27.3 If a crane is required for the safe and proper delivery of a Power Generator, You will be liable for the cost of the crane which includes any waiting time.

27.4 You acknowledge that where the Power Generator is required to be connected to fixed or hard wiring, You are responsible for arranging the connection, maintenance and disconnection of the Power Generator by a suitably qualified electrical contractor who conducts the works strictly in accordance with the applicable State or Territory laws and regulations.

27.5 We are not responsible for arranging the inspection or reinspection of the Power Generators by the applicable electrical safety authority, where required. Such inspections will be arranged by You at Your expense.

27.6 You agree to operate the Power Generator strictly in accordance with the applicable State and Territory electrical laws and regulations.

27.7 You agree to operate the Power Generator strictly in accordance with all environmental laws and regulations. You agree to indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us) which we may incur as a result of Your failure to comply with any environmental law or regulation.

27.8 When operating the Power Generator, You will:

- (a) Properly position the Power Generator and any accessories to eliminate any adverse environmental impact to ensure that it will not leak, spill or disperse any fluids, oils, coolants or fuels;
- (b) In the event of a leak, spill or dispersal, immediately implement control measures to prevent, limit or reduce the impact;
- (c) Evaluate whether spill kits should be available at the site the Power Generator is located;

27.9 We make no warranties about the ability of the Power Generator to provide constant, uninterrupted power supply. You are responsible for ensuring there is a contingency power supply in place on site in the event that the Power Generator fails. You will be liable and indemnify Us against all liability, claims, damage, loss, costs and expenses arising as a result of Your hire of the Power Generator and Your failure to implement a contingency power supply.

27.10 If there is any inconsistency between the Terms of Hire and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency.

Signed

Name (printed)

Company

Dated/...../.....