

1. **DEFINITIONS AND FORMATIONS OF CONTRACT**

In these terms:

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

“Pneumatic Engineering” means Pneumatic Nominees Pty Ltd ABN 31 623 040 559.

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

“**Hire Equipment**” means materials, equipment, tooling or other property belonging to Pneumatic Engineering, which has been made available to the Customer for the hire and many 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 Pneumatic Engineering, 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 Pneumatic Engineering, and thereafter in the respective Purchase Order.

“**Terms and Conditions**” mean this and other documents comprising of the Agreement.

2. **GENERAL**

2.1 Pneumatic Engineering’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 Pneumatic Engineering with respect to Hire Equipment is expressly limited to the Customer’s acceptance of these Rental Conditions and Terms and Conditions of trade.

2.2 Any terms and conditions submitted by the Customer which add to, vary from or conflict with these Rental Conditions or Terms and conditions of trade, are hereby expressly rejected unless there is a written agreement covering rental terms and conditions which has been negotiated and mutually executed by authorized representative of Pneumatic Engineering 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 Pneumatic Engineering in writing.

2.4 For the avoidance of doubt, with respect to any rental services provided by Pneumatic Engineering Standard Terms and Conditions of Supply, which can be found at <https://pneumatic.com.au> and are incorporated into this Agreement in full. In the event of any inconsistency between these Rental Conditions and the Pneumatic Engineering Standard Terms of Supply, with respect to any Purchase Order which seeks the supply of rental or hire services, these Rental Conditions shall prevail.

### 3. RENTAL PERIOD

3.1 Unless Pneumatic Engineering 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 Pneumatic Engineering's premises (Commencement Date).

3.2 Unless Pneumatic Engineering 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 Pneumatic Engineering and the Customer have not agreed to any fixed term in writing,

3.3 Pneumatic Engineering may terminate the hire at any time.

3.4 If Pneumatic Engineering do not have:

3.4.1 at the Commencement Date; and

3.4.2 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 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.

### 4. FEES AND TAXES

4.1 The Customer must pay to Pneumatic Engineering the rental fees and the other fees associated with any Hire Equipment as set out in any quote issued by Pneumatic Engineering 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 Pneumatic Engineering 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 Pneumatic Engineering: (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 Pneumatic Engineering.

4.3 If Pneumatic Engineering 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 Pneumatic Engineering have agreed a different fee with the Customer, the attendance fee shall be Pneumatic Engineering's then current attendance fee. A copy of Pneumatic Engineering's current attendance fees is available at any time on request.

- 4.4 Unless the Customer directs Pneumatic Engineering not to, in writing (and before the Hire Equipment leaves Pneumatic Engineering's premises), Pneumatic Engineering will charge the Customer a damage waiver fee for the Hire Equipment. Unless Pneumatic Engineering have agreed a different fee with the Customer, the damage waiver fee is Pneumatic Engineering's damage waiver fee at the time the rental commences. A copy of Pneumatic Engineering's current damage waiver fees is available at any time on request.
- 4.5 If the Hire Equipment is stolen whilst in the Customer's care, possession or control, then (without limiting any of Pneumatic Engineering's other rights or remedies) the rental fee continues to be payable (in full) until the Customer notifies Pneumatic Engineering, in writing, of the theft.
- 4.6 Without limiting any other right or remedy of Pneumatic Engineering, 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.
- 4.7 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, decrease is not applied, and increases apply regardless of when a rental term commenced.
- 4.8 Pneumatic Engineering 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 provision (including increases under clause 4.7) above.
- 4.9 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 Pneumatic Engineering's income.
5. EQUIPMENT
- 5.1 The Customer may not rent, lease, lend or part with possession of the Hire Equipment unless Pneumatic Engineering has agreed, in writing, that the Customer may do so.
- 5.2 Notwithstanding any other term, condition or provisions to the contrary, Pneumatic Engineering 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).
- 5.3 Risk in the Hire Equipment passes to the Customer when it leaves Pneumatic Engineering premises and remain with the Customer at all times until it is returned to Pneumatic Engineering.
- 5.4 The Customer must comply with the additional customer obligations in Clause \_\_\_\_?
- 5.5 The Customer acknowledges that Hire Equipment is in a used condition.
- 5.6 If the Hire Equipment breaks down, then Pneumatic Engineering 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 Pneumatic Engineering for the rental term in which the Hire Equipment was operational.

- 5.7 The Customer must (at the Customer's cost) return the Hire Equipment to the Pneumatic Engineering 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) Pneumatic Engineering may recover it; and (B) the Customer must pay all of the costs that Pneumatic Engineering incur in doing this (including legal costs (on an indemnity basis) and claims against Pneumatic Engineering by the Customer or a third party.
- 5.8 Subject to clause 6, if (for any reason) the Hire Equipment (or any part of the Hire Equipment):
- 5.8.1 goes missing, is stolen, is seized, is converted or is damaged beyond repair, then the Customer must pay Pneumatic Engineering its Full List Price; or
- 5.8.2 at no fault of Pneumatic Engineering, 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.
- 5.9 Without limiting clause 5.8, if the Customer does not comply with the Customer's obligations in clause 5.4, then the Customer must pay Pneumatic Engineering (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.
- 5.10 Amounts under clauses 5.7, 5.8 and 5.9 are payable as a debt due and payable by the Customer within 7 days after Pneumatic engineering 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 Pneumatic Engineering an additional amount equal to the greater of: (A) 15% of the list price of the relevant Hire Equipment; and (B) AUD\$1000.
- then subject to clause 6.3, Pneumatic Engineering 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 the 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 willful act) by the Customer or the Customer's personnel; or (v) theft caused by inadequate security.
- 7 INSURANCE & INSOLVENCY
- 7.1 The Customer must do all acts and things to insure (and keep insured until its return to Pneumatic Engineering) 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 of 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 Pneumatic Engineering's interest as an additional insured.

- 7.2 In the event of loss, the Customer shall cooperate with Pneumatic Engineering 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.
- 7.3 The 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 Pneumatic Engineering's liability, and all of the provisions of this Agreement will apply with full force and effect.
- 7.4 The Customer must do everything reasonably necessary to protect Pneumatic Engineering'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 Pneumatic Engineering's property; (B) notify Pneumatic Engineering; and (C) do everything that the Customer can lawfully to prevent the seizure, sale or dealing of the Hire Equipment.
- 7.5 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) Pneumatic Engineering may immediately terminate this Agreement; and (ii) the Customer irrevocably authorizes Pneumatic Engineering to enter any premises and remove the Hire Equipment.

## 8. LIABILITY

- 8.1 Nothing in these Rental Conditions (including clause 8.2) affects any non-excludable statutory rights or remedies that the Customer may have.
- 8.2 To the maximum extent permitted by law and subject to clause 8.1:
- 8.2.1 Pneumatic Engineering excludes all implied terms (statutory or otherwise – including implied warranties) of any kind.
- 8.2.2 Pneumatic Engineering 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 and 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);
- 8.2.3 Pneumatic Engineering'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.

- 8.2.4 Pneumatic Engineering'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);
- 8.2.5 Clause 8.2.1 – 8.2.4 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
- 8.2.6 If a statute implies a term into these Rental Conditions or this Agreement, and it cannot be excluded, then Pneumatic Engineering's liability for breaching, it will be limited (at Pneumatic Engineering'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. Pneumatic Engineering may choose not to do any of these things.

## 9. ADDITIONAL CUSTOMER OBLIGATIONS

### 9.1 *Operation by Qualified Personnel*

The Customer warrants and represents that the Hire Equipment is and shall be used and operated in a proper and skillful manner using only competent and properly trained and qualified personnel and by recognized methods and standard of operation.

### 9.2 *No Alterations*

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

### 9.3 *Location*

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

### 9.4 *Protection, Maintenance and Fluids*

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).

9.5 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 Pneumatic Engineering 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.

9.6 Without limiting 9.5, the Customer must only use parts, and oils and other fluids, that Pneumatic Engineering has approved for use with the relevant Hire Equipment.

### 9.7 *Inspection Access*

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

9.8 *Return Condition*

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

9.9 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).

9.10 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.

9.11 To avoid doubt, complying with the Customer's obligations in this clause 9 does not affect, limit or reduce any of the Customer's liability, or otherwise affect any of Pneumatic Engineering's liability, and all of the provisions of this Agreement apply with full force and effect.

9.12 To avoid doubt, the Customer must meet all of the Customer's obligations under this Agreement (including the obligations in this clause 9) solely at the Customer's own cost.

10 COMPLETE AGREEMENT & THIRD-PARTY RIGHTS INCLUDING TERMS OF TRADE

10.1 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.

10.2 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.