



**Address:** 46 Tulloch Way, Canning Vale WA 6155

**Phone:** 08 9456 1204

**Fax:** 08 9456 0584

**ABN:** 47 100 887 901

## STANDARD TERMS OF TRADE APPLICABLE TO HIRE OF GOODS

### 1. HIRE AGREEMENT

These Terms of Hire, together with:

- (a) any application for commercial credit You completed and submitted to Us;
- (b) any Guarantee You completed and submitted to Us;
- (c) each Hire Proposal provided to You by Us, whether signed or not; and
- (d) any Special Terms specific to the type of Equipment You have hired make up the hire agreement (the "Hire Agreement") between You and Us.

It is important that You read and understand all of the terms and conditions of the Hire Agreement before hiring from Us. If You have any questions please ask Us. Your acceptance of Equipment from Us shall be deemed as Your acceptance of these Terms of Hire.

### 2. DEFINITIONS

"90-day Bank Bill Swap Rate" means the rate compiled from time to time by the Australian Financial Markets Association.

"Consequential Loss" means any indirect or consequential loss or damage however caused including, (a) loss of (or anticipated loss of) use, production, revenue, income, profits, business and savings or business interruption whether or not the indirect or consequential loss or damage was foreseeable or foreseen; and (b) any liability of a person or any other person, or any claim brought against the person by any other person, and any other costs or expenses in connection with the liability or claim.

"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating the environment including without limitation the use or protection of the environment.

"Equipment" means any of Our equipment available for hire.

"Expected Off Hire Date" means the date You advised Us at the commencement of the hire that You would no longer require the Equipment.

"Guarantee" means any guarantee provided by You.

"Hire Period" means the period as defined in clause 4.

"Hire Proposal" means the National Tools Hire Sheet provided by Us to You.

"Manufacturer" means the manufacturer of the Equipment.

"Off Hire Date" has the meaning set out in clause 5.6.

"PPSA" means the PPS Act and any other legislation and regulations in respect of it and the following words in clause 12 have the respective meanings given to them in

the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

"PPS Act" means the Personal Property Securities Act 2009 (Cth) (as amended).

"Regulatory Authority" means any public authority or government agency responsible for regulating the performance of electrical works.

"Trade Account" means You have properly completed and submitted a Trade Application to Us and We have approved You for an account with Us.

"We/Us/Our" means National Tools Pty Ltd (ABN 47 100 887 901).

"You/Your/Yourself" means the entity that hires the Equipment from Us.

### 3 HIRE OF EQUIPMENT

We agree to hire You the Equipment and will provide the Equipment to You in good working order subject to these Terms of Trade.

### 4. THE HIRE PERIOD

4.1 The Hire Period begins when, either:

- (a) You take possession of the Equipment; or
- (b) if You request delivery and collection of the Equipment, the time the Equipment leaves our premises.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our custody and possession.

4.3 The Hire Period includes weekends and public holidays.

### 5. CALCULATION OF HIRE CHARGES

5.1 You will pay Us for the hire of the Equipment at the hire charge rates set out in the Hire Proposal.

5.2 The Hire Proposal will specify the type of rate which will apply to You and the method of calculation.

5.3 Additional hire charges as set out in the Hire Proposal will apply if the Equipment is used for more than 12 hours per day.

5.4 You will be charged for the hire of Equipment for the full Hire Period.

5.5 You will continue to incur hire and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date.

5.6 The off hire date is the date you returned the Equipment to our premises (subject to 5.7 below).



**Address:** 46 Tulloch Way, Canning Vale WA 6155

**Phone:** 08 9456 1204

**Fax:** 08 9456 0584

**ABN:** 47 100 887 901

## STANDARD TERMS OF TRADE APPLICABLE TO HIRE OF GOODS

5.7 If You have requested that We deliver and collect, or arrange delivery and collection of the Equipment, and We have agreed, hire charges will commence from the time the Equipment leaves Our premises and continue until the date You notify Us in writing that the Equipment is available for collection (the off hire date for Equipment that is subject to collection). If You notify Us that the equipment is available for collection after the time of day at which Your hire commenced (e.g. if Your hire commenced at 10am, and you notify Us after 10am on the Off Hire Date), We reserve the right to charge an extra day of hire charges.

### 6. OTHER CHARGES

In addition to hire charges, You agree that You will be required to pay:

- (a) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Proposal;
- (b) any stamp duty or GST arising out of this Hire Agreement;
- (c) if You request site instruction or training on the use of the Equipment, the cost these services at rates agreed with Us;
- (d) charges for the cleaning and repair of the Equipment if you do not return the Equipment to us in clean and good working order.
- (e) any other applicable levies, fines, penalties and any other government charges that we are liable to pay arising from Your use of the Equipment.

### 7. PAYMENT

7.1 You must pay all fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the last day of the month in which the invoice is issued.

7.2 If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement:

- (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is 10% per annum; and
- (b) any costs and expenses (including any commission payable) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

### 8. YOUR OBLIGATIONS

8.1 You must not allow nor authorise any other person or entity to use, re-hire or take possession of the Equipment at any time.

8.2 You and Your employees, agents and contractors must:

- (a) operate the Equipment safely, in strict accordance with all laws, only for its intended use and in accordance with the Manufacturer's instructions;
- (b) ensure persons operating Equipment are suitably trained on its safe and correct use and qualified to use the Equipment;
- (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the Manufacturer;
- (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (e) ensure that no persons carry prohibited or dangerous substances in or on the Equipment; and
- (f) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.

### 8.3 Equipment Care and Maintenance

You must:

- (a) clean, fuel, lubricate and keep the Equipment in good condition under Our instructions at Your own cost;
- (b) not modify, tamper with, damage or repair the Equipment without Our prior written consent;
- (c) not remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.

8.4 During the Hire Period, You must secure the Equipment protected from theft, loss or damage.

8.5 You will allow Us to enter Your premises and inspect the Equipment during the Hire Period.

8.6 Whilst You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and Manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the Manufacturer of the Equipment to ensure its safe loading and handling.

8.7 Any electrical Equipment provided by Us will be tested and tagged before it is hired to You, but You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the Manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost. We are able to arrange for such re-testing and re-tagging of the electrical Equipment at Your cost.



**Address:** 46 Tulloch Way, Canning Vale WA 6155

**Phone:** 08 9456 1204

**Fax:** 08 9456 0584

**ABN:** 47 100 887 901

## STANDARD TERMS OF TRADE APPLICABLE TO HIRE OF GOODS

8.8 We may at our discretion consent for You to re-hire the Equipment to third parties but our prior consent must be given in writing and You are required to register Our and or Your interest in the Equipment under the PPSA with the persons that you re-hire to. You must provide a copy of the verification statement issued upon registration under the PPSA to Us within 5 days of the re-hire to a third party and incorporate all relevant provisions in clause 12 in Your agreement with the third party You on-hire to.

8.9 You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness of the Equipment for your intended use and You acknowledge that we make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.

### 9. OUR TITLE TO THE EQUIPMENT

9.1 You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.

9.2 You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.

9.3 In no circumstances will the Equipment be deemed to be a fixture.

### 10. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for the Equipment for the Hire Period.

### 11. RETURN OF EQUIPMENT

11.1 It is Your responsibility to return the Equipment during normal business hours in good working condition to Our office from which You hired the Equipment from.

11.2 You must ensure the Equipment is kept safe and secure until the time the Equipment is returned to Our custody.

### 12. PPSA

12.1 You consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest. We may at any time register a

financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

12.2 You undertake to:

(a) do anything (in each case, including executing any new document or providing any information) that is reasonably required by Us (i) so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA;

(b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent.

12.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

(a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

12.4 Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under



**Address:** 46 Tulloch Way, Canning Vale WA 6155

**Phone:** 08 9456 1204

**Fax:** 08 9456 0584

**ABN:** 47 100 887 901

## STANDARD TERMS OF TRADE APPLICABLE TO HIRE OF GOODS

section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

12.5 For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Hire Proposal provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.

12.6 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.

12.7 You agree to notify Us in writing of any change to Your details set out in the Hire Agreement, within 5 days from the date of such change.

### 13. RECOVERY OF THE EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated

We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

### 14. EXCLUSION OF LIABILITY

14.1 Notwithstanding anything to contrary in the Hire Agreement

(a) We will not be liable to You, or any third party, for any loss or damage (including but not limited to Consequential Loss) howsoever caused by the Equipment or Your use of the Equipment.

(b) Our liability under or in connection with the Hire Agreement is limited to the resupply of the Equipment.

### 15. GOVERNING LAW

The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

### 16. ENTIRE AGREEMENT AND AMENDMENT

16.1 The Hire Agreement as defined, comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the parties.

16.2 These Terms of Hire may be amended by Us from time to time. Updated Terms of Hire will be published on

Our website at [www.national-tools.com.au](http://www.national-tools.com.au) and You will be deemed to have accepted the updated Terms of Hire if You continue to hire Equipment from Us.

### 17. ACTS OF GOD

17.1 (a) neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

(b) During the Hire Agreement no weather or natural disaster will warrant a stand down period unless expressly agreed to by both parties as defined in the Hire Proposal.

### 18. RECOVERY AND LIEN

18.1 If You are in breach of the Agreement or if the Agreement has been terminated We may take all steps necessary (including legal action) to recover Our Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

18.2 All goods or items (without limitation) belonging to You shall be subject to a particular and general lien for moneys due to Us by You for any reason.

18.3 If any moneys due to Us are not paid within one calendar month after written notice has been given in writing to You that such goods or items are detained, they may be sold by auction or otherwise at Our sole discretion and at Your expense and the proceeds applied in or towards satisfaction of such particular and general lien.

18.4 If any of Our Equipment is sold to You and We have not been paid in full for that Equipment title to the Equipment shall not pass to You until We have received full payment in cleared funds. You must use Your best endeavours to ensure that third parties are aware that You do not have title to the Equipment in these circumstances.