

Atlas Copco (NZ) Limited, Private Bag 92814, Penrose, Auckland 1135 Ph: (09) 579 4069 Fax: (09) 525 2006

Business Type:  Private Company  Sole Trader  Partnership  Trust  Public Company**If Company:**

Legal Name Entity: \_\_\_\_\_

Trading As: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Registered Office: \_\_\_\_\_ Year Incorporated: \_\_\_\_\_

Company Number: \_\_\_\_\_ Paid Up Capital: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

Required Credit Limit: \_\_\_\_\_ GST Number: \_\_\_\_\_

**If Partnership or Sole Trader**

Business Name: \_\_\_\_\_

Length of Time in Business: \_\_\_\_\_ GST Number: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

Required Credit Limit: \_\_\_\_\_

**Name of directors/Proprietors/Partners (All Applicants must complete)**

Full Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Full Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

**Contact Names**

Accountant: \_\_\_\_\_ Telephone: \_\_\_\_\_

Solicitor: \_\_\_\_\_ Telephone: \_\_\_\_\_

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

Accounts Payable: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Contact: \_\_\_\_\_ Fax: \_\_\_\_\_

Postal Address for Accounts: \_\_\_\_\_

**Trade References**

1) \_\_\_\_\_ Telephone: \_\_\_\_\_

2) \_\_\_\_\_ Telephone: \_\_\_\_\_

3) \_\_\_\_\_ Telephone: \_\_\_\_\_

The Customer authorises Atlas Copco (NZ) Limited to collect, retain and use any information about the Customer, for the purposes of assessing the Customer's credit-worthiness, enforcing any rights under the terms and conditions of sale, or marketing any goods and services provided by Atlas Copco (NZ) Limited. The Customer authorises Atlas Copco (NZ) Limited to disclose any information obtained in relation to the Customer to any person for any of the purposes set out above. The Customer authorises any person to provide to Atlas Copco (NZ) Limited such information as Atlas Copco (NZ) Limited may require in response to its credit enquires or its provision of credit to the customer. Where the Customer is an individual these authorities and consents are for the purposes of the Privacy Act 1993. Under the Privacy Act 1993, the Customer (if an individual) has rights of access to and correction of information held by Atlas Copco (NZ) Limited.

**Signed in Agreement:** \_\_\_\_\_ **Date:** \_\_\_\_\_**Full name of Signatory:** \_\_\_\_\_ **Designation:** \_\_\_\_\_

Approved/declined (Date) \_\_\_\_\_ Account Number: \_\_\_\_\_

Credit Controller: \_\_\_\_\_

## STANDARD TERMS OF RENTAL

### 1. DEFINITIONS AND FORMATION OF CONTRACT

In these terms:

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

“**Atlas Copco**” means Atlas Copco (NZ) Ltd, their related entities or their respective transferees or successors.

“**CGA**” means the Consumer Guarantees Act 1993.

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

“**Hire Equipment**” means materials, equipment, tooling or other property belonging to Atlas Copco, which has been made available to the Customer for hire and may otherwise be referred to as Equipment in these Rental Conditions.

“**FTA**” means the Fair Trading Act 1986

“**Full List Price**” means the market value of any equipment, parts and/or consumables, as is determined by Atlas Copco, from time to time, that is chargeable to the Customer in accordance with the terms of this Agreement with respect to any Hire Equipment, equipment or related parts and/or consumables.

“**Purchase Order**” means the Customer’s purchase order.

“**PPS Law**” means the Personal Property Securities Act 1999 and any associated rules and regulations.

“**Rental Conditions**” means the terms and conditions set out herein.

“**Services**” means the services described in a Purchase Order.

“**Specification**” means the specifications for the Hire Equipment as set out or referenced in any Quote issued by Atlas Copco, and thereafter in the respective Purchase Order.

“**terms and conditions**” mean this and other documents comprising of the Agreement.

### 2. GENERAL

- 2.1 Atlas Copco’s rental of Hire Equipment to the Customer is expressly conditioned upon the Customer’s agreement to these Rental Conditions. Any acceptance by the Customer of an offer by Atlas Copco with respect to Hire Equipment is expressly limited to the Customer’s acceptance of these Rental Conditions.
- 2.2 Any terms and conditions submitted by the Customer which add to, vary from or conflict with these Rental Conditions are hereby expressly rejected unless there is a written agreement covering rental terms and conditions which has been negotiated and mutually executed by authorised representatives of Atlas Copco and the Customer, and such agreement is applicable to the particular Hire Equipment, whereby such written agreement shall take precedence (to the extent of inconsistencies) and these Rental Terms will be supplemental to such agreement.
- 2.3 Any quote provided to the Customer may be withdrawn at any time prior to the Customer’s acceptance is provided to Atlas Copco in writing.
- 2.4 For the avoidance of doubt, these Rental Conditions only apply to the rental services provided by Atlas Copco, and all other goods and services provided by Atlas Copco are provided to the Customer pursuant to Atlas Copco’s Standard Terms and Conditions of Supply, which can be found at <https://www.atlascopco.com/en-nz> (“the Atlas Copco Standard Terms of Supply”).
- 2.5 The Customer agrees and acknowledges that: (i) the Customer is engaged in trade and the Hire Equipment supplied to the Customer under this Agreement is provided for the purposes of a business, such that the CGA does not apply to this Agreement; (ii) that before accepting any Hire Equipment the Customer will examine the Hire Equipment to satisfy itself on its own judgement as to the condition of the Hire Equipment and its suitability for the Customer’s purposes and the Customer does not rely on the representations or other conduct of Atlas Copco or Atlas Copco’s employees or agents, and that the Customer and Atlas Copco expressly contract out of the FTA to the maximum extent possible; and (iii) it is fair and reasonable that the parties are bound by this clause.
- 2.6 Atlas Copco complies with the Privacy Act 2020 and the Privacy Principles set out in that Act. Atlas Copco may collect and use personal information for supplying the Hire Equipment (including for Atlas Copco’s administrative requirements), for debt collection, for enforcing any rights under this Agreement, and to provide the Customer with information about products or services that Atlas Copco think might be of interest to the Customer. The Customer has the right to access and request correction of any personal information we hold about the Customer.
- 2.7 If Atlas Copco or any of Atlas Copco’s employees, contractors, agents or representatives are required to attend a location under the

Customer’s control (which may not be the Customer’s sole control) in connection with this Agreement, then the Customer must provide a safe work environment in accordance with all applicable laws, including the Health and Safety at Work Act 2015.

### 3. RENTAL PERIOD

- 3.1 Unless Atlas Copco have agreed to a different time and date with the Customer in writing, the rental term of the Hire Equipment starts on the time and date that the Hire Equipment leaves Atlas Copco’s premises (Commencement Date).
- 3.2 Unless Atlas Copco have agreed a different time and date with the Customer in writing, the rental term of the Hire Equipment ends on the date that the Hire Equipment has been returned to the branch from which the Hire Equipment was supplied or that branch issues an official ‘off-hire’ number to the Customer after the Customer correctly confirms that the Hire Equipment is no longer required and is available for collection. If Atlas Copco and the Customer have not agreed to any fixed term in writing,
  - 3.3 Atlas Copco may terminate the hire at any time.
  - 3.4 Unless otherwise agreed, a daily rental shall be twenty-four (24) hours, a weekly rental shall be seven (7) consecutive days and a monthly rental shall be twenty-eight (28) consecutive days.
- 3.5 If Atlas Copco does not have a registration on the New Zealand Personal Property Securities Register under the *Personal Property Securities Act 1999 (PPS Law)* ensuring a perfected first priority security interest in any Hire Equipment within 10 working days of the Customer taking possession of that Hire Equipment, the rental period (including any option for renewal or extension of the rental period or the aggregate of consecutive rental periods during which the Customer has or may have substantially uninterrupted possession) shall, despite anything else in this Agreement and any schedule annexed to it, be the lesser of (i) the specified rental period and any possible renewal or extension terms; and (ii) one year only (being one day short of the applicable threshold period for a lease for a term of under the PPS Law), without any ability to renew or extend the rental period.

### 4. FEES AND TAXES

- 4.1 The Customer must pay to Atlas Copco the rental fees and the other fees associated with any Hire Equipment as set out in any quote issued by Atlas Copco which has subsequently been accepted within thirty (30) days by the Customer. If no quote has been issued, the Customer shall pay the relevant rental fees associated with the Hire Equipment as may be set out by Atlas Copco on its standard schedule of fees, as amended from time to time.
- 4.2 If the Hire Equipment is not returned by the Customer to Atlas Copco: (i) by the end of the rental term; or (ii) within 24 hours after the Agreement terminates, then the rental fee continues to be payable (in full) up to and including the date that the Hire Equipment is returned to Atlas Copco.
- 4.3 If Atlas Copco sends a technician to repair the Hire Equipment (see clause 5.6 below) and the Hire Equipment is not available or not at the agreed site, then an attendance fee is payable by the Customer. Unless Atlas Copco have agreed a different fee with the Customer, the attendance fee shall be Atlas Copco’s then current attendance fee. A copy of Atlas Copco’s current attendance fees is available at any time on request.
- 4.4 Unless the Customer directs Atlas Copco not to, in writing, (and before the Hire Equipment leaves Atlas Copco’s premises), Atlas Copco will charge the Customer a damage waiver fee for the Hire Equipment. Unless Atlas Copco have agreed a different fee with the Customer, the damage waiver fee is Atlas Copco’s damage waiver fee at the time the rental commences. A copy of Atlas Copco’s current damage waiver fees is available at any time on request.
- 4.5 Atlas Copco may, at its absolute discretion, charge the Customer a credit card fee of up to 1.5% of the payment amount for any payments made by the Customer by credit card.
- 4.6 If the Hire Equipment is stolen whilst in the Customer’s care, possession or control, then (without limiting any of Atlas Copco’s other rights or remedies) the rental fee continues to be payable (in full) until the Customer notifies Atlas Copco, in writing, of the theft.
- 4.7 Without limiting any other right or remedy of Atlas Copco, the rental fee continues to be payable (in full) during any period that the Hire Equipment is not operating correctly (or at all) because of anything referred to in clause 5.9 or a failure to comply with clause 5.5.
- 4.8 All fees (including the rental fees) automatically increase on 1 February each year by increases in the consumer price index published by the Australian Bureau of Statistics for Sydney (Capital City) (All Groups) or, if that index is suspended or discontinued, the index substituted for it by the Australian Bureau of Statistics. To avoid doubt, decreases are not applied, and increases apply regardless of when a rental term commenced.
- 4.9 Atlas Copco may increase the rental fees on no less than 30 days’ notice. To avoid doubt, increases under this clause apply in addition to increases under other provisions (including increases under clauses **Error! Reference source not found.** and 4.8 above).

Taxes

- 4.10 The fees referenced in any quote or agreement do not include taxes. The Customer must pay all taxes arising from, or relating to, this Agreement in addition to any fees quoted or otherwise provided. Taxes mean all taxes of any kind (including stamp duties) other than taxes on Atlas Copco's income.
- 4.11 Without limiting clause 4.10, the Customer must pay Atlas Copco the amount of any goods or services tax for a supply. Atlas Copco will provide the Customer with a tax invoice.
- 4.12 The Customer agrees to repay Atlas Copco, on demand, any costs or expenses that Atlas Copco may incur to make good any failure by the Customer of the Customer's performance or non-performance of their obligations under this Agreement, or incurred by Atlas Copco in the enforcement or protections of Atlas Copco's rights in the Hire Equipment.

## 5. EQUIPMENT

- 5.1 When Atlas Copco agrees to rent the Customer an item of Hire Equipment, a separate agreement, which contains all of the terms and conditions of this Agreement, except this clause 5.1, is created for that item.
- 5.2 The Customer may not rent, lease, lend or part with possession of the Hire Equipment unless Atlas Copco has agreed, in writing, that the Customer may do so.
- 5.3 Notwithstanding any other term, condition or provisions to the contrary, Atlas Copco will always own all right, title and interest in the Hire Equipment. The Customer does not in any way and shall not obtain any form of interest (whether legal, equitable or otherwise) in the Hire Equipment (even if such Hire Equipment is installed on, or is incorporated into, any of the Customer's equipment).
- 5.4 Risk in the Hire Equipment passes to the Customer when it leaves Atlas Copco's premises and remains with the Customer at all times until it is returned to Atlas Copco.
- 5.5 The Customer must comply with the additional customer obligations in clause 11.
- 5.6 The Customer acknowledges that Hire Equipment is in a used condition.
- 5.7 If the Hire Equipment breaks down, then Atlas Copco will (in its absolute discretion), upon being promptly notified by the Customer of the breakdown in writing: (i) repair or replace the relevant item of Hire Equipment; or (ii) terminate the Agreement and refund any rental fees paid in advance, less any amounts that the Customer owes Atlas Copco for the rental term in which the Hire Equipment was operational.
- 5.8 The Customer must (at the Customer's cost) return the Hire Equipment to the Atlas Copco branch/depot it was issued from: (i) at the end of the rental term; or (ii) within 24 hours after the Agreement terminates. If (for any reason) the Hire Equipment has not been returned by that time, then: (A) Atlas Copco may recover it; and (B) the Customer must pay all of the costs that Atlas Copco incur in doing this (including legal costs (on an indemnity basis) and claims against Atlas Copco by the Customer or a third party).
- 5.9 Subject to clause 6, if (for any reason) the Hire Equipment (or any part of the Hire Equipment):
- 5.9.1 goes missing, is stolen, is seized, is converted or is damaged beyond repair, then the Customer must pay Atlas Copco its Full List Price; or
- 5.9.2 at no fault of Atlas Copco, is not working or is damaged (fair wear and tear excepted), then the Customer must pay us: (A) for the parts and labour to repair it; or (B) its Full List Price, if it cannot be repaired.
- 5.10 Without limiting clause 5.9, if the Customer does not comply with the Customer's obligations in clause 5.5, then the Customer must pay Atlas Copco (as the case may be): (i) to repair any damage that such acts or omissions cause (including all parts and labour); (ii) to replace any non-approved parts or fluids with approved parts and fluids (including all parts and labour); and (iii) the cost of cleaning and decontaminating the Hire Equipment.
- 5.11 Amounts under clauses 5.8, 5.9 and 5.10 are payable as a debt due and payable by the Customer within 7 days after Atlas Copco requests payment.

## 6. DAMAGE WAIVER

- 6.1 If there is a Damage Waiver Event (see 6.2 below) for the Hire Equipment and:
- 6.1.1 the Customer has paid the damage waiver fee; and
- 6.1.2 the Customer pays Atlas Copco an additional amount equal to the greater of: (A) 10% of the list price of the relevant Hire Equipment; and (B) NZ 500,
- then subject to clause 6.3, Atlas Copco will waive its right to claim for the cost of repairing the damaged Hire Equipment or for the loss of the stolen Equipment (as the case may be).
- 6.2 For the purpose of this clause 5, a Damage Waiver Event is agreed to be: (i) damage that occurs when the Hire Equipment is damaged by fire, storm, earthquake, collision or accident; or (ii) loss that occurs when there is a genuine theft of Equipment.
- 6.3 The damage waiver in 6.1 does not apply to: (i) tools, accessories, tyres, tubes, batteries or similar items; (ii) fire, storm, earthquake, collision or accident damage caused (for any reason) while the Hire

Equipment is located, used, loaded, unloaded, transported on land, or transported on, over or adjoining water (including, without limitation, while located, used, loaded, unloaded or transported over or on wharves, bridges, barges and vessels of all kinds); (iii) fire, storm, earthquake, collision or accident damage caused or contributed to by inadequate storage; (iv) without limiting (ii) or (iii) fire, collision or accident caused by a negligent act or omission (or a wilful act) by the Customer or the Customer's personnel or representatives; or (v) theft caused by inadequate security.

## 7. PAYMENT TERMS

- 7.1 For Customers who have opened an account with Atlas Copco and appropriately completed an application for an account, all fees shall be payable in arrears, 30 days from the relevant invoice date.
- 7.2 For any Customer who does not hold a valid account with Atlas Copco, all fees shall be payable in advance.
- 7.3 Without limiting any other right or remedy, Atlas Copco may charge the Customer daily interest, at 1.5% per month, on all overdue amounts. If Atlas Copco charge interest, then the Customer must pay such interest charge within 7 days after Atlas Copco request payment of the same. Together with any interest charges, the Customer will be liable to pay all costs and expenses, including all legal fees and costs (on an indemnity basis), incurred by Atlas Copco in collecting or otherwise recovering overdue amounts from the Customer.
- 7.4 Without limiting any of Atlas Copco's other rights or remedies, Atlas Copco may immediately terminate this Agreement if any amount due under this Agreement remains outstanding for more than 30 days.

## 8. INSURANCE & INSOLVENCY

- 8.1 The Customer must do all acts and things to insure (and keep insured until its return to Atlas Copco) with a reputable insurer the Hire Equipment at its Full List Price during the rental period at its sole expense. The insurance must include cover for loss or damage caused by fire, storm, tempest, theft, burglary, riots, strikes, civil commotion and explosion. The relevant insurance policies must be in the Customer's name note Atlas Copco's interest as an additional insured.
- 8.2 In the event of a loss, the Customer shall cooperate with Atlas Copco and the Customer's insurer in any investigation, prosecution and the defence of any claim, action or suit, and the Customer must not do anything to impair or invalidate the required insurance coverage.
- 8.3 To avoid doubt, complying with the Customer's obligations in clauses 8.1 and 8.2 do not affect or otherwise limit or reduce any of the Customer's liability, or otherwise affect any of Atlas Copco's liability, and all of the provisions of this Agreement will apply with full force and effect.
- 8.4 The Customer must do everything reasonably necessary to protect Atlas Copco's right, title and interest in the Hire Equipment. Without limitation, the Customer must:
- 8.4.1 not encumber the Hire Equipment (or any part of the Hire Equipment), or allow it to be encumbered or subject to a security interest (as defined in PPS Law, in any way; and
- 8.4.2 if someone tries to seize, sell or deal with the Hire Equipment (or any part of the Hire Equipment), then the Customer must immediately: (A) tell that person/entity that the Hire Equipment is Atlas Copco's property; (B) notify Atlas Copco; and (C) do everything that the Customer can lawfully do to prevent the seizure, sale or dealing of the Hire Equipment.
- 8.5 If the Customer is (or is about to become) insolvent or subject to any form of administration or insolvency process or proceedings of any kind (whether voluntary or involuntary), then without limiting any other rights or remedies: (i) Atlas Copco may immediately terminate this Agreement; and (ii) the Customer irrevocably authorises Atlas Copco to enter any premises and remove the Hire Equipment.

## 9. PPSA

- 9.1 The Customer grants to Atlas Copco a 'security interest' for the purposes of the PPS Law (Security Interest) in the Hire Equipment as security for the performance of the Customer's obligations (including payment obligations) under this Agreement. The Security Interest is a continuing interest irrespective of whether there may be monies or other obligations owing by the Customer to Atlas Copco at a particular time. The Customer will not permit the Hire Equipment to become an accession (as defined in the PPS Law) or affixed to any land or premises.
- 9.2 Atlas Copco may register any actual impending or likely Security Interest over the Hire Equipment and all proceeds of the Hire Equipment. The Customer may not make a claim or demand against Atlas Copco for any loss or liability action of any kind in respect of any registration, even if it is determined that Atlas Copco should not have made a registration. The Customer must do anything (such as obtaining consents and signing documents) which Atlas Copco require for the purposes of ensuring that Atlas Copco's Security Interest is enforceable, perfected, first in priority and otherwise effective under the PPS Law. The Customer will meet on demand all costs and expenses that Atlas Copco may incur in filing a financing statement or financing change statement under the PPS Law or in maintaining that registration.



- 9.3 Atlas Copco's rights under this Agreement are in addition to and not in substitution for Atlas Copco's rights under other law (including the PPS Law) and Atlas Copco may choose whether to exercise rights under this Agreement, and/or under such other law, as Atlas Copco see fit.
- 9.4 To the maximum extent possible, the Customer agrees to waive any period of, or right to notice that, would otherwise apply under the PPS Law in the Customer's favour in respect of enforcement by Atlas Copco.
- 9.5 In addition to any rights Atlas Copco have under the PPS Law, the Customer agrees that under this Agreement, Atlas Copco shall, if there is a default by the Customer, have the right to seize purchase, take possession or apparent possession, retain, deal with or dispose of any goods, and the Customer agrees that Atlas Copco may do so in any manner Atlas Copco sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 9.6 In accordance with section 107 of the PPS Law (permitted contracting out) the Customer waives their rights as a debtor under sections 114(1)(a), 116, 120(2), 121, 125 - 127, 129, and 131 - 134 of the PPS Law, and under section 148 of the PPS Law the Customer waive it's right to receive a verification statement confirming registration of a financing statement or the filing a financing change statement (and this waiver also extends to any verification statement in respect of Security Interests arising or provided for under the security documents prior to the date of this Agreement).
- 9.7 Atlas Copco and the Customer agree not to disclose any information relating to the amounts due under, the payment terms of, or obligations secured by, this Agreement except as required for the performance of their respective obligations under this Agreement, as permitted by this Agreement, as required by law, or where disclosure is required to our funders or assignees.  
Sub-hire
- 9.8 the Customer must not dispose or purport to dispose of or create or purport to create or permit to be created any Security Interest in the Hire Equipment other than with Atlas Copco's written consent. The Customer must not lease, hire, bail or give possession (Sub-hire) the Hire Equipment to anyone else unless Atlas Copco (in Atlas Copco's absolute discretion) first consent in writing. If Atlas Copco does consent, any such Sub-hire must be in writing in a form acceptable to Atlas Copco and must be expressed to be subject to Atlas Copco's rights under this Agreement. The Customer may not vary a Sub-hire without Atlas Copco's prior written consent (which may be withheld in Atlas Copco's absolute discretion)
- 9.9 The Customer must ensure that Atlas Copco are provided at all times with up-to-date information about the Sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the Sub-hire and the location and condition of the Hire Equipment
- 9.10 The Customer must take all steps (including registration under PPS Law) as may be required by Atlas Copco:
- 9.10.1 to ensure that any Security Interest arising under or in respect of the Sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - 9.10.2 enabling the Customer to gain (subject always to Atlas Copco's rights) first priority (or any other priority agreed to by Atlas Copco in writing) for the Security Interest; and
  - 9.10.3 enabling Atlas Copco and the Customer to exercise their respective rights in connection with the Security Interest.
- 9.11 To assure performance of the Customer's obligations under this clause, the Customer hereby gives Atlas Copco (and each of Atlas Copco's directors) an irrevocable power of attorney to do anything Atlas Copco consider necessary to protect its interest in the Hire Equipment. Atlas Copco may recover from the Customer the cost of doing anything under this clause, including registration fees.

## 10. LIABILITY

- 11.1 Nothing in these Rental Conditions (including clause 11.2) affects any non-excludable statutory rights or remedies that the Customer may have including, without limitation, under the Consumer Guarantees Act 1993 (CGA), the Fair Trading Act 1986 (FTA) and the Contract and Commercial Law Act 2017 (except to the extent permitted by those Acts).
- 11.2 To the maximum extent permitted by law and subject to clause 11.1:
- 11.2.1 Atlas Copco excludes all implied terms (statutory or otherwise - including implied warranties) of any kind.
  - 11.2.2 Atlas Copco excludes all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

- 11.2.3 Atlas Copco's total liability for loss or damage of any kind not excluded by other provisions in these Rental Conditions is limited in aggregate as follows:  
(i) for liability relating to an item of Hire Equipment, to the lesser of: (A) the fees received by Atlas Copco from the Customer for that item of Equipment; and (B) NZ 10,000; and  
(ii) in all other cases: NZ 10,000;
- 11.2.4 Atlas Copco's liability with respect to these Rental Conditions is reduced to the extent that the liability was caused or contributed to by an act or omission by the Customer or by any of the Customer's personnel (including agents, contractors and subcontractors);
- 11.2.5 Clauses 11.2.1 – 11.2.4 apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), equity, under any statute or otherwise, arising from or related in any way to the Rental Conditions, this Agreement (including arising from or related in any way to the Hire Equipment); and
- 11.2.6 If a statute implies a term into these Rental Conditions or this Agreement, and it cannot be excluded, then Atlas Copco's liability (whether in tort, negligence, breach of contract, statute, common law or otherwise) for breaching it will be limited (at Atlas Copco's option) to: (i) for goods: repair, replacement with equivalents or paying the cost of such repair or replacement; and (ii) for services: resupply or paying the cost of resupply. Atlas Copco may choose not to do any of these things.

## 11. ADDITIONAL CUSTOMER OBLIGATIONS

### *Operation by Qualified Personnel*

- 12.1 The Customer warrants and represents that the Hire Equipment is and shall be used and operated in a proper and skilful manner using only competent and properly trained and qualified personnel and by recognised methods and standards of operation.

### *No Alterations*

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

### *Location*

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

### *Protection, Maintenance and Fluids*

- 12.4 The Customer warrants and represents that it will protect the Hire Equipment from loss or damage (including by taking steps that a prudent company or individual would take to protect similar equipment).
- 12.5 The Customer must carry out all of the checks and perform all of the tasks, set out in any Hire Equipment documentation (including in maintenance manuals). To avoid doubt, this includes carrying out all scheduled servicing. The Customer must inform Atlas Copco immediately of any leaks, noises or faults that could result in damage (or additional damage) to the Hire Equipment and cease using the Hire Equipment until the leak, noise or fault has been investigated.
- 12.6 Without limiting 12.5, the Customer must only use parts, and oils and other fluids, that Atlas Copco has approved for use with the relevant Hire Equipment.

### *Inspection Access*

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

### *Return Condition*

- 12.8 Prior to returning the Hire Equipment the Customer must clean the Hire Equipment and decontaminate it.
- 12.9 The Customer must ensure that returned Hire Equipment is free of defects (which, to avoid doubt, means that the Hire Equipment operating normally and does not any missing parts or missing accessories).
- 12.10 The Hire Equipment will be supplied with all fluids (fuels, oils, additives) at maximum levels. The Customer will be responsible for, and further warrants and represents that it shall ensure that the Hire Equipment is returned with all fluids (fuels, oils and additives) at maximum levels. The cost for filling returned equipment fluids to their maximum levels will be charged at Full List Price.
- 12.11 To avoid doubt, complying with the Customer's obligations in this clause 11 does not affect, limit or reduce any of the Customer's liability, or otherwise affect any of Atlas Copco's liability, and all of the provisions of this Agreement apply with full force and effect.

12.12 To avoid doubt, the Customer must meet all of the Customer's obligations under this Agreement (including the obligations in this clause 11) solely at the Customer's own cost.

**12. COMPLETE AGREEMENT & THIRD-PARTY RIGHTS**

13.1 This Agreement (together with each applicable rental schedule for the supply of the Hire Equipment) is the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, arrangements, correspondence and discussions of any kind relating to its subject matter. This Agreement may be updated by Atlas Copco at any time with written notice to the Customer, and this Agreement, as amended, will apply to each current agreement for the rental of Hire Equipment the Customer has with Atlas Copco at the date of such notice..

13.2 This Agreement does not confer any rights or benefits upon any third parties (except Atlas Copco's related companies, as expressly provided for in this Agreement) and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third-party beneficiary law.

**13. ASSIGNMENT AND GOVERNING LAW**

14.1 The Customer may not deal with (including, to avoid doubt, assign) any of the Customer's rights or obligations under this Agreement without Atlas Copco's prior written consent and any dealing without that prior written consent is void and of no effect. A change in the Customer's control or beneficial ownership will be deemed an assignment.

14.2 Atlas Copco may assign or novate this Agreement as Atlas Copco sees fit and the Customer agrees to sign any novation that Atlas Copco reasonably requires for that purpose.

14.3 This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

14.4 Any failure to enforce any term of this Agreement will not be construed as a waiver of an of Atlas Copco's right.

**Acknowledgements, Consents and Acceptance of Application Term (Mandatory)**

**TERMS AND CONDITIONS**

The Applicant acknowledges and agrees that all products and services will be provided solely on the terms and conditions for the applicable Atlas Copco (NZ) Limited available on the Atlas Copco website <https://www.atlascopco.com/en-nz/rental/about-atlas-copco-specialty-rental/download-zone> and on request from Atlas Copco.

To avoid doubt, no other terms or conditions will apply (including any set out in (or any referred to in) any of the Applicant's documents and are hereby expressly rejected – including any set out in, or referred to in, purchase orders terms and conditions).

Acceptance (Mandatory)		
Print Name and Position	Signature**	Date

**\*\*the signatory(s) warrant(s) that they are authorised to make this application on behalf of the Applicant.**