

1 Definitions and interpretation

The following terms shall have the following meanings:

Damage Excess means the amount(s) stated in the Quotation as payable by the Renter in accordance with clause 10 and if none is specified then the amount shall be either:

- (a) if the Equipment is repaired, 20% of the repair cost of the Equipment or \$10,000 (whichever is lower); or
- (b) if the Equipment is replaced, 20% of the full new replacement cost of the Equipment or \$10,000 (whichever is lower).

Damage Waiver means the amount(s) stated in the Quotation to be paid by the Renter to reduce the Renter's financial liability in the event of loss or damage to the Equipment, which shall be specified as percentage of the Rental Charges set out in the applicable invoice.

Date Out means the date on which the Equipment is rented as specified in the Rental Agreement.

EPSA means Energy Power Systems Australia Pty Ltd ABN 80 055 274 514 and includes its officers, employees, agents, successors and related parties

Equipment means the Equipment rented by EPSA to the Renter under the Rental Agreement and includes any and all accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials, substitute and replacement Equipment, unless indicated to the contrary in the Rental Agreement

Location means the place where the Equipment will be located during the Rental Term as specified in the Rental Agreement or such other place as agreed by EPSA.

PPSR means the Personal Property Security Register as defined in the *Personal Property Securities Act 2009* (Cth) as amended ("PPSA"). Capitalised terms used in clause 3 that are not otherwise defined in these Rental Terms have the meaning given in the PPSA.

Quotation means EPSA's proposal or quotation document preceding these terms and conditions in connection with the rental of the Equipment (if any).

Rental Agreement as defined in clause 2.1.

Rental Charges means the charges specified in the Quotation and/or charged by EPSA to the Renter under the Rental Agreement as identified in the invoice provided to the Renter by EPSA.

Rental Credit Account Application means the application identified as the Credit Account Application including the Credit Terms governing the Credit Account Application.

Rental Period means the period specified in the Rental Agreement or (where the Equipment is held over in accordance with clause 6) the period from the Date Out until the return of the Equipment to EPSA, or if EPSA agrees, collection of the Equipment by EPSA.

Renter means the Renter identified in the Rental Agreement and includes the Renter's employees, executors, administrators and representatives.

Where there is more than one Renter then a reference to the Renter includes all Renters jointly and severally. Words importing the singular include the plural and vice versa and each gender includes any other gender. Reference to a monetary currency shall mean Australian dollars unless otherwise specified.

2 Agreement

2.1 EPSA rents the Equipment to the Renter on the terms stated in EPSA's Quotation, these Rental Terms and, where applicable, the Rental Credit Account Application (collectively, the "Rental Agreement").

2.2 If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents that comprise the Rental Agreement (as set out in clause 2.1), those documents take precedence in the following order:

- (c) these Rental Terms;
- (d) the Quotation, and;
- (e) the Rental Credit Account Application.

3 Title to the Equipment

3.2 The Renter acknowledges that in all circumstances EPSA retains title to the Equipment and the rights of the Renter to

use the Equipment are as a bailee only. The Renter is not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of EPSA as owner of the Equipment.

- 3.3 The Equipment is a chattel and shall not be affixed to any land.
- 3.4 The Renter must not sublet, transfer, assign, sell, charge, mortgage or create any type of security interest over, or otherwise deal with, the Equipment without EPSA's prior written consent. It will be a condition of any consent given by EPSA under this clause to a sublease of the Equipment that:
- (a) EPSA approves the form of the sublease; and
 - (b) the Renter takes all steps required at the Renter's cost, including registration on the PPSR, to ensure that any security interest arising under the sublease is enforceable, perfected and otherwise effective under the PPSA.
- 3.5 The Renter acknowledges and agrees that in certain circumstances the Rental Agreement constitutes a Security Agreement under the PPSA and that EPSA will have a Security Interest in the Equipment (and in any Proceeds in that Collateral), and the Renter consents to the registration of those Security Interests on the PPSR.
- 3.6 The Renter agrees to execute any and all documents required to enable EPSA to register a Financing Statement or Financing Change Statement as may be required from time to time under the PPSA to perfect the Security Interests referred to in clause 3.4. All fees and costs associated with those Financing Statements and Financing Change Statements, plus any fees and costs incurred in relation to the maintenance, enforcement or discharge of those Security Interests, must be promptly paid by Renter (or promptly repaid to EPSA where EPSA incurs those fees or costs).
- 3.7 The Renter acknowledges and agrees that the Security Interests created under clause 3.4 are granted for value and attach to the Equipment on the Renter first obtaining possession of the Equipment and not at any other time.
- 3.8 To the maximum extent permitted by law:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) EPSA need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (ii) sections 142 and 143 of the PPSA are excluded;

- (b) for the purposes of section 115(7) of the PPSA, EPSA need not comply with sections 132 and 137(3); and
- (c) if the PPSA is amended after the date of the Rental Agreement to permit the Renter and EPSA to agree to not comply with or to exclude other provisions of the PPSA, EPSA may notify the Renter that any of these provisions are excluded, or that EPSA need not comply with any of these provisions, as notified to the Renter by EPSA, and that notice will be binding on the Renter.

- 3.9 As far as the law permits, the Renter waives any right it may have to receive a notice of the registration of the Security Interest granted to EPSA, by the Renter under the Rental Agreement.

4 Rental charges plus other charges to be paid by the Renter

- 4.1 Rental Charges will be incurred for the Rental Period as specified in EPSA's Quotation (as may be extended under this Rental Agreement) and where no Rental Period is specified then from the Date Out until the Rental Agreement is terminated in accordance with clause 12.
- 4.2 Unless otherwise specified in EPSA's Quotation, the Equipment is hired on a daily or weekly basis and is used for more than 8 hours in any day or for more than 40 hours in any week, and the Quotation states that this clause 4.2 applies, then the Renter shall be required to pay additional rental charges which, unless specified otherwise by EPSA, will be calculated by multiplying the extra hours the Equipment has been used by an hourly rate equal to 1/8th of the daily rate or 1/40th of the weekly rate as applicable.
- 4.3 In addition to the Rental Charges, unless EPSA's Quotation states otherwise, the Renter must pay:
- (a) EPSA's charges for delivery and, if necessary, return of the Equipment;
 - (b) all Equipment operating costs and all consumables costs (including fuels, oils and lubricants) incurred during the Rental Period;
 - (c) any taxes, including a sum equal to the amount of any GST charged by EPSA on any supplies made by EPSA under or in connection with the Rental Agreement, duties (including stamp duty), levies, charges, fines or imposts in connection with the Rental Agreement;
 - (d) any costs or expenses reasonably incurred by EPSA in enforcing the Rental Agreement (including collection agency fees, debt recovery fees and legal fees, costs and disbursements on a full indemnity

basis), as a result of the Renter's breach of the Rental Agreement or in order to return the Equipment to the same condition as at the Date Out;

- (e) any environmental charge levy in respect of waste disposal specified in the Rental Agreement;
- (f) any Damage Waiver payable under clause 10; and
- (g) any other costs and charges payable under any other provision of this Rental Agreement (including, but not limited to, any damage caused to the Equipment (fair wear and tear excepted) and any costs and/or charges specified in EPSA's Quotation)

5 Payment

- 5.1 If the Renter does not have a rental credit account with EPSA, the Renter must pay the Rental Charges and other applicable charges (as outlined in clause 4.3) in advance of the commencement of the Rental Period.
- 5.2 If the Renter has a rental credit account with EPSA, the Renter must, unless agreed otherwise, pay all amounts owing under the Rental Agreement in accordance with the credit arrangements and within 30 days from the date of invoice free from all deductions and setoffs.
- 5.3 Where any amount payable under the Rental Agreement becomes overdue, all outstanding amounts whether due to EPSA under the terms of the Rental Agreement or under any other rental agreement between EPSA and the Renter will become immediately due and payable by the Renter to EPSA within 7 days of the date of default.
- 5.4 EPSA may charge the Renter interest calculated on a daily basis and compounded monthly on overdue amounts from the date the relevant payment was due, to the date of actual receipt of payment at an interest rate which is 5% greater than the rate published by the Reserve Bank of Australia calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.

6 Holding Over

- 6.1 Upon expiry of the Rental Agreement the Renter may continue renting the Equipment upon the same terms and conditions as the Rental Agreement except that:
 - (a) the Rental Agreement will be deemed an agreement for month to month rental; and
 - (b) EPSA may demand the return of the Equipment at any time.

7 Renter's Obligations

- 7.1 Risk in the Equipment passes to the Renter upon collection or delivery of the Equipment and remains with the Renter

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until the Equipment is collected by or returned to EPSA.

- 7.2 Subject to clause 10, during the Rental Period the Renter is liable to EPSA for any and all loss or damage to the Equipment and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at the full new replacement cost, salvage costs and Rental Charges incurred while the Equipment is repaired or replaced.

- 7.3 The Renter will:

- (a) comply with all statutory laws and regulations and all common laws with respect to use of the Equipment and will not permit the Equipment to be used for any illegal purpose or in any manner that would amount to a breach of any statute or any other law;
- (b) operate the Equipment safely, only for its intended use and in accordance with the manufacturer's instructions;
- (c) ensure persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use the Equipment;
- (d) ensure that the Equipment is not operated by any person under the influence of alcohol and/or drugs;
- (e) ensure that the Equipment is used only for the general purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
- (f) ensure that the Equipment is only used or operated on land in any State or Territory and will not cross streams or any other body of water without EPSA's prior written consent; and
- (g) ensure that the Equipment is not used or permitted to be used or operated in violation of the terms of the Rental Agreement

- 7.4 The Renter will:

- (a) at all times ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment;
- (b) at all times maintain any safety signs supplied by EPSA and ensure they are clearly legible and brought to the attention of any person using the Equipment;
- (c) at all times ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment;
- (d) at all times ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by EPSA or the safety and

operating instructions; and

- (e) conduct a site hazard assessment prior to using the Equipment at a site.

7.5 The Renter must:

- (a) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with EPSA's instructions and the operator's manual;
- (b) ensure that the Equipment is at all times stored safely and protected from theft, loss or damage;
- (c) not remove the Equipment from the Location in which it was hired without EPSA's written consent;
- (d) notify EPSA immediately in writing of any change in the Location;
- (e) not alter, deface or erase any identifying mark, plate or number on the Equipment;
- (f) not in any way alter, affix or attach anything to, modify, tamper with, damage or repair the Equipment without EPSA's written consent; and
- (g) safely secure all Equipment (or items loaded in or on the Equipment) loaded in or on any vehicle owned by the Renter.

7.6 Any person provided by EPSA to demonstrate the operation of the Equipment shall be under the sole direction and control of the Renter. The Renter is responsible for any and all claims, loss or damages whatsoever arising in connection with the operation of the Equipment by that person. Where a demonstrator operator is provided by EPSA, no other person shall operate the Equipment without EPSA's prior written consent.

8 Access, inspection and return of Equipment

- 8.1 EPSA and its representatives have the right to enter the Location at any time upon giving prior reasonable notice to inspect, maintain and/or repair the Equipment. The Renter must assist EPSA and its representatives in exercising its rights under this clause.
- 8.2 Unless expressly agreed in writing otherwise by EPSA, the Renter must return the Equipment to EPSA.
- 8.3 Unless EPSA's Quotation states otherwise, when returning the Equipment the Renter must return it to the EPSA premises from where it was collected by the Renter on the Date Out.
- 8.4 The Renter must ensure that the Equipment is returned to EPSA in the same condition as the Date Out (except for normal wear and tear) and returned with a full tank of fuel or the Renter will pay EPSA the cost of filling that tank.
- 8.5 If the Renter fails to return the Equipment when required by the Rental Agreement or within 24 hours of oral or written

demand to the Renter, the Renter will be deemed to be in unlawful possession of the Equipment without EPSA's consent.

9 Suitability & Breakdown

- 9.1 The Renter is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Equipment unless EPSA is otherwise notified within 24 hours of the commencement of the Rental Period.
- 9.2 If the Equipment breaks down or becomes unsafe to operate, the Renter shall immediately stop using the Equipment, ensure it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.
- 9.3 The Renter must not repair or attempt to repair the Equipment without EPSA's prior written consent.
- 9.4 The Renter must immediately notify and provide full details to EPSA of any loss, theft, breakdown or damage to the Equipment. After receiving such notification, subject to clause 17, EPSA will use reasonable endeavours to repair or replace the Equipment at EPSA's discretion and at the Renter's expense. Any Equipment supplied as a replacement will be supplied for the unexpired balance of the Rental Period on the terms of the Rental Agreement.

10 Damage Waiver

- 10.1 Unless the Renter provides a certificate of currency of insurance covering the Renter and EPSA for loss, theft, or damage to the Equipment whilst rented to the Renter in accordance with clause 11.1 hereof (for the agreed insurable value of the Equipment) then the Renter is required to pay the Damage Waiver, as stated in the Quotation.
- 10.2 If the Equipment is lost, stolen and/or damaged whilst rented to the Renter, and the Renter does not provide EPSA with a certificate of currency of insurance in accordance with clause 11.1, then the Renter shall be liable to pay to EPSA the Damage Excess.
- 10.3 The Renter's liability will not be limited in accordance with clause 10.2 if, in EPSA's reasonable opinion, the loss or damage to the Equipment arises from or is caused by:
 - (a) breach of the Rental Agreement;
 - (b) improper use of the Equipment;
 - (c) transporting, loading or unloading;
 - (d) lack of lubrication or other normal servicing of the Equipment;
 - (e) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper

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- servicing of the Equipment;
- (f) artificial electrical current or exposure to any corrosive substance or environment;
- (g) use of the Equipment in a harsh environment, or an environment otherwise not suitable for operation of the Equipment in accordance with the Equipment manufacturer's guidelines;
- (h) use or location of the Equipment in, on or over water, on bridges, vessels or structures of any kind; and/or
- (i) negligent acts or omissions of the Renter.

11 Insurance

11.1 The Renter agrees to:

- (a) as an alternative to the Damage Waiver, insure and keep the Equipment insured with a reputable and solvent insurer in the names of EPSA and the Renter for the full new replacement value against fire, accident, theft, damage and transport and such other risks as EPSA may require;
- (b) pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorizes EPSA to receive all insurance monies;
- (c) not to do or permit or allow to be done anything which might or could prejudice any insurance of the Equipment;
- (d) maintain policies of insurance for third party and public liability indemnity cover of not less than 10 million dollars; and
- (e) ensure that EPSA always has current copies of the certificates of currency in respect of the all the insurances the Renter is required to obtain under the Rental Agreement.

12 Termination

12.1 Subject to clause 12.2 the Rental Agreement will terminate upon expiration of the Rental Period.

12.2 EPSA may terminate the Rental Agreement by written notice to the Renter if the Renter is in "Default" pursuant to clause 12.3 and, if capable of remedy, fails to remedy that Default within 7 days of receiving notice requiring the Renter to do so.

12.3 The Renter is in Default where during the Rental Period:

- (a) the Renter fails to pay the Rental Charges as required by the Rental Agreement;
- (b) the Renter breaches any other provision of the Rental Agreement;
- (c) any execution or other process of any Court or

authority is issued against the Renter or the Renter's assets;

- (d) a receiver, receiver manager, administrator or controller is appointed to the Renter;
- (e) the Renter ceases or threatens to cease to carry on its business;
- (f) any insurance renewal or insurance proposal made by the Renter in respect of the Equipment is declined;
- (g) any insurance policy in respect of the Equipment lapses or is cancelled; or
- (h) the Renter commits an act of insolvency or is otherwise unable to pay its debts as they fall due.

12.4 Upon giving the Renter a notice of termination EPSA may:

- (a) recover possession of the Equipment; and/or
- (b) enforce performance of the Rental Agreement; and/or
- (c) recover damages for breach of the Rental Agreement,
- (d) and EPSA may take any or all of the above or other actions notwithstanding that EPSA may have waived any previous breaches or Defaults by the Renter.

12.5 If EPSA's right to terminate the Rental Agreement under paragraphs (c), (d), or (h) of clause 12.3 is unenforceable as a matter of law, that unenforceability does not limit EPSA's right to terminate the Rental Agreement on any other grounds permitted by the Rental Agreement.

13 Rights on termination

13.1 At the expiration of the Rental Period or where EPSA exercises its right of termination pursuant to clause 12.2, the Renter shall at its own expense forthwith return the Equipment to EPSA.

13.2 EPSA shall be entitled to recover from the Renter on demand:

- (a) any payment of the Rental Charges or other monies payable to EPSA under the Rental Agreement; and
- (b) the cost of any renovations or repairs performed by EPSA to return the Equipment to good order and repair, fair wear and tear excepted.

14 Repossession of Equipment

14.1 If the Renter is in Default under the Rental Agreement or if EPSA has terminated the Rental Agreement, EPSA may take all steps necessary (including legal action) to repossess the Equipment, including entering the Renter's

premises to do so.

- 14.2 EPSPA may recover from the Renter as a debt due and owing without demand:
- (a) all costs incurred by EPSPA in re-taking possession of the Equipment;
 - (b) any storage fees paid in respect of the Equipment;
 - (c) any transportation costs in respect of the re-possession of the Equipment; and
 - (d) any costs of renovation, repair or maintenance of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted.
- 14.3 Without limiting clause 14.2, if an incident occurs at the Location (such as a fire, flooding or other damage to or at the Location), which prevents EPSPA from repossessing the Equipment, whether under this clause 14 or under any other provision of the Rental Agreement, EPSPA may recover from the Renter as a debt due and owing an amount equal to the Rental Charges payable under the Rental Agreement, with such Rental Charges to continue to be payable by the Renter to EPSPA until such time as the Equipment is either:
- (a) repossessed by EPSPA; or
 - (b) written off by EPSPA (in the event the Equipment is lost and/or damaged beyond repair).

15 Claims and proceedings

- 15.1 Where use of Equipment by the Renter results in any claim, accident, damage or loss, the Renter:
- (a) will as soon as is practicable report such incident to the relevant authority and in writing to EPSPA;
 - (b) will not, without EPSPA's written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability;
 - (c) agrees EPSPA or its insurer may at its own cost bring, defend, enforce, or settle any legal proceedings against third parties; and
 - (d) will as soon as is practicable complete and return EPSPA's accident report and furnish to EPSPA any statements, information or assistance which EPSPA or its insurer may reasonably require, including attending at lawyer's offices and at court to give evidence.

16 Force Majeure

EPSPA is not liable to the Renter for any delay or failure to perform its obligations pursuant to this Rental Agreement if such delay or failure to perform is due to force majeure being a circumstance beyond its reasonable control, including strikes, lockouts, fires,

floods, storm, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, disease or pandemic, acts of God, any measures taken by a foreign and Australian government authority to control the spread of any epidemic or pandemic, such as quarantine and isolation requirements, lock down and other travel restrictions into or within Australia to regulate or manage the Covid-19 Pandemic or any other act beyond EPSPA's control.

17 Indemnities and liability

- 17.1 As far as the law permits, EPSPA excludes all warranties, conditions, rights and remedies the Renter would otherwise be entitled to by law.
- 17.2 The Renter is liable for and indemnifies EPSPA against all liability, loss, costs and expenses (including collection agency fees, debt recovery fees and legal fees, costs and disbursements on a full indemnity basis) ("Losses") arising from or incurred in connection with the Renter's hire and use of the Equipment or its breach of the Rental Agreement, except to the extent the Losses are caused by EPSPA's own acts or omissions or negligence.
- 17.3 The indemnity in clause 17.2 is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the Rental Agreement. It is not necessary for EPSPA to incur expense or make any payment before enforcing the right of indemnity conferred by the Rental Agreement. The Renter must pay on demand any amount it must pay under an indemnity in the Rental Agreement.
- 17.4 To the extent permitted by law, and notwithstanding any other provision of the Rental Agreement, the maximum aggregate liability of EPSPA under the Rental Agreement shall not exceed the total amount of the Rental Charges received by EPSPA in relation to the applicable Quotation as at the date the claim arose.
- 17.5 Without derogating from clause 17.4, EPSPA, to the extent permitted by law, shall not be liable for:
- (a) any loss or anticipated loss of profit, income, revenue, saving, production; business, good will, contract or opportunity increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or any other financial or economic loss; and
 - (b) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising.

18 Privacy

- 18.1 The Renter agrees that EPSA may obtain, disclose and use information:
- (a) about the Renter's credit worthiness for the purpose of obtaining and maintaining credit information about the Renter or collecting overdue payments;
 - (b) about the Renter for the purpose of providing services to the Renter, including sharing information with EPSA's related companies.
- 18.2 The Renter consents to EPSA recording the details of the Renter and of this Rental Agreement and any other agreement between the Renter and EPSA on the Personal Property Securities Register.

19 Notice and other matters

- 19.1 Any notice to be given may be given by posting the notice to the address of the parties specified in the Rental Agreement and shall be deemed received 3 days after posting by ordinary prepaid post.
- 19.2 Any notice to be given may be given by email to the address of the parties specified in the Rental Agreement and shall be deemed received at the time notified on the transmitter's computer terminal that the email has been received by the other party's computer.
- 19.3 The Rental Agreement is governed by the laws of the State or Territory of Australia in which it is signed.
- 19.4 If any part of the Rental 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.
- 19.5 The Rental Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitment about the subject matter of the Rental Agreement are merged in this Rental Agreement and are of no further effect.
- 19.6 For the avoidance of any doubt, the Renter understands and agrees that the Rental Agreement will prevail over, and EPSA will not be bound by, any terms and conditions of purchase (express or implied) submitted by the Renter, whether printed on or sent with any purchase order or otherwise, unless agreed in writing by EPSA.
- 19.7 The expiry or termination of the Rental Agreement does not affect the rights, which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.
- 19.8 EPSA may assign or subcontract all or any of its rights under the Rental Agreement with the Renter's written consent. The Renter must not assign or subcontract all or any of its right under the Rental Agreement without EPSA's written consent.
- 19.9 No delay or omission to exercise any right, power or remedy accruing to EPSA upon any continuing breach or Default under the Rental Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any right of EPSA to take action or make a claim in respect of a continuing breach or Default or to be acquiescence to it.

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