

## WA TORQUE TOOLS GENERAL CONDITIONS

These conditions apply to all dealings between **WA Torque Tools Pty Ltd** ("WATT") and the Customer unless WATT otherwise agrees in writing.

**Signed On Behalf of the Customer by**

**Signature:** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Signed On Behalf of WATT by**

**Signature:** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

### **1. HIRE OF PLANT:**

(a) WATT agrees to hire and the Customer agrees to take on hire the Plant on the terms and conditions contained in this agreement for the agreed hire rates. Rates will be provided or advised at the time of quotation or order.

(b) The signing of this agreement by the Customer shall be deemed to constitute an agreement made between the Customer and WATT in accordance with these terms and conditions. No variation of the terms hereof shall be binding or enforceable against WATT unless confirmed in writing by a person authorized by WATT's management to give such confirmation.

(c) The Customer, by the execution of this agreement, agrees to this agreement taking precedence over all other documents including the Customer's order form, and notwithstanding that such other documents may purport that they shall take precedence. These general conditions may be overruled by the express terms of a quotation or variation given by WATT.

(d) Notwithstanding whether the Customer signs this agreement, when the Customer has requested Plant then acceptance of the Plant on site constitutes deemed acceptance of all terms and conditions herein.

### **2. BASIS OF CHARGING AND HIRE PERIOD:**

(a) *Hire period.* The hire period commences at the time of delivery to or pick up by the Customer. The hire period finishes at the time of return to WATT's specified redelivery location (usually WATT's store). Provided the Plant has not been used on the day of dispatch WATT will allow a grace period of one day where the Customer has dispatched the Plant returning it to WATT.

(b) *Minimum Periods.* (i) The Day Rate is for a minimum hire period of two days. (ii) The Week Rate is for a minimum hire period of seven days. (iii) The Month Rate is for a minimum hire period of four weeks.

(c) After a weekly or monthly hire period has expired, the hire payable for a fraction of any succeeding week or month shall be the proportion of part of the applicable rental rate according to the number of calendar days in such fraction.

(d) Public Holidays and weekends are not excluded from the hire period.

(e) No reduction in the hire rate will apply because the Customer returns the Plant to WATT before the expiration of any agreed hire period.

(f) Mobilisation and demobilisation of Plant to site locations (if required) shall be charged at WATT's standard service call rates unless otherwise agreed in writing. Plant redelivered to any location other than the original collection office may also incur a relocation fee. In the event that the Customer requires WATT to deliver the Plant back to any site other than the original collection point the Customer must advise WATT a reasonable time in advance and daily contracted hire rates will be charged until the Plant is returned to original point of hire.

(g) *Off hire.* No claims will be allowed by WATT for any "stand downs" or "off-hires" unless the Customer can produce WATT's written confirmation of acceptance.

(h) All rates, fees, costs, damages and charges will be calculated by WATT and shall be deemed correct in the absence of manifest error.

(i) *Additional charges (if applicable).* (i) a sum equal to the replacement value of any tools, accessories and equipment lost or stolen during the hire period; (ii) the agreed sum payable in respect of each and every claim specified on the hire agreement or; (iii) any fines payable by WATT arising from the use of the Plant imposed by a Relevant Authority during the hire period; (iv) any expenses incurred by WATT in repossessing the Plant including where the Plant has been impounded or confiscated by a Relevant Authority, liquidator, administrator, receiver or creditor of the Customer for any

reason; (v) pay all Government Stamp Duty and other levies on hire; (vi) any expenses incurred for cleaning and/or rust treatments due to exposure to salt and salt damage.

### **3. PAYMENT FOR HIRE:**

(a) *No absolute right to credit.* The Customer has no right to credit from WATT. All hire charges hereunder are payable in advance for the estimated duration of hire unless specifically agreed to the contrary in writing by WATT. Should the period of hire be extended the Customer will pay in advance the hire charge for the additional period. Any moneys due from the Customer to WATT will be paid forthwith on the hire being determined.

(b) *Account customers.* WATT may at its discretion agree to provide trade credit to a Customer on commercial terms at the discretion of WATT and may cease to provide such credit at any time. In the absence of a written agreement to the contrary, invoices must be paid within thirty days of issue. By special arrangement some long hire Customers may be permitted to pay within thirty days from the end of the billing month.

(c) *Interest.* It is agreed that WATT shall be entitled to charge interest at the rate of two per cent per month for all overdue moneys. Interest shall become payable without need for notice.

### **4. TRANSPORT AND DELIVERY OF HIRED PLANT:**

(a) *Customer to arrange transport.* The Customer shall arrange all transport of WATT's Plant and pay transport costs directly to the transporter. If WATT arranges transport on behalf of the Customer and makes payment for same, the Customer agrees to pay WATT the total inward cost and estimate of removal cost plus ten percent handling fee in its first invoice. Transport charges are estimates only and are not binding on WATT.

(b) *Time of Delivery.* Unless WATT is personally transporting the Plant, dispatch from WATT's premises shall constitute delivery of goods to the Customer's possession.

(c) *Delivery times.* WATT shall use its best efforts to deliver the Plant to the Customer upon the date specified for the commencement of the hiring of the Plant PROVIDED HOWEVER that WATT shall be under no liability whatsoever for any delay in the delivery of the Plant.

(d) *Delivery in good order and inspection reports.* All Plant is tested and logged prior to dispatch from WATT. On receipt following freighting the Customer should re test before using the Plant. Testing should only be done by appropriately qualified persons in accordance with good industry practice and safe testing procedures. Should any electrical or hydraulic components be considered faulty, equipment should not be used, and WATT is to be notified within four hours of receipt. Unless such notification is received by WATT, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination.

(e) *Risk.* Unless WATT is personally transporting the Plant, the Customer bears the risk of loading the Plant in preparation of transporting it to the site. Upon each dispatch the Customer as bailee accepts responsibility for the safety and maintenance of the Plant and takes the risk of any loss or injury thereto however caused.

(f) *Loading and unloading.* The Customer shall be responsible for unloading and loading the Plant at site.

(g) *Quarantine.* The Customer shall be responsible for complying with any quarantine requirements of a Relevant Authority.

### **5. CUSTOMER'S PRIMARY OBLIGATIONS**

The Customer's primary obligations are to pay the agreed rental; to take proper care of the Plant; to comply with the limitations placed on the use of the Plant; and to restore the Plant to WATT at the end of the hiring in the same condition as at the commencement of hire period. For the avoidance of doubt, the Customer is responsible for returning the Plant to WATT, together with any fittings and equipment, (collectively the "Plant") at the end of the hire period. The Plant must be returned in the condition it was in when first rented,

subject only to fair wear and tear. Otherwise the Customer will be on risk for all loss, cost, damage and other liability related to the hire of the Plant as if the Customer was the owner of the Plant.

#### **6. CUSTOMER'S RESPONSIBILITY FOR LOSS OR DAMAGE:**

(a) *To take reasonable care.* The Customer must take reasonable care of the Plant at all times and must not operate it when it is in a damaged or unsafe condition. The Customer shall take all reasonable steps to keep itself acquainted with the state and condition of the Plant.

(b) Except for fair wear and tear, the Customer is liable for all loss or cost to WATT from theft or damage to the Plant from whatever cause which occurs during the hire period.

(c) The Customer fully indemnifies WATT in respect of all claims by any person for injury to person or property caused by or arising out of the use of the Plant and in respect of all charges, costs and claims in connection therewith.

(d) In the event of loss, or damage to the Plant, hire charges shall continue until the Plant has been repaired or until equivalent replacement plant has been acquired by WATT.

#### **7. CUSTOMER'S MAINTENANCE AND OPERATION OF PLANT:**

(a) *General.* The Customer shall comply with all maintenance requirements of the Plant using properly trained and qualified personnel and in accordance with any manufacturer's specifications and good industry practice. Repairs and maintenance shall be at the direction of WATT.

(b) *Servicing and inspection.* The Customer shall at all reasonable times allow WATT, its employees, agents and/or his insurers to have access to the Plant to inspect, test, adjust, repair or replace it. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Customer.

(c) *Urgent repairs.* If WATT decides that urgent repairs to the Plant are necessary, it may arrange for such repairs to be carried out on site or at any other location of its nomination. If similar Plant is unavailable WATT shall be entitled to terminate the hire contract forthwith by giving written notice to the Customer.

(d) *Operator experience.* It is the Customer's responsibility to ensure that operators are suitably trained and supervised in the operation of the Plant. If requested by the Customer, WATT can provide training for operators at hourly rates to be negotiated. WATT will endeavour to train to the level required by good industry practice however WATT shall not be liable if an operator is subsequently injured.

(e) *Safety equipment.* WATT is not responsible for the safety equipment used by Plant operators. This is for the Customer or its other contractors to organise. For most items of Plant the minimum safety equipment will include safety glasses, hard hat, gloves, steel cap boots and other protective clothing.

(f) *No re-hiring.* The Customer must not on-hire, sub-let or lend the Plant to any third party without WATT's prior written permission.

(g) *Nameplate/part number.* The Customer shall not remove, deface or cover-up WATT's name plate (or part number) or mark on the Plant indicating it is the Customer's property.

#### **8. BREAKDOWN, REPAIRS OR ADJUSTMENT OF PLANT:**

(a) When the Plant is hired without WATT's operator, any breakdown or the unsatisfactory working of any part of the Plant must be notified immediately to WATT. Any claim for breakdown time will only be considered from the time and date of notification.

(b) Full allowance will be made to the Customer for any stoppage due to breakdown of Plant caused by the development of either an inherent fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs which may be in accordance with the terms of a quotation.

(c) The Customer shall not repair the Plant without the written authority of WATT. WATT will pay a reasonable charge to the Customer where repairs have been authorised.

(d) The Customer accepts responsibility for all call-out service provided during hire pending the period e.g. to replace worn components or repair damage to Plant.

#### **9. OTHER STOPPAGES LOSS OF USE OF OTHER PLANT DUE TO BREAKDOWN:**

(a) No claims will be admitted (other than those allowed for under breakdown as provided in clause 8 above) for stoppages through causes outside WATT's control, including bad weather or ground conditions. The Customer shall be completely responsible for the cost of recovering Plant from either soft ground or 'dig out' conditions, including for loss of hire.

(b) Each item of Plant specified in this agreement is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of WATT or otherwise) through any cause whatsoever shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, or associated labour costs.

#### **10. INSURANCE AND NOTICE OF ACCIDENTS:**

(a) The Customer shall hold a policy or policies of insurance as required to indemnify it for its liabilities and responsibilities pursuant to this agreement. Additionally, should WATT agree to allow the Customer to tow Plant on a public road, the Customer will obtain a policy of public liability insurance to indemnify itself and WATT against all claims which may arise as a result of such towing.

(b) If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to WATT or its solicitors (for the purpose of considering any litigation against WATT), by telephone, and confirmed in writing.

(c) WATT shall maintain its own personal liability and workers compensation insurances in accordance with good industry practice.

#### **11. COMPLIANCE WITH LAWS AND REGULATIONS**

##### **(HIRE CONTRACT):**

The Customer is responsible for compliance with relevant rules, laws and regulations issued by Relevant Authorities and the Customer indemnifies and will keep indemnified WATT as a result of loss, cost or damage suffered by WATT resulting from any breach by the Customer. It is the Customer's responsibility to ensure that all Plant is adequately secured and set up in a non-hazardous manner and that sufficient guards are in place and correctly maintained.

##### **12. LIABILITY OF WATT (HIRE CONTRACT):**

(a) To the extent to which the law permits, all terms set out in these standard conditions are in lieu of and exclude all other conditions, guarantees or warranties expressed or implied by law whether statutory or otherwise.

(b) To the extent permitted by law, the liability of WATT for a breach of the consumer warranties and/or any warranty provided by WATT is limited, at the option of WATT, to the repair or replacement of the Plant or the cost of such repair or replacement or the performance of the services again.

(c) In no event will WATT be liable for any loss, injury, or damage howsoever arising to any persons or property and shall not on any account be liable: (i) In respect of consequential loss or damage to any person or property arising out of alleged defects, breakdown, failures or the use to which the Plant is put; or (ii) for any lost production, down time or incurred expenses in the event that the Plant fails to operate or stops working during the hire period.

(d) *Literature.* Any literature provided by WATT containing torque values, tensions, conversions or procedures are only offered as a general guide only. The Customer should consult its own engineers or other relevant experts for technical information and advice specific to the Customer's application. Should the Customer use the WATT literature they do so at their own risk and are responsible for their own outcomes. WATT will not be responsible for any injury, loss or death.

(e) *Plant/equipment output.* WATT will not be liable for the end result of applied torque, tension or elongation produced by the Plant. Should the Customer require assurances of accuracy then for an additional fee WATT can provide pre-hire calibrations and equipment operators. The Customer will need to provide friction factors, method, load requirements, torque values and equipment to measure electronic elongation.

##### **13. PROTECTION OF WATT'S RIGHTS (HIRE CONTRACT):**

(a) *WATT may terminate this agreement for breach.* If the Customer is found to be in breach of any material term condition or warranty herein or has made any material misrepresentation to WATT; or if WATT considers on reasonable grounds that the conduct of the Customer is likely to have a material adverse effect on the interest of WATT or the condition of the Plant then WATT may determine this agreement and repossess the Plant whereupon all moneys previously paid by the Customer shall be forfeited to WATT but without prejudice to any claims or rights of WATT in respect of any arrears of rent or other moneys due to WATT.

(b) The Customer shall protect the Plant against distress, execution or seizure, and indemnifies WATT against all losses, damages, costs, charges, and expenses which arise by any failure to observe and perform this condition, except in the event of requisition by a Relevant Authority.

(c) *Events of default.* The following are events of default giving cause for WATT to terminate this agreement: If the Customer (i) does not pay sums due to WATT pursuant to this agreement in a punctual manner (ii) fails to observe and perform the provisions of this agreement or (iii) (*insolvency*) is or could be reasonably expected to fail to pay debts when they are due or if a receiver/administrator/liquidator/trustee in bankruptcy is appointed or if the Customer suffers any distress or execution to be levied against it, or makes any arrangement with its creditors for deferred payment of debts or shall do or shall cause to be done or permit to suffer any

act or thing whereby WATT's rights in the Plant may be materially prejudiced or put into jeopardy.

*Provisions related to Servicing*

**14. SERVICING, REPAIR AND MAINTENANCE**

(a) WATT may accept orders to service or maintain tools, plant or equipment owned by the Customer. Unless excluded by the context these terms and conditions shall apply to Plant, parts and labour supplied pursuant to a contract for servicing. In particular where Plant is supplied in the context of servicing the general provisions of the supply of Plant shall apply.

(b) Subject to agreement, servicing may be performed at WATT's business premises or some other location such as on site.

(c) Where servicing requires travel from WATT's business premises, the Customer shall pay all WATT's reasonable travel, accommodation and messing costs. Unless otherwise agreed the Customer will organise and pay for the travel (including flights) of WATT's workmen.

(d) WATT will perform servicing in a proper and workmanlike manner and using materials and Plant suitable for the purpose for which they are required in accordance with good industry practice.

(e) WATT shall: (i) use suitably qualified workmen; and, (ii) obtain or maintain all the necessary licences and permits required for the servicing.

*General Provisions related to Hire, Sale and Servicing*

**15. CREDIT AND ORDERS**

(a) WATT at its absolute discretion may refuse any order and may refuse to proceed with any order should the Customer's trade or credit references be unsatisfactory to WATT.

(b) The Customer hereby acknowledges that it has no right to credit or a credit facility from WATT and the granting of any credit or credit facility by WATT in respect to the supply of the Plant to the Customer will be at WATT's absolute discretion and should credit or a credit facility be granted to the Customer it will be on the terms and conditions set out in or pursuant to this document.

(c) All costs charges fees and duties payable in respect of such application for credit or credit facility or the provision of security or securities will be the sole expense of the Customer.

(d) WATT may vary the terms and conditions of any credit facility from time to time, or revoke that credit facility at any time, at WATT's absolute discretion. Any such variation or revocation will take effect from the date such variation or revocation is communicated to the Customer, in accordance with these terms and conditions.

(e) Prior to commencement of hire or the extension of a hire period, WATT may require personal guarantees from directors or shareholders (including a holding company) of the Customer, a bank guarantee, cash security deposit or other form of security.

**16. CREDIT, CHARGE OR DEBIT CARDS**

(a) WATT may require a credit or similar card ("Card") as security for the hire of the Plant or payment for servicing or for a sale and if so, the following provisions shall apply. At the Commencement of hire or point of sale or placement of an order for servicing, WATT may draw a security deposit or require the Customer to reserve a sum in the account which may be drawn upon. The deposit drawn or the sum to be withheld will be specified at the time of hire. A further amount may be required if the hire period is extended. Credit cards will usually attract a 1.5% surcharge.

(b) Similar to (a) above, if the Customer presents a Card it authorises WATT to reserve credit with, or obtain an authorisation from the Card issuer (or draw upon the Card) up to an amount equal to the expected cost of the rental plus an additional sum to be advised at the time of hire as security for the hire.

(c) The Customer hereby irrevocably authorises WATT to charge or draw upon the Card (or any cash deposit) to recover or secure any loss, cost or damage pursuant to this agreement. If WATT charges the Card to recover an indemnity or loss, cost or damage WATT shall notify the Customer of the amount charged and provide details of WATT's claim. If the Customer disputes any amount drawn it must respond in writing within twenty one days of receiving notice from WATT.

(d) The Card may be charged within sixty days after the Plant has been returned, notwithstanding that any particular charge or amount of damages could have been but was not charged when the Plant was returned.

(e) If the Customer provides a cash deposit in lieu of a Card or as part security for this agreement, then, because WATT retains minimal cash on its premises, there is no guarantee that the cash deposit will be reimbursed in cash at the time the Plant is returned. WATT will

reimburse any cash deposit by way of electronic transfer of funds or cheque within five Business Days to the account or address notified by the Customer.

**17. SECURITY**

(a) In consideration of this agreement, in addition to any other rights and remedies of WATT hereunder the Customer hereby agrees to indemnify and keep indemnified WATT from and against any loss, damage, costs, expense or claim whatsoever which WATT may incur in connection with, or as a consequence of, any breach or default by the Customer of or under any of the covenants, agreements or obligations on its part contained in this agreement. This includes interest and legal costs on a solicitor and own client basis (the "Monies Hereby Secured").

(b) The Customer hereby charges the Plant supplied by WATT and any cash bond or credit card reservation or authorisation provided, as security for payment of the Moneys Hereby Secured pursuant to this agreement. WATT has the express right to register securities on the PPSR giving notification of this charge.

(c) Neither the security in paragraph (b) above, nor anything herein contained shall affect or become merged with any other security which WATT now holds or may hereafter hold in respect of the Moneys Hereby Secured or any claim or demand which WATT now has or may hereafter have against any other person or surety or otherwise. This security shall be a continuing security until a final discharge has been given to the Customer. WATT shall hold any judgment which WATT may obtain against the Customer in respect of the Moneys Hereby Secured collaterally for the due payment of the Moneys Hereby Secured. This security will not merge with such judgment.

(d) Immediately on default in payment of the Moneys Hereby Secured or in the observance or performance of any of the Customer's covenants or at any time thereafter all WATT's powers may be exercised by WATT without any proof of such default or its continuance or any notice being required.

(e) WATT is irrevocably authorised by the Customer to enter, at any time, onto any premises that the Customer has possession of or is entitled to grant access to, for the purpose of: (i) reclaiming possession of any goods supplied by WATT; and/or, (ii) at WATT's discretion temporarily or permanently decommissioning the goods where that good or any other goods have not been paid for in accordance with this agreement.

(f) Any costs incurred by WATT in reclaiming or decommissioning any Plant, including the costs of making good any damage to third party property in reclaiming the Plant, are to be costs indemnified to WATT by the Customer and are recoverable as allowed for in these terms and conditions, as part of the purchase price or hire costs of the Plant.

**18. WARRANTIES:**

(a) The Customer is responsible for the Plant being suitable for the purpose for which it is contracted, including production rates, quality of product and grading. All statements as to out-put, power or capacity and all drawings, catalogues or specifications or other documents issued by WATT shall not be regarded as forming part of this agreement unless specifically stated in writing.

(b) The Customer warrants that prior to signing hereof it was satisfied by means other than information given by or received from WATT as to the quality and fitness of the Plant.

(c) Where the Purchaser is a consumer as defined by any relevant law such as the *Competition & Consumer Act (Cth)* (formerly known as the Trade Practices Act) and similar State or territory laws, certain conditions and warranties ("the consumer warranties") may not be excluded, restricted or modified. The Customer then has the benefit of both the consumer warranties and any other warranty that may be provided by WATT or by the manufacturer of the Plant. To the extent permitted by Law, all implied warranties and conditions are excluded and all warranties which may be modified are modified by this agreement.

(d) Subject to subclause (c) immediately above, if any of the Plant is expressly warranted by a manufacturer or supplier other than WATT, that warranty is not a warranty of WATT and WATT shall have no liability in respect of any breach thereof. WATT in its absolute discretion may present such claims to the manufacturer or supplier on behalf of the Customer.

(e) *Purchaser's remedy for breach of warranty:* (i) Where there is a breach of warranty by WATT, or where the Customer elects or is compelled to treat any breach of a condition on the part of WATT as a breach of warranty, the Customer is not by reason only of such breach of warranty entitled to reject the Plant. The Customer may set up against WATT the breach of warranty in diminution or extinction of the price; or, maintain and action against WATT for damages for breach of warranty. (ii) The measure of damages for breach of warranty is the estimated loss directly and naturally

resulting, in the ordinary course of events, from the breach of warranty. Under no circumstances will the Customer be entitled to claim for consequential loss (iii) In the case of breach of warranty of quality the Customer's loss is, prima facie, the difference between the value of the Plant at the time of delivery to the Customer and the value they would have had if they had answered to the warranty plus the costs of delivery from WATT's premises to the Customer.

#### **19. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

(a) WATT (as grantee) may protect its interest in the goods by registering one or more charges pursuant to the PPSA against the goods, or against any deposit, promise to pay, card authority or other security granted pursuant to this agreement

(b) To the extent permitted by law, the following sections in the PPSA will not apply to this agreement and the Customer as grantor hereby waives all rights arising under those sections: s92 (secured party must not damage goods when removing accession); s93 (reimbursement for damage); s94 (refusal of permission to remove accession); s95 (notice of removal of accession - to the extent that it requires the grantee to give a notice to the grantor); s97 (Court order about removal of accession); s118 (enforcing security interests in accordance with land law decisions); s121 (enforcement of liquid assets); s130 (notice of disposal to the extent that it requires the grantee to give a notice to the grantor); s132(3)(d) and (4); s134(1); s135 (notice of retention); s137; s140; s142 (redemption of collateral)

(c) The grantor hereby agrees, at the grantor's cost to do everything which the grantee reasonably requires to be done, for the purpose of ensuring that in relation to each and every Security Interest granted by it to the grantee: (i) any such Security Interest is enforceable, perfected and effective and continues to be so; (ii) the grantee may apply for any registration or give any notification which the grantee may deem necessary to ensure that the Security Interest has priority as a first priority interest, or with such other priority as the grantee agrees in writing; (iii) the grantee is able to exercise all of its rights in relation to the Security Interest; (iv) promptly sign any further documents and provide any further information (such information to be complete, accurate and up to date in all respects) that the grantee may reasonably require to register a Financing Statement, Financing Change Statement other document required under the PPSA; (v) indemnify and upon demand reimburse the grantee for all expenses incurred in registering a Financing Statement, Financing Change Statement or any other document required under the PPSA or for the purposes of releasing any charged property; (vi) give the grantee at least fourteen days prior written notice of any proposed change in the grantor's name or any other change in the grantor's details; (vii) immediately advise the grantee of any material change in its business practices of selling goods that would result in a change in the nature of proceeds derived from such sales.

(d) The grantor hereby waives its right to receive a Verification Statement in accordance with s157 PPSA.

(e) The grantor will not disclose any information of the kind described in s275(1) PPSA without the prior written consent of the grantee.

#### **20. NOTICES AND COMMUNICATIONS**

(a) *Service of Notices.* A notice, demand, consent, approval or communication under this agreement (Notice) must be: in writing, in English and signed by a person authorised by the sender; and, hand delivered or sent by prepaid post or facsimile or email to the recipient's address for Notices provided or put forward by the party, as may varied by any Notice given by the recipient to the sender.

(b) *Effective on receipt.* Subject to paragraph (c), a Notice given in accordance with this clause takes effect when taken to be received (or at a later time specified in it), and is deemed to be received: (i) if hand delivered, on delivery; (ii) if sent by prepaid post, three clear Business Days after the date of posting (or seven clear Business Days after the date of posting if posted to or from a place outside Australia); (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; (iv) if sent by email then when it enters the recipient's mail delivery system.

(c) If the delivery, receipt or transmission would otherwise be taken to be received on a day which is not a Business Day in the place of receipt or after 4.00pm on a Business Day, the Notice will be taken to be received at 9.00am on the next following Business Day.

(d) Other methods of notice permitted by law are not excluded.

#### **21. GUARANTEE AND INDEMNITY (if applicable)**

(a) *General:* (i) In consideration of WATT at the request of the Guarantor agreeing to supply and continuing the supply of the Plant to the Customer and in further consideration any credit or credit facility given by WATT to the Customer, the Guarantor hereby guarantees to WATT the due and punctual payment by the Customer of all moneys which are

now or may from time to time hereafter be owing or remain unpaid by the Customer to WATT and the due performance of the Customer's obligations to WATT howsoever arising now and in the future and undertakes to pay all such moneys and fulfill all such obligations on demand (ii) AND ALSO INDEMNIFY and keep indemnified WATT against all loss or damage that WATT may suffer by reason that the whole or any part of the Customer's liability to WATT is not recoverable from the Guarantor by reason of any failure of liability of the Customer for any reason. This indemnity will not be limited or affected in any way whatsoever by the fact that such moneys or obligations cannot be or could never be recovered from or enforced against the Customer for any reason. Each Guarantor's liability under this clause is unlimited.

(b) The Guarantor acknowledges that the Guarantor's obligations under this Guarantee will be principal obligations co-extensive with those of the Customer to WATT

(c) This Guarantee is a continuing guarantee to WATT for all debts of the Customer to WATT in respect of the Plant supplied or to be supplied to the Customer and will not be prejudiced, abrogated or affected by: (i) WATT providing any indulgence or concession to the Customer or any Guarantor or by any variation in the terms upon which WATT supplies the Plant or makes credit available to the Customer or by WATT waiving any breach or default by the Customer (ii) any payment made to WATT which is thereafter avoided whether by statute as a preference or voidable transaction or for any other reason whatsoever and any said payment will not operate to discharge the Guarantor's liability under this Guarantee and in that event WATT, the Customer and the Guarantor are to be restored to the rights which each respectively would have had if the payment had not been made; (iii) the Guarantor not having notice of any neglect or omission by the Customer to pay for the Plant ordered in accordance with the trade terms specified by WATT; (iv) any absolute or partial release of or compromise with the Customer or any one or more Guarantor by WATT; (v) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by WATT; (vi) any variation of the provisions of this agreement by the Customer; (vii) any assignment of this agreement or the contract of supply; (viii) any release, failure to sue, any agreement not to sue, any exchange, variation, renewal or modification made or any other dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by WATT with respect to any judgment, order for payment of moneys, specialty, instrument (negotiable or otherwise) or other security whatsoever held, recovered, or enforceable by WATT or any obligation or liability whatsoever in respect of all or any of the moneys reserved by these terms and conditions for the obligations contained herein (ix) any other act, omission or default on the part of WATT or the happening of any other matter or thing whereby the liability of the Guarantor would, but for this clause, have been discharged, reduced or otherwise affected or any other present or future legal disability of the Customer or the Guarantor

AND each of the above circumstances is to be construed separately and independently and so as not to limit the meaning or any other listed circumstances and is not to be limited by the provisions of any other clause in these terms and conditions.

(d) WATT will not be required or obliged to give any notice to: the Guarantor of a default by the Customer or any other Guarantor; or, give any notice to or obtain any consent from the Guarantor before the amount of moneys payable by the Customer to WATT or the obligations and liabilities of the Customer are increased or varied for any reason.

(e) *Guarantor not to compete in insolvency.* The Guarantor will not in competition with WATT enforce any security held by the Guarantor against any of the assets of the Customer or claim payment of any moneys owing to the Guarantor by any other Guarantor or the Customer in any manner which would have the effect of reducing the amount recoverable by WATT of the moneys hereby guaranteed. The Guarantor is not to prove or claim in any bankruptcy, liquidation, composition arrangement or assignment or in respect of the appointment of any liquidator or trustee until WATT has received one hundred cents in the dollar in respect of the moneys owing by the Customer to WATT and the Guarantor is to hold on trust for WATT that proof and claim and any dividend received thereon.

(f) This Guarantee is valid and effective and binds any person who executes it despite the fact that another proposed or contemplated party has not executed it.

(g) This Guarantee will not be affected by the death, disability, lunacy, mental incapacity, bankruptcy, liquidation, insolvency, deed of arrangement, assignment or composition for the benefit of creditors, capital reconstruction or the appointment of a receiver and/or manager (whether by the court or under the powers contained in any instrument) or administrator of the of the Customer or of any Guarantor

or the property of any such party or notice of any of the preceding circumstances

(h) In the event that this agreement is transferred or assigned to any person or persons, the benefit of the Guarantee extends to the transferee or assignee and the benefit of the Guarantee continues to inure concurrently for the benefit of WATT despite any such transfer or assignment to the extent permissible by law.

(i) When this agreement is signed by the director of a Pty Ltd company such director is deemed to sign as director and Guarantor.

## **22. MISCELLANEOUS**

(a) *Title*. In no case will title in any goods supplied pursuant to this contract pass to the Customer except pursuant to a formal contract for sale on terms set by WATT.

(b) *Choice of Law*. This agreement is governed in all aspects by the Law of Western Australia and the Customer submits to the jurisdiction of the courts of Western Australia.

(c) *Quotations*. All quotations issued by WATT to a Customer are subject to these terms and conditions. WATT reserves the right to vary or rescind quotations at any time prior to the Customer placing an order the subject of such quotations unless the parties agree to lock the quotation in for a period of time.

(d) *Read Down*. If any provision of this agreement or part of a provision of this agreement is or becomes legally ineffective, under the general law or by force of legislation, but would not have such effect if it were read down and, if it is capable of being read down, such provision or part of a provision shall be read down accordingly.

(e) *Severance*. If notwithstanding the foregoing a provision or part of a provision of this agreement still is or becomes legally ineffective: If the provision would not have such an effect if a word or words were omitted, that word or those words are hereby severed; and, in any other case, the whole provision is hereby severed; and the remainder of this agreement shall be of full force and effect.

(f) *Warranty of Authority*. Any person who signs this agreement on behalf of the Customer warrants that for all purposes of the agreement he is the duly authorised agent of the Customer. If such person is not the duly authorised agent of the Customer then in consideration of WATT accepting the order he shall be deemed to be the Customer and agrees to be bound by all the terms and conditions of this agreement.

(g) *Customer as representative*. Where a Customer purchases any goods or service for the benefit of a third party, whether as agent or in any other capacity, until that third party has paid for the goods or service in full, the Customer will remain liable as the primary debtor for those goods or services.

(h) The parties agree that these terms and conditions will apply to all subsequent sale and servicing and hirings of Plant by the Customer from WATT unless specifically varied in writing by the execution of a later agreement. Every twelve months WATT may request the Customer re-execute this agreement in its most current form.

(i) *Assignment*. Nothing herein contained shall prevent WATT from charging, assigning, pledging, mortgaging, transferring, or otherwise disposing of, in whole or in part, its rights hereunder. The Customer may not, as to such assignee, terminate this agreement or subject its obligations to pay money under this agreement to any diminution or right of setoff.

(j) *Counterparts*. This agreement may consist of a number of copies (including facsimile or electronic copies), each signed by one or more parties to the agreement. If there are a number of signed copies they are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement.

(k) *Waivers and Consents*. No consent or waiver expressed or implied by WATT to, or of, any breach of any of these terms and conditions by the Customer will be construed as a consent or waiver to, or of, any other breach of the same or any other covenant, condition or duty. No consent or waiver by WATT will be valid unless provided in writing and signed by an authorized officer of WATT.

(l) *Further assurances*. The Customer must do and concur in doing and permit to be done all such acts and things as may be reasonably required by WATT for the purpose of enforcing rights and remedies or obtaining relief or indemnity from third parties who have caused or contributed to loss, damage or cost of WATT, including but not limited to commencing or joining in or rendering reasonable assistance in respect of, an action against any third party who may have caused or contributed to such loss cost or damage.

(m) *Health and safety*. It is the Customer's sole responsibility and risk to ensure that all health and safety regulations in relation to the Plant are observed at all times after delivery of the Plant and that appropriate steps are taken in accordance with such regulations in relation to the storage, handling and use of the Plant. The Customer will indemnify and continue to indemnify WATT against all loss or damage arising out of any breach by the Customer of the said health and safety regulations.

(n) *No bailment*. WATT is not a bailee of tools or goods provided by a Customer and shall not be responsible for loss, theft or damage to such tools or goods when at WATT's work site or in WATT's possession, custody or power.

## **23. DEFINITIONS AND INTERPRETATION:**

**(a) Definitions** – in this agreement

**this agreement and hire agreement** includes these general conditions and where relevant the application to hire, an account application, credit application and an accepted quotation.

**Business Day** means a day in which trading banks are open in Western Australia provided that day is not a Saturday, Sunday or Public Holiday.

**Customer** means and includes the following (unless an express contrary intention is agreed in writing): (i) any person who signs this agreement whether on his own behalf or on behalf of any other person or organisation; (ii) the person or organisation shown on the rental agreement/application for hire or the addressee of that rental agreement; and (iii) and/or the purchaser as required by the context.

**Fault** means caused by or materially contributed to by: (i) the Customer's misconduct, negligent act or omission; and/or (ii) the Customer's contacting with a stationary vehicle or other object (whether or not that thing was also moving); (iii) breach of a provision of this agreement. For the avoidance of doubt, even if the Customer is not negligent but breaches a restriction on the use and operation of the Plant then the Customer shall be deemed at Fault.

**good industry practice** means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from competent contractors performing services comparable to the services, consistent with law.

**Plant** means all classes of plant, machinery, equipment, tools, accessories or other goods and materials including parts which WATT agrees to hire, sell or provide to the Customer and includes any alternate or replacement Plant.

**PPSA** is reference to the Personal Property Securities Act (Cth) and **PPSR** is a reference to the register established and maintained pursuant to that Act.

**Purchaser and purchaser** refer to the buyer of Plant.

**Relevant Authority** includes a police force, a government or other statutory authority and where a quasi government or private organisation is responsible for managing an area, issuing permits, tickets or fines (e.g. to use private roads or a mine site) then that organisation.

**WATT** means the business of A.J. Burrows Pty Ltd t/as WA Torque Tools (A.B.N. 83 062 236 088) also known as WATT Torque & Porta Power and includes situations where WATT supplies Plant as distributor or agent for another organisation.

**(b) Interpretation** In the construction of these presents:

(i) Words in the singular number will include the plural number and the masculine gender will include the feminine and neuter genders and vice versa where the circumstances so require. (ii) A reference to a party named herein means and includes its or their and each of its or their heirs executors administrators and permitted successors or assigns.

(iii) Where two or more persons constitute a party hereto the covenants and agreements on the part of those persons herein contained will bind them and any two or more of them jointly and each of them severally

(iv) Quality of Plant includes its state or condition. (v) **PPSA definitions apply**. Unless the context otherwise requires words and phrases defined in the PPSA shall have the same meaning when used in this agreement. (vi) Reference to any statute or act includes all statutes and acts (State or Federal) for the time being enacted amending or modifying any statutes and all regulations, by-laws, requisitions or orders made under any statute from time to time by any statutory public or other competent authority and any statutes or acts enacted in substitution for any such statute or act.

*Additional conditions specifically related to sale of Plant*

## **24. CONFIRMATION OF SALE**

(a) The sale will not be accepted until signed as accepted by an authorised officer of WATT or expressly confirms the acceptance by email or other written means.

(b) When WATT receives an official order number from the Purchaser, then the Purchaser is confirming that agrees and accepts all the conditions set out in this agreement.

## **25. PRICE AND PAYMENT**

(a) Unless otherwise expressly agreed, payment for all Plant is to be made in full prior to delivery or collection of any Plant.

(b) The price quoted or invoiced is based on costs, taxes, duties, awards, statutes, rate of exchange and conditions as at the date of quotation or sale.

(c) Unless otherwise stated in a quotation: (i) the price is subject to

increase by an amount equivalent to all increases in costs, taxes, duties, awards, statutes, rates of exchange and conditions taking place prior to delivery of the Plant or performance of the services; and, **(ii)** Unless otherwise specified by WATT, prices quoted are valid for thirty days from the date of quotation and subject to change thereafter. WATT reserves the right to withdraw an offer if it is not signed and accepted within seven days from the date sent to the Purchaser. **(iii)** the price does not include the cost of delivery from WATT's premises.

**(c)** Notwithstanding the delivery of the Plant to the Purchaser, or to a carrier or other bailee or custodian for the purpose of transmission to the Purchaser, until payment in full of all moneys owing to WATT: **(i)** the Plant shall remain WATT's property; **(ii)** if in the Purchaser's possession, the Plant will be held as bailee and returned immediately on demand unused and undamaged; and **(iii)** the Purchaser indemnifies WATT against any claim or liability for damage or injury to or caused by the Plant.

**(d)** The consideration for any supply has been calculated initially without regard to, and is exclusive of, the goods and services tax ("GST"). If GST is payable in respect of any supply, WATT may increase the price for the supply ("original amount") by an amount sufficient so that the total amount payable in respect of the supply, after discounting for the amount of any GST payable in respect of the supply, is equal to the original amount.

**(e)** WATT may bank any part payments of invoices, without prejudice to its rights to recover the outstanding balance of any invoice, irrespective of the Purchaser's intention when making that payment.

#### **26. DESCRIPTION**

**(a)** Any representation, promise, statement or description not given in writing by an authorised representative of WATT is expressly excluded. The Purchaser acknowledges that it has relied solely upon its own inspection, skill and judgment and not on any other representation, promise, statement or description.

**(b)** All photographs, weights, illustrations, dimensions and other particular given in or accompanying a quotation or order or contained in descriptive literature are approximate only and deviations there from shall not give rise to any claim against WATT.

**(c)** Where (by a contract of sale) WATT purports to effect a present sale of future goods, the contract operates as an agreement to sell the Plant.

#### **27. DELIVERY AND FORCE MAJEURE**

**(a)** Delivery and availability dates are approximate only. WATT will use its best endeavours to meet these estimates but is not liable for delay from any cause beyond WATT's reasonable control.

**(b)** If for any cause beyond WATT's reasonable control, WATT is prevented from or delayed in making delivery or performance then WATT may either extend the time for delivery or performance for a reasonable period or terminate the contract. The Purchaser shall not have any claim for damages and shall pay for all deliveries made or services performed prior to the date of such termination and all expenses incurred and moneys paid by WATT in connection with the contract. Causes beyond WATT's reasonable control shall include without limitation any act of God, war, strike, lock out, industrial dispute, civil unrest, governmental or semi-governmental award, enactment, priority or restriction, fire, flood, adverse weather, delay in obtaining licences, transport, labour or materials, accidents, relevant damage to WATT's works or business or those of its relevant suppliers.

**(c)** The time of delivery in any quotation or order represents the time at which the Plant are to be ready for dispatch from WATT's premises and if applicable, WATT will be allowed the further time necessary to cover transit from WATT's premises. WATT does not accept orders under penalty for late delivery.

**(d)** Delivery is completed on the earlier of when WATT delivers the Plant to the Purchaser or to a carrier or other bailee or custodian (whether named by the Purchaser or not) for the purpose of transmission to the Purchaser.

**(e)** Unless being personally delivered by WATT: **(i)** all Plant shall be at the Purchaser's risk on leaving WATT's premises, even if WATT has agreed to deliver the goods to a location nominated by the Purchaser **(ii)** The Purchaser, at its own cost will insure the goods from the time they leave WATT's premises **(iii)** The Purchaser will indemnify WATT against any claim or liability regarding damage or

injury to or by the Plant after dispatch from WATT's premises.

**(f)** Unless otherwise expressly required by the Purchaser, WATT may make such contract with the carrier on behalf of the Purchaser as may be reasonable, having regard to the nature of the Plant and the other circumstances of the transaction.

#### **28. ACCEPTANCE AND CLAIMS**

**(a)** The Purchaser shall inspect the Plant within forty eight hours of their arrival and within seven days from that inspection give notice to WATT of any claims that the Plant are not in accordance with the sale contract. If the Purchaser does not give such notice the Plant shall be deemed to be in accordance with the agreement and the Purchaser shall be bound to accept and pay for the Plant.

**(b)** If the Purchaser has a right to refuse Plant which has been delivered to it then the Purchaser must return it to WATT or as WATT may reasonably direct.

**(c)** WATT may resell any Plant not taken by the Purchaser within seven days from the date of attempted delivery and, at its option, deem the sale contract repudiated; or, by subsequently substituting other Plant, treat the contract as subsisting.

#### **29. LIMITATION OF LIABILITY (SALE)**

**(a)** To the extent permitted by law, the liability of WATT for a breach of the consumer warranties and/or any warranty provided by WATT is limited, at the option of WATT, to the repair or replacement of the Plant or the cost of such repair or replacement or the performance of the services again.

**(b)** Parts and labour for repair or replacement under subclause (a) of this clause shall be provided by WATT during normal working hours at a place of business of WATT. WATT shall have no liability for the cost of transportation of the Plant to such place of business.

**(c)** The Purchaser's property under WATT's custody or control will be entirely at the Purchaser's risk as regards loss or damage from all causes to that property or caused by that property.

**(d)** The Purchaser releases WATT from any claim action or liability for consequential loss or damage to persons or property including, without limitation, loss of use of the Plant or of profits, or loss on resale, arising by reason of delays, non-delivery, defective materials or workmanship, negligence, or any act, matter, conduct or thing done, permitted or omitted by WATT.

**(e)** All rejected parts or defective parts shall be the property of WATT to dispose of as it sees fit. The Customer must preserve such parts to allow WATT or its experts an opportunity to conduct its own inquiries such as to determine the cause or nature of the defect. Do not leave them out in the rain.

**(f)** WATT accepts no responsibility for loss of or damage to or maintenance of secrecy with respect to any plans, drawings, samples or other materials supplied by the Purchaser to WATT.

#### **30. TRADE IN**

Any Plant, machine or equipment traded in by the Purchaser shall:

**(a)** remain the Purchaser's property and at the Purchaser's risk until delivery at Purchaser's expense to WATT's nominated point of delivery; and, **(b)** be delivered to WATT in the same state and condition it was in at the time of appraisal by WATT and shall be free from all encumbrances and third party interests. If it is not so delivered WATT may terminate any contract for the acquisition of those goods.

#### **31. SELLER'S LIEN**

**(a)** If WATT is unpaid and is in possession of the Plant then WATT is entitled to retain possession of the Plant until payment or tender of the price in the following cases: **(i)** Where the Plant has been sold without any stipulation as to credit **(ii)** Where the Plant has been sold on credit, but the term of credit has expired or has been revoked by WATT **(iii)** Where the Purchaser becomes insolvent, bankrupt or is unable to pay its debts when they fall due.

**(b)** WATT may exercise its right of lien notwithstanding that it may be in possession of the Plant as agent or bailee or custodian for the Purchaser.

**(c) Part delivery and lien.** Where WATT has made part delivery of the Plant and remains unpaid, WATT may exercise its right of lien or retention on the remainder, unless such part delivery has been made pursuant to a written agreement which expressly waives the lien or right of retention.