

The conditions set out below shall apply to all contracts for the hire and/or sale of goods / parts (“equipment”) between **AIR GAS COMPRESSOR SPECIALISTS LTD** (“the owner”) and the person hiring or buying the equipment. (“Hirer”) and shall apply from the time of collection/delivery of equipment until the equipment is returned/collected in good condition and working order as set out in Clause 1. These conditions shall not be modified, amended, waived, in whole or in part, except by written agreement between the parties. These conditions replace and supersede all other terms and conditions of hire, if any, previously in force between the Owner and the Hirer.

**ACCOUNT:**

The amount shown as Debit balance of this account will be paid in full by the twentieth (20<sup>th</sup>) of the month following the date of purchase. Payment by cheque will not be treated as made if the cheque is subsequently dishonoured by the hirer’s bank. Interest of 5% per calendar month may be charged on the total sum payable on overdue accounts. In the case of default payments, bankruptcy, insolvency or the assignment by the hirer for the benefit of its creditors the entire outstanding debt owing shall become due and payable immediately at the option of the Owner. All costs (including solicitors/client basis) of recovering overdue amounts will be due and payable by the hirer.

**OWNERSHIP:**

Ownership in any equipment supplied by the Owner shall not pass to the Hirer unless and until all monies owed by the hirer to the Owner for both equipment/services and any equipment/services supplied to at any time to the Hirer. Nothing in this condition shall prevent the sale by the Hirer of these goods in the normal course of the Hirer’s business, but the Hirer acknowledges that the proceeds of any such sale will be held in trust in a separate account for the Owner and that the Hirer stands in a fiduciary relationship with the Owner

**REPOSSESSION:**

The customer acknowledges the right of the Owner or its representative or agent to enter any premises in which the hirer has stored such equipment and to take possession of the equipment if payment has not been made within the stipulated time, or the hirer has become bankrupt or, in the case of a body corporate a receiver or a liquidator is appointed, or the hirers have indicated that the hirer is unwilling or unable to pay for the equipment.

**RISK:**

The equipment shall be at risk of the hirer from the time the equipment leaves the Owners premise.

**RETURN OF EQUIPMENT:**

No equipment will be accepted for return without prior agreement by the Owner. Such agreement shall always be subject to receipt of equipment free of freight charges to the company, in good order and condition and suitable for resale and returned within 14 days of receipt and the quotation of the relevant invoice number. A service charge may be applied to defray administrative and handling costs equal to 10% of the price of the procured equipment returned, unless expressly waived by the company.

**CHARGES:**

- 1.1 Equipment may be hired for a) daily, b) weekly, c) monthly, or e) as agreed to in writing. The hire periods are as defined in clause 1.2 certain equipment may carry minimum hiring periods.
- 1.2 Hire periods, Usage and Maximum periods of usage are:
  - “Day/Daily” means up to 8hrs in any 24 hour period
  - “Week/Weekly” means 5 days
  - “Monthly” means 4 weeks unless a Calendar month is specified
  - “Minimum Period” is a period up to and not exceeding 8hrs from collection to return
  - “Standby” means not used/run; backup unit only
  - “Runtime” means the hrs/days the unit is being used/run
- 1.3 The hire period is reckoned from the date/time on which the equipment leaves the owner’s premises until it arrives there again or this hire agreement is terminated pursuant to clause 4 & 6.
- 1.4 If the equipment is used for more than 8 hours in a single day the Owner will charge extra hours at a pro rata or extra shift(s) rate unless otherwise agreed to in writing prior to the hire commencing.
- 1.5 The Owner will negotiate longer term hire periods, charge/daily rates. The period of hire and charge/daily rate must be confirmed by the Owner in writing prior to the hire commencing.
- 1.6 No allowance whatever can be made for the time during which the equipment is not in use, unless special arrangements are made before and confirmed in writing. Time out Not time used.
- 1.7 The Owner may accept a stand-down of the equipment but this must be negotiated and agreed to in writing prior to the hire commencing
- 1.8 The hire charge will be solely as specified by the Owner and maybe changed by the Owner at its sole discretion by notifying the Hirer in writing 7 days prior to any rate change taking effect.

- 1.9 The Hirer shall pay as invoiced for the hire period for all materials used, loss and damage, waiver charges (if applicable), delivery/ removal costs, excess use / pro-rata charges, damage to or loss of the equipment, cleaning costs (if any), default interest for late payment.
- 1.10 The Hirer shall pay as invoiced for all servicing, maintenance and repair work
- 1.11 The cost of reconditioning equipment blunted by use or rendered unfit for further service, without repairs, by the Hirer, will be charged for by the Owner

#### **PAYMENT AND DEFAULT INTEREST:**

- 2.1 All charges are plus GST unless otherwise indicated.
- 2.2 For hire of equipment, the Hirer may be required to pay a deposit of not less than the estimated total charge  
On return of the equipment in good order and condition, the actual total charges will be calculated and the Hirer will either pay or be refunded with the difference between the deposit and the total charge
- 2.3 For purchase of equipment the Hirer will pay the owner the agreed price. Risk passes on delivery of equipment.
- 2.4 Any agreed discount for charge account customers is claimable ONLY if the account is paid by the 20<sup>TH</sup> OF THE MONTH following the date of the invoice.
- 2.5 The Hirer must not make any claim for credit more than 14 days after the date of the invoice
- 2.6 Without prejudice to the Owners other remedies under these conditions at law or otherwise, the Hirer will pay default interest at the rate of 5% per calendar month on all outstanding amounts from the end of the agreed hire period (for cash customers) or from the 20<sup>th</sup> of the month from the date of invoice (for charge account customers) until all monies have been paid in full.
- 2.7 No credit shall be extended on overdue accounts.
- 2.8 The Hirer shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or attempted exercise of any of its right or remedies under this contract including commissions and legal costs, solicitor and client basis.
- 2.9 The Hirer must make all payments due under this contract without set off or deduction of any kind.

#### **DELIVERY AND REMOVAL:**

- 3.1 Delivery and removal charge payable by the Hirer in addition to the hire/purchase costs
- 3.2 The Hirer authorises the Owner to bring the Owners vehicle onto the place where the equipment is to be used or is located to deliver and/or remove the equipment either on the expiry of the hire period or on the breach by the Hirer of any term in this contract.
- 3.3 The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owners actions under this clause.
- 3.4 The Hirer must make any requests for removal firstly by phone and then followed by email confirmation at the completion of the hire to the Owner.

#### **OWNERS RIGHT TO CANCEL:**

- 4.1 If the Owner believes the equipment to be at risk for any reason whatsoever including but not limited to the manner of its use by the Hirer or adverse weather or work conditions, or that the Hirer is unable to, or might be unable to pay any hire charge or purchase price the Owner may take action as necessary to retake possession of the equipment. Accordingly the Hirer grants the Owner or will procure that the Owner is granted and irrevocable right and authority to enter at any time onto any place where the equipment is situated or thought to be situated to remove the equipment.
- 4.2 The Hirer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under this clause or otherwise acting to recover any equipment hired or monies payable by the Hirer pursuant to this contract.
- 4.3 The Owner will not be liable to the Hirer or any other person's for loss suffered or liability incurred arising from cancellation or repossession of the equipment.

#### **NO ASSIGNMENT:**

- 5.1 This contract is personal to the Hirer and is not capable of assignment whether in whole or part by the Hirer.

#### **HIRERS OBLIGATIONS:**

- 6.1 Pay all hire charges and other charges, fees, taxes, levies, duties and imposts that become due and payable under a hire agreement executed with the Owner.
- 6.2 Pay to the Owner any debts under the payment terms agreed to in these conditions of trading
- 6.3 Subject to clause 8 (INSURANCE) in the case of hired equipment, the Hirer is responsible for any loss or damage to the equipment from the time the equipment leaves the Owners premise until it is returned to the Owners possession.
- 6.4 The Hirer shall notify the Owner in writing immediately if the equipment is lost or damaged and shall follow all reasonable instructions of the Owner.

- 6.5 The Hirer indemnifies the Owner, including any breach of any legislation, arising out of or in any way related to the use of the equipment by the Hirer and the Hirer hereby warrants that the Hirer holds insurance to cover the Hirer's liabilities arising from or relating to the use of the equipment.
- 6.6 The Hirer indemnifies the Owner against the destruction or loss of the equipment by any means or for any reason whatsoever, including lawful confiscation.
- 6.7 The Hirer agrees that should any equipment require maintenance and/or repairs and / or servicing shall be affected only by the Owner or its duly authorised agent at the cost of the Hirer.
- 6.8 The Hirer agrees that all such maintenance and/or repairs and / or servicing shall, (including by way of example the supply of all necessary parts, oils, grease and fuel) is at the cost of the Hirer and additional to the hire charges.
- 6.9 In the case of damage to the equipment, however caused, the Hirer shall be responsible for and indemnify the Owner for the full cost of any repairs to restore the equipment to the condition it was in at the time of the hire.
- 6.10 In the case of loss of the equipment, however caused, the Hirer shall be responsible for and indemnify the Owner for the full cost to the Owner of replacing the equipment.
- 6.11 In addition the Hirer shall be responsible for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the equipment for hire due to loss or damage.
- 6.12 The Hirer is responsible for:
- a. taking proper and reasonable care of the equipment, if the equipment is hired, return in good order and condition and
  - b. Satisfying themselves regarding the suitability and fitness for the purpose intended of hired items upon receipt of the items; and
  - c. Acknowledge that in no way has it relied on any verbal representations made by or on behalf of the Company in respect of the equipment, its purpose, performance or use.
  - d. Use the equipment only for the purpose for which the manufacturer designed and intended it to be used.
  - e. Using the equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such equipment and regulations pertaining to the use of such equipment; and
  - f. If the equipment is hired, immediately notify the Owner by telephone upon occurrence of the following events:-
    - Movement of the equipment from one location to another.
    - Breakdown or malfunction of the equipment.
    - Failure of the equipment to perform to specification.
    - Loss or damage to the equipment.If such notification is not received by the Owner, the Hirer may be liable for any extra costs incurred by the Owner as a consequence.
  - g. Be responsible for all daily maintenance routines as outlined in the manufacturers specifications or as in instructions provided by the Owner. These shall include but not be limited to checking the condition of and levels of
    - Batteries, oils, lubricants, coolants, drive belts and tyres and making any deficiencies good.
  - h. Transport charges incurred at the request of the Hirer will be to the Hirer's account unless otherwise agreed in writing by the Owner.
  - i. Clean the equipment thoroughly at the conclusion of the hire. If the equipment is not cleaned to the Owner's satisfaction, the Hirer shall be liable for a cleaning fee charged by the Owner.
  - j. Ensure the equipment is securely stored when not in use.
  - k. Any loss of or damage, abuse or vandalism to the equipment, howsoever caused, reasonable fair wear and tear excepted. Such reasonable fair wear and tear to be decided solely and completely at the Owner's discretion.
  - l. Agree to indemnify and keep indemnified the Owner against any and all actions, suits, proceedings, claims, demands, costs and expenses howsoever incurred in relation to the Owner exercising its rights referred to in Clause 2 of these conditions.
  - m. Confirm with the Company the rates and charges applicable to the hire prior to the hire commencing.
  - n. Except as permitted by the Consumers Guarantee Act 1993, not bring or threaten to bring claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the equipment; and
  - o. Indemnifying the Owner against any claim made by any person against the Owner for any loss suffered or liability incurred arising directly or indirectly out of the Hirer's use or possession of the equipment.

- p. Any damage to the goods by any party other than the Owner; whether malicious, negligent or accidental
  - q. The cost of repair or replacement of any goods which have been modified or altered in any way by any person other than the Owner.
  - r. The repair or replacement of the goods where any action by the Hirer or any person other than the Owner invalidates any warranty for the equipment given to the Owner by its manufacturer or supplier and the Hirer will pay to the Owner in relation to repair or replacement of the goods and any other loss suffered by the Owner.
- 6.13 The Hirer warrants that all persons who use the equipment shall be COMPETENT and QUALIFIED to use the equipment, shall use the equipment in the manner it was designed to be used, and follow any directions from the Owner, local authorities, codes of practice or from the manufacturer of the equipment relating to the use and control of the equipment and person using said equipment to the Health and Safety in Employment Act 1992 and all other relevant legislation.
- 6.14 If the Hirer is not an individual, the person who signs this contract on behalf of the Hirer warrants that they have the authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations of the Hirer.

#### **PERSONAL PROPERTIES SECURITIES ACT 1999 (PPSA):**

- 7.1 Hire or acquisition of equipment may create a security interest in the equipment. If so, the provisions of this clause 7 apply. All terms in this clause 7 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 7.2 On the request of the Owner the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this contract constitutes a perfected security interest in the equipment and their proceeds which will have priority over all other security interests in the equipment.
- 7.3 The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financial statement in connection to this contract.
- 7.4 The Hirer waives its rights under sections 114(1) (a), 116,117,119,120,(2),121,125,129,131,132,133,134 and 148 of the PPSA.
- 7.5 The Hirer waives its rights to receive a copy of any verification statement relating to the Owner registering, changing or renewing any financing statement on the Personal Properties Securities Register.

#### **INSURANCE:**

- 8.1 The equipment shall be at the sole risk of the Hirer from the time the equipment leaves the Owners site until return to the Owners site.
- 8.2 The Hirer will affect full replacement insurance in the joint names of the Hirer and the Owner against loss or damage however caused, and will provide proof of such insurance to the Owner upon request.

#### **LIMITATION OF LIABILITY:**

- 9.1 Except when the owner is in breach of a guarantee in terms of the Consumer Guarantees Act 1993, the Hirer in entering into this contract acknowledges that in all other circumstances whatsoever the Owner shall not be liable for direct or consequential damage or loss or expense whatsoever and howsoever arising (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law and whether suffered by the Hirer and/or any third party for any amount that exceeds the amount actually paid by the Hirer to the Owner pursuant to this contract.
- 9.2 If the Hirer is acquiring the services for the purposes of a business as defined in the Consumer Guarantees Act 1993, the provisions of the act do not apply.
- 9.3 If the Hirer is purchasing equipment, then except as prohibited by law, all guarantees in respect of the equipment, whether express or implied are excluded.
- 9.4 The Owner shall not, in any event, be liable to compensate the hirer, his servants, agents, or any third parties for direct, contingent, consequential, indirect, special, punitive or any other damages, howsoever caused, for any damage to property or injury to person, whether arising out of the use or operation of the equipment or otherwise and whether arising under breach of warranty, contract, negligence, commission, omission (or advice), tort, strict liability or otherwise.

#### **ENVIRONMENTAL MANAGEMENT:**

- 10.1 The Environmental Management at any site on which the Owner's equipment is used is the responsibility of the Hirer.
- 10.2 In this regard the Owner disclaims responsibility for any infringements which occur related to breaches of Acts, Rules or Regulations pertaining to environmental pollution aspects such as noise, atmospheric, water, sewer, dangerous goods, waste disposal etc. The Owner is not liable for use or operation of equipment or indirect or consequential loss.

**GENERAL:**

- 11.1 Headings are included for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and sub clause is a reference to a clause or sub clause hereof. A reference to Owner includes its servants and agents
- 11.2 If at any time any provision of this contract is or becomes illegal, invalid or non-enforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby to the intent that this contract should be construed as if the provision or part thereof in question has been deleted.
- 11.3 Equipment purchased from the Owner remains the property of the Owner until paid for in full.
- 11.4 These conditions replace and supersede all other terms and conditions of hire, if any, previously in force between the Owner and the Hirer.
- 11.5 The parties acknowledge that these conditions constitute the entire agreement between the parties notwithstanding any previous negotiations and discussions or representations unless confirmed in writing by the Owner.
- 11.6 Failure by the Owner to insist upon strict performance of any of these conditions or to exercise in whole or part any at law rights that may accrue under these conditions shall not be deemed to be a waiver of any rights that the Owner may have and shall not be deemed to be a waiver of any further breach of these conditions.

**FORCE MAJEURE:**

- 12.1 The Owner shall have no liability for any consequence of delay or failure in carrying out the contract caused by force majeure.

**PRIVACY ACT 1993:**

- 13.1 If the Hirer is an individual, this clause 13. applies. This contract collects personal information about you. The information is principally collected to evaluate the hire of equipment that you seek. The information is collected and held by the Owner. The failure to provide the information on the front of this contract may result in your application to hire equipment being declined or this contract subsequently being terminated by the Owner. The Hirer has rights of access to personal information contained in this contract, subject to the provisions of the Privacy Act 1993. The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owners other goods and services. The Hirer authorises disclosure of personal information held by any other party regarding any previous hire agreements entered into by the Hirer. The Hirer agrees to the Owner releasing to any other parties information regarding this hire contract if the Hirer does not comply with its obligations.
- 13.2 The Hirer and each person who signs the Owners application for Credit authorises the Owner:
  - To collect retain and use information about the Hirer or such other signatory's creditworthiness; to disclose information about the Hirer or such other signatory:
  - To any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Hirer's obligations to the owner
  - To such persons as may be necessary or desirable to enable the Owner to exercise any power, enforcement or attempted enforcement of the Owner's rights, remedies and powers under these conditions.

I/We \_\_\_\_\_ (Full Names) hereby guarantee that due and punctual performance by the above company/person(s) of debt and obligations which are now or may in the future be owed to the Owner.

1/We hereby acknowledge and accept the Owner's Terms and Conditions (above).

1/We understand that failure to adhere to these terms may result in the cancellation of credit facilities.

1/We authorise the Owner to collect any information as may be required to evaluate my/our credit worthiness.

I/We also consent to the passing of information to Credit Agencies, if I/We fail to meet My/Our financial commitment.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

POSITION: \_\_\_\_\_