



## Quality Power Limited ("QPower") Equipment Hire/Sales/Service Agreement

### Terms and Conditions

#### Definitions

1. In this document:

'Contract' means these terms and conditions (as updated from time to time) together with the QPower Hire, Sale and Service Contract all operating instructions and relating to the equipment hired/purchased.

'Equipment' means all equipment, vehicles, services and materials provided by QPower.

'Hirer' means the hirer or the Equipment described herein on the hirer terms and conditions contained herein.

'Hire Equipment' means hire equipment that is leased by the hirer from the owner pursuant to the hirer terms in this agreement.

'Owner' means QPower and/or its related companies (as defined in the Companies Act 1993) and/or its agents.

'Purchaser' means the purchaser of the Equipment described herein on the purchaser terms and conditions contained herein.

'Services' means the, servicing, repair, installation and/or commission of the equipment supplied by the Owner to the Hirer so that it is in a ready to use state

#### Agreement

2. QPower agrees to provide the Hirer with the use of Equipment on the terms and conditions set out in the Contract and the Hirer (as named herein) agrees to be bound by the same.

#### Duration /Term of Hire

3. The duration and terms and conditions of the hire shall be as set out and recorded in the Contract.

#### Hirer's Liability and Insurance

4. The Hirer shall be responsible for and indemnifies the Owner in full for direct losses incurred or suffered by the QPower in respect of accidental physical loss or damage to the Equipment. For the avoidance of doubt the indemnity does not extend to any indirect losses including any loss incurred or suffered due to loss of revenue and due to the non-availability of the Equipment due to damage, theft or loss.

5. The Hirer may elect to insure itself, its property, third parties and their property against all risks arising from the presence or operation of the equipment. The Hirer must insure the equipment against loss, damage or theft of the equipment to its full replacement value and must provide evidence of such insurance to the Owner on request.

In the event that evidence of insurance is not provided, the Owner may (at its sole election):

- I. insure the Equipment while on hire. The Hirer must pay a fee of 10% of the hire cost for this service. The Hirer shall remain liable for the cost of the insurance excess, up to a maximum of \$5,000 plus GST per item; or
- II. Cancel the Contract

(c) The Hirer must immediately upon request provide the Owner with all assistance and information required to enable the Owner to claim under its insurance policies.

(d) If the or any part of the Equipment is stolen, or involved in any incident resulting in damage, immediate notice must be given to the Owner.

e) The amount of the insurance excess (\$5,000.00 per claim) which applies for the Equipment (as recorded in the Contract) for each and every new accidental or physical loss or damage to the Equipment that occurs during the duration/term of hire.

f) All Equipment shall be stored by the Hirer at a secured premise. Should the Equipment not be stored at a secured premise of the Hirer and the equipment is stolen, the Hirer shall be liable to pay the full amount of the stolen Equipment. The insurance does not cover theft (as defined by the insurer) of Equipment, theft is not covered by insurance and the Hirer shall be liable to pay the full amount of the item stolen.

g) The insurance cover for any piece of Equipment is up to a maximum of \$300,000.00

6. In the event of an attempt to steal the Equipment and the Equipment is damaged during the course of these events, the Hirer shall be liable for any insurance excess applying to the Equipment or for the costs of repairs to the Equipment, whichever may be applicable.

7. If the Equipment is damaged, stolen or requires repair or salvage because of an accident, breakdown or otherwise the Hirer shall advise the Owner or its agent of the full circumstances by telephone as soon as possible.

8. The Hirer shall not arrange or undertake any repairs or salvage without the authority of the Owner except to the extent that the repairs are necessary to prevent further damage to the Equipment or other property.

9. The Hirer is responsible for repairing any punctures, tyre or rim damage that occurs during the period of hire.

10. In the event of accident/damage/theft the Owner is not obliged to provide the Hirer with any replacement Equipment or make any refund for the unused hire period. Any replacement equipment will be provided to the Hirer at the sole discretion of the Owner.

10. If replacement Equipment is provided then any cost associated with the supply of the replacement Equipment will be at the Hirers' expense and payable prior to supply of the Equipment.

#### Use of the Hire Equipment

12. The Hirer shall:

- a) Take proper and reasonable care of the Equipment;
- b) Ensure the Equipment is suitable for its intended use and environment;
- c) Immediately notify the Owner if the Equipment is faulty, breaks down or any warning light is activated;
- d) Read and understand the manual and/or operating instructions provided with the Equipment. The Hirer must immediately advise QPower if these are not provided with the Equipment;
- e) Not sublet or hire the Equipment to any other person;
- f) Not permit the Equipment to be operated outside the Hirer's authority;
- g) Not operate the Equipment in any race, speed test, rally, contest;
- h) Not operate the Equipment (or permit it to be operated) in breach of the laws of New Zealand;
- i) Not use the Equipment to transport goods, except in compliance with all necessary approvals, permits, licenses and government regulations and in accordance with the manufacturer's specifications;
- j) Not allow or permit the Equipment to be used for any other illegal purpose.

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- k) Where recommended in any manual or operating instructions provided with the Equipment, ensure the Equipment's engine oil and coolant and water levels are checked daily and topped up if required unless agreed otherwise with QPower.
- l) Not use or operate the Equipment unless they are familiar with the correct use and operation of the Equipment (including operational limits). Where the Hirer operates the Equipment without undergoing the basic training detailed in clause 27 (k) below, the Hirer is deemed to have waived receiving such training.
- m) Allow QPower access to the Equipment at reasonable times to perform all necessary maintenance.

#### **Return of the Hire Equipment**

13. In the event that the Hirer wishes to terminate the Contract earlier than the return date and time stated, there is no obligation on the Owner to provide a refund for the balance of the hire period. Any refund or amendment to the hire rate is at the sole discretion of the Owner. Hire charges are non-refundable and non-transferrable.
14. The Hirer shall, at or before the expiry of the period of hire, deliver the Equipment to the Owner or the Owner's agent at the location address as agreed between the Hirer and Owner unless the parties have agreed that the Owner or its agent will collect the Equipment from the Hirer.
15. Should the Equipment be returned dirty (at QPower's sole discretion) or not refilled with the correct fuel then QPower will refill the same at the cost of the actual consumables on that date plus 15% to be charged to the Hirer including the costs of cleaning and/or cleaning the Equipment at QPower standard rates.
16. If the Equipment is returned to a different location other than agreed a minimum penalty fee of \$500.00 may be charged at the Owner's sole discretion in addition to the current daily hire rate.
17. If the Hirer returns the Equipment to any place other than the agreed location it will be deemed to have been returned only when the Equipment is returned to the agreed location. The Hirer will be responsible for the Equipment until such time as the Equipment is deemed to have been returned and the hire terminated. The Hirer will be responsible for all additional charges which may apply.

#### **Shipments**

18. Except where the parties agree that QPower is to deliver the Equipment to the Purchaser, responsibility ceases with the delivery of the Equipment in good order to the transportation carrier. Where QPower is to deliver the Equipment to the Purchaser, clauses 19 and 20 shall not apply.
19. Delivery is not guaranteed at or to the Purchaser's premises. Claims for shortage or damage in transit must be made by the Purchaser against the transportation carrier. In the absence of definite shipping instructions, we reserve the right to ship all Goods, to the premises of any public carrier which we deem satisfactory.
20. The Purchaser shall keep the Equipment insured against damage, loss and deterioration and shall, if QPower requires it, confirm the existence of such insurance until ownership passes to the Purchaser.
21. QPower may deliver by instalments and each instalment shall be deemed to be sold under a separate contract, on the same terms of the Contract, and for the respective proportion of the total price.
22. Claims of incorrect or defective Equipment must be made in writing to QPower where the Equipment were obtained within ten days from receipt of the Equipment. QPower has the option of re-inspection at either the Purchaser's premises or QPower's premises before allowing or rejecting the Purchaser's claim. No Equipment may be returned without first obtaining written permission from QPower. Defects in the Equipment that do not impair satisfactory service shall not be a cause for rejection by the Purchaser.

#### **Transportation of Equipment**

23. The Equipment shall only be used, transported or towed during the period of hire only by the Hirer as named in the Contract and only if they hold a current New Zealand driver licence. The Hirer named in the Contract consents to the photocopying of their New Zealand driver license, and the release of this information to third parties in certain events, including but not limited to the incurrance of fines, damage to the equipment and overdue fees or payment. Should the Equipment be used, transported or towed by any person who is not named in the Contract and the Equipment is damaged by that person, the Hirer agrees it is liable for all costs of salvage, repair and any third party damages, and such costs shall become immediately due for payment. All transport costs are at the hirers expense and hire ceases only when the equipment is returned to QPower's depot in the city to which it is being leased (unless otherwise agreed in writing with QPower and the Hirer).

#### **SERVICE, WORK, REPAIRS, INSTALLATION SERVICES AND COMMISSIONING**

24. Where QPower has agreed to perform installation Services, the Hirer / Purchaser shall provide QPower, its employees, agents and subcontractors with suitable access to the premises in all weather conditions during normal working hours for any vehicles and equipment that QPower may need for the installation, together with electricity and any other amenities reasonably required to perform such Services.
25. The Hirer/Purchaser shall ensure that the premises:
- (a) comply with all applicable laws (including those relevant to the health and safety of QPower' installation personnel); and
  - (b) are in a state ready for the installation services and are structurally sound (including the foundations if required).
26. The Hirer acknowledges and agrees that the Hirer is responsible for:
- (a) obtaining, at its own cost, any necessary permits, licences, consents or approvals (including any building consents) required for the installation Services in accordance with all applicable laws and industry standards;
  - (b) accepting the installation of the Equipment prior to any claddings or linings being installed (if applicable) or prior to any other work being performed that may restrict access to the installed Equipment;
  - (c) ensuring that any other trades people carrying out works in connection with the Equipment that the Hirer is responsible for are appropriately qualified and perform such works in accordance with all applicable laws and industry standards;
  - (d) ensuring that any other trades people that the Hirer is responsible for at the premises co-operate with QPower; and
  - (e) providing safe and secure on-site storage for materials and equipment that QPower will use in providing the installation Services.
27. Where the Hirer/Purchaser requests that QPower engage an independent subcontractor to carry out installation services ("Hirer/Purchaser Subcontractor"), the Hirer acknowledges and agrees:
- (f) that the Hirer/Purchaser appoints QPower as the Hirer's agent to enter into a contract with the Hirer/Purchaser Subcontractor for the installation services on such terms as QPower deems appropriate;
  - (g) that such installation services are not considered "Services";
  - (h) that the Hirer/Purchaser is responsible for accepting the quality of the installation services and QPower has no liability (whether in contract, statute, tort or otherwise howsoever arising) for the installation services performed by the Hirer/Purchaser Subcontractor;
  - (i) that the Hirer/Purchaser will fully reimburse QPower for the costs of the Hirer Subcontractor and QPower is entitled to charge the Hirer/Purchaser a handling fee for enabling the Hirer to use the Hirer's QPower account for billing purposes to pay the Hirer Subcontractor; and



- (j) to indemnify QPower against any loss, cost or liability suffered or incurred by QPower in respect of any Claim by a third party made against QPower arising out of its agency appointment under this clause. This does not apply where QPower has been negligent.
- (k) to pay QPower for any additional training completed by them or their agents necessary to show the operation of the equipment to the Hirer and any additional training required at the hourly rate set out in the Contract, acknowledging that basic training for operation of Equipment is provided by QPower free of charge where requested by the Hirer/Purchaser. For the avoidance of doubt, basic training comprises correct use of the Equipment including basic controls and panel operations, stopping and starting the Equipment and checking and topping up oil, coolant and water levels of the Equipment. This clause is to be read subject to clause 12.k).

#### **Payments by the Hirer / Purchaser**

- 28. The Hirer shall pay to the Owner as payment for the hire of the Equipment for the period specified in the Contract the sum detailed in the Contract.
- 29. The Hirer agrees to pay on demand from the Owner any amount which it is liable for under the Contract and, in respect of the Hirer's breach of the Contract (but subject to any other clause in the Contract providing otherwise), for damage or loss to the Equipment or third party property.
- 30. Where purchasing Equipment, the Purchaser agrees to pay QPower the agreed price as contained in the contract. Risk in this Equipment passes to the Purchaser on delivery of the Equipment and title will pass to the Purchaser on payment in full to the Owner.

#### **Bond and Credit or Debit Card Authorisation**

- 31. The Hirer agrees and irrevocably authorises that if it has presented a credit or debit card by way of bond or payment or paid a bond, that any actual or consequential liability arising out of the Contract or any other agreement under the Hirer's name may be billed directly to that credit or debit card or deducted (partially or wholly) from any bond paid.

#### **Breach of Agreement**

- 32. The Hirer acknowledges a breach of the terms of the Contract may result in the Hirer being responsible and paying for:
  - a) All costs to rectify the Equipment to its original condition or replacement of the Equipment; and/or
  - b) Loss of rental/hire revenue to the Owner; and/or
  - c) Damage to third party property being the Hirer's full responsibility;
  - d) All reasonable costs for towing, storage and recovery of the Equipment; and/orFor the avoidance of doubt, payment is due immediately upon demand from the Owner and this clause is subject to any other clause in the Contract which provides otherwise.

#### **Right to Cancel, Default & Recovery**

- 33. The Owner may terminate the Contract by notice with immediate effect if the Owner reasonably believes that the Hirer is unable to or might be unable to, comply with the Contract or pay any charges or that the Equipment is at risk for any reason whatsoever including the manner of its use by the Hirer or any adverse weather or work conditions.
- 34. Where it has sufficient legal rights to do so, the Hirer grants the irrevocable authority to the Owner or their representative to enter any premises occupied by the Hirer or on which the Equipment is situated at any time after default by the Hirer or before default if the Owner believes a default is likely and to remove or repossess the Equipment and any other property which has been supplied by the Owner. The Owner or their representative shall not be liable for any costs, damages, expenses or losses incurred by the Hirer or any third party as a result of this action, now liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded.
- 35. The following shall constitute default by the Hirer/Purchaser:
  - a) Non Payment of any sum by the due date;
  - b) The Hirer/Purchaser implies that they will not pay any sum by the due date;
  - c) The Equipment is seized by any other creditor of the Hirer or any other creditor intimates that it intends to seize the Equipment;
  - d) The Hirer/Purchaser is put into liquidation or a receiver is appointed to any of the Hirer's assets;
  - e) A court judgment is entered against the Hirer and remains unsatisfied for seven (7) days;
  - f) Any materially adverse change in the financial position of the Hirer;

#### **Payment and Default Interest**

- 36. The Hirer / Purchaser shall pay to the Owner as payment for the hire of the Equipment for the period specified in the Contract the sum detailed in the Contract.
- 37. The Hirer / Purchaser agrees to pay on demand from the Owner any amount which it is liable for under the Contract, and in respect of a breach of the Contract or for damage or loss to the equipment or third party property.
- 38. The Hirer/Purchaser undertakes to pay any monies owing under the Contract in full and on demand. In default of such prompt payment the Hirer / Purchaser undertakes to pay late payment fees of 2.5% per month, calculated daily on any amount outstanding and to indemnify the Owner and pay all costs and expenses on a solicitor and own client basis if legal action is necessary, and/or any collection agency fees, which the owner may incur in recovering any overdue or outstanding amounts of monies. QPower will also charge an administration charge for overdue accounts at \$100.00 per month.

#### **Privacy Act 1993**

- 39. The Hirer / Purchaser acknowledges that the information provided on this form ("the information") will be held by the Owner and agrees that the information may also be held by any company related to the Owner;
- 40. QPower may seek permission from the Hirer / Purchaser to use related business case study information for the purposes of marketing the QPower's products and services and the products and services of any company related to the Owner.
- 41. Where the Hirer is not a corporate entity, he or she understands that unless advised in writing to the contrary they have "opted-in" and he or she may request access to the information held by the Owner and may request that the information be corrected if the hirer considers the information is wrong or advise that they wish to opt-out.

#### **Personal Properties and Securities Act 1999 ("PPSA")**

- 42. The Hirer acknowledges that title to the Hire Equipment remains with the Owner at all times.
- 43. The Purchaser acknowledges that the Owner has a *Security Interest* (as defined in the PPSA) in the Equipment until it is paid for in full (along with any other costs outstanding).

#### **Limitation of Liability and Indemnity**

- 44. In entering into the Contract, the Hirer/Purchaser acknowledges that except in the case of QPower's negligence the Owner has no liability to the Hirer/Purchaser for any direct, indirect or consequential loss or damage or for any loss of revenue or loss of actual or anticipated profit (or any



other form of economic loss) arising in connection with the Contract (whether in contract or in tort) including that resulting from the use by the Hirer of the Equipment. Without limiting the foregoing, the Owner is not liable for any indirect or consequential loss or damage including any loss of profit or other loss suffered by the Hirer/Purchaser, or liability incurred by the Hirer/Purchaser, or liability as a result of breakdown of any hired Equipment, however caused. In the event hire Equipment breaks down the Owner will provide a replacement at no cost or cancel any remaining time on the hire contract from the point in time that the Equipment was out of use.

45. If the Hirer is hiring / the Purchaser is Purchasing the Equipment for the purposes of a business, the Hirer acknowledges the provisions of the Consumer Guarantees Act 1993 do not apply but, for the avoidance of doubt, all other statutory rights of the Hirer / Purchaser remain and apply.

46. The Hirer shall indemnify the Owner and the Owner's servants and agents against all liability, expenses, damages, actions, claims and demands arising directly from the Hirer's use, operation, maintenance and transport of the Equipment, except to the extent that the actions or inactions of the Owner and/or its servants and agents contribute to such liability, expenses, damages, actions, claims and demands.

#### **General**

47. The laws of New Zealand governs these terms and conditions of hire/purchase and any disputes under the same.

48. The Contract records the entire arrangement between the parties relating to the matters dealt with in the Contract and supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.

49. By accepting the Equipment the Hirer accepts these terms and conditions as binding on them and by confirming an order for Equipment the Purchaser accepts these terms as binding on them.

50. If a Guarantor(s) has executed this Hire Contract the Guarantor(s) shall with the Hirer shall be jointly and severally liable to the Hirer for the due payment of all money to be paid by Hirer to QPower and for the due compliance of the Hirer of all the obligations imposed on the Hirer under these terms and the Terms and Conditions including solicitor client costs on an indemnity basis.