

Building & Industrial Supplies Group Pty Limited T/A The Tool Store

ABN 32 665 642 115

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these conditions:

"**ACL**" means the Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts.

"**Agreement**" means the agreement comprising these terms and conditions of trade, any applicable Hire Schedule and any applicable Credit Application.

"**Consequential Loss**" means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings and/or loss or denial of opportunity.

"**Consumer**" has the meaning given to it in section 3 of the ACL.

"**Consumer Guarantee**" means any right or statutory guarantee under Division 1 of Part 3-2 of the ACL.

"**Credit Application**" means a credit application submitted by the Hirer, in a form approved by The Tool Store, that The Tool Store accepts.

"**Equipment**" means the items of equipment and, if any, services specified overleaf.

"**Hirer**" means the hirer of the equipment specified overleaf.

"**Hire Schedule**" has the meaning given to it in clause 4.1.

"**Non-Excludable Rights**" means any statutory rights conferred on the Hirer which The Tool Store is not capable of excluding, restricting or modifying, including Consumer Guarantees conferred on the Hirer under the ACL.

"**The Tool Store**" means Building & Industrial Supplies Group Pty Limited T/A The Tool Store ABN 32 665 642 115 which is the owner of the Equipment.

2. Agreement

2.1 Unless otherwise agreed by The Tool Store in writing, this Agreement is the only agreement which applies to the Equipment we supply for hire.

2.2 If there is an inconsistency between the documents forming this Agreement, the inconsistency will be resolved by applying the following order of precedence: (a) these terms; (b) the Credit Application; and (c) the Hire Schedules.

3. Performance

3.1 Any performance figures given by The Tool Store are estimates only. Any written guarantees as to performance of the Equipment by The Tool Store are subject to the recognised tolerances applicable to such figures.

4. Hiring

4.1 The Hirer agrees to take on hire from The Tool Store the Equipment shown overleaf (Hire Schedule).

5. Use of Equipment

5.1 The Hirer shall at all times use the Equipment in a skilful and proper manner and shall at its own expense service, clean and maintain the Equipment in good and substantial repair and condition, fair wear and tear excepted. The Hirer shall supply all power, fuel and lubricants necessary for the operation, service and maintenance of the Equipment.

5.2 If the Hirer is a natural person and they wish to hire Equipment in the form of a motor vehicle, they must be at least 21 years of age and the Hirer must ensure that any persons driving a motor vehicle that is hired by the Hirer under these conditions is also 21 years or over.

5.3 Where the Equipment is a motor vehicle, The Tool Store will arrange comprehensive motor vehicle insurance and that insurance will not cover the Hirer for the following:

- (a) if the driver is under 21;
- (b) if the driver is over 25, damage to The Tool Store's vehicle (damage caused by the driver of the Hirer) of up to \$2,500; or
- (c) if the driver is over 21 but under 25, damage to The Tool Store's vehicle (damage caused by the driver of the Hirer) of up to \$3,500.

5.4 The Hirer will, at the commencement of this Agreement, provide a credit card imprint to The Tool Store, and provide The Tool Store with a non-cancellable authority to debit from the credit card, liability for the amount set out in 5.3(a), 5.3(b) and 5.3(c) above.

6. Cleaning

6.1 On completion of the hiring, the Equipment must be properly cleaned by the Hirer, failing which the Hirer will pay The Tool Store for any reasonable cleaning costs of which may be deducted from the deposit or any balance shall be paid by the Hirer to The Tool Store forthwith on demand by The Tool Store.

7. Charges

7.1 The Hirer will pay The Tool Store for the use of the Equipment charges as shown overleaf.

7.2 The following additional costs are payable by the Hirer:

- (a) all freight charges whether incurred by The Tool Store or the Hirer in respect of the delivery and return of the Equipment;
- (b) other charges associated with the use of the Equipment incurred by The Tool Store, including but not limited to tolls, parking fines or speeding tickets; and
- (c) any Goods & Services Tax, stamp duty and any other taxes, fees or other government levies or changes which may be imposed with respect to this Agreement, the goods or the services but excluding any income tax payable by The Tool Store on its own income.

8. Loss or damage to Equipment

8.1 The Hirer is responsible for any loss of or damage to the Equipment, for any reason whatsoever, fair wear and tear excepted and excluding any pre-existing loss or damage, or loss or damage caused by The Tool Store. The Hirer must indemnify The Tool Store in respect of all claims, damages and expenses in relation thereto, except to the extent that the loss or damage has been caused or contributed to by The Tool Store or The Tool Store's personnel. Any amount payable by the Hirer pursuant to this paragraph may be deducted from the deposit and any balance shall be paid by the Hirer to The Tool Store forthwith upon demand by The Tool Store.

8.2 Responsibility of the Hirer for damage or loss to any hired Equipment commences on collection or delivery of the hired Equipment and shall cease only on receipt of a return docket issued by The Tool Store or The Tool Store's assigned employee confirming return of the Equipment in good order and condition. The Tool Store / The Tool Store's assigned employee must inspect the returned Equipment and if in order issue a return docket as soon as reasonably practicable after receiving the returned Equipment.

8.3 The Hirer shall ensure that the Hirer's accredited representative is present on return of the Equipment to acknowledge registration of any damage incurred during use by the Hirer.

9. Damage to property or person

9.1 The Hirer is responsible for any loss of or damage to property or person caused by the Equipment or arising out of any use thereof during the period of hire or any period thereafter prior to the return of the Equipment to The Tool Store and the Hirer shall indemnify The Tool Store in respect of all claims damages and expenses in relation thereto, except to the extent that the loss or damage has been caused or contributed to by The Tool Store or The Tool Store's personnel.

10. Period of hire

10.1 The period of hire shall commence from the commencement date and time as shown overleaf which shall be either the date and time at which the Equipment is collected by the Hirer from The Tool Store's premises or the date and time at which the Equipment leaves The Tool Store's premises for delivery to the Hirer as the case may be.

10.2 The period of hire shall continue until the Equipment is returned to The Tool Store's premises provided that if the Hirer notifies The Tool Store that the Equipment is available for collection and obtains from The Tool Store an "off-hire" number then the period of hire shall end when the Hirer is given that "off hire" number. It shall be the responsibility of the Hirer to ensure that the Equipment is returned to The Tool Store as soon as practicable after receiving the "off hire" number.

10.3 During the period of hire, the Hirer will safely secure all items loaded in or on the motor vehicle or Equipment.

10.4 During the period of hire, the Hirer will not allow any person (where Equipment is a motor vehicle) to drive if:

- (a) the driver does not hold a current driver's licence for the hired class of vehicle;
- (b) the driver is affected by drugs or with more than the legally prescribed level of blood alcohol content;
or
- (c) the driver has been refused motor vehicle insurance.

11. Hiring charges

11.1 Notwithstanding anything herein, hiring charges at the rates specified overleaf shall commence from the commencement of the period of hire and shall continue until the completion of the period of hire defined herein or until the expiration of the minimum period of hire specified overleaf whichever is the later.

11.2 The Tool Store may deduct all or part of any outstanding hiring charges (that are not subject to a bona fide dispute) from the deposit.

11.3 The Hirer must pay all tolls, fines, penalties and kilometre charges (under clause 11.4) in respect of this Agreement.

11.4 The Hirer is responsible for the kilometre charge, as specified in the Hire Schedule, (where Equipment is a motor vehicle) should the Hirer exceed the 50 kilometres per day allowance.

11.5 The Hirer must return all motor vehicles with a full tank of petrol/diesel (as applicable) or pay The Tool Store the cost of refuelling the same.

12. Breakdown

12.1 If there is a breakdown or failure of the Equipment, the Hirer shall return the Equipment to The Tool Store's premises forthwith and on no account repair or attempt to repair the Equipment without the prior consent of The Tool Store. If there is a breakdown or failure is caused by fair wear and tear, or by The Tool Store, then the period of hire shall come to an end at the time that it is no longer able to be used by the Hirer.

13. Owner's liability

- 13.1 If under any law, any terms conditions or warranties which apply to the supply of Equipment or services pursuant to this Agreement cannot legally be excluded restricted or modified (Non-Excludable Rights), then these Non-Excludable Rights apply to the extent required by that law.
- 13.2 Subject to clause 13.1 and to the maximum extent permitted by law, The Tool Store excludes any term, condition, warranty, representation, guarantee or undertaking that may otherwise be implied into this Agreement by legislation, common law, equity, trade, custom or usage.
- 13.3 To the extent permitted by law, and subject to clause 13.1 The Tool Store's sole liability for any breach of any Non-Excludable Right is limited:
- (a) in the case of Equipment, to any one of the following as determined by The Tool Store in its absolute discretion: the replacement of the Equipment or the supply of equivalent equipment, the repair of the Equipment, the payment of the cost of replacing the Equipment or of acquiring the equivalent equipment and the payment of the cost of having the Equipment repaired; and
 - (b) in the case of services, to any one of the following as determined by The Tool Store in its absolute discretion: the supplying of services again and the payment of the cost of having the services supplied again.

14. Limitation

- 14.1 To the extent permitted by law and subject to any Non-Excludable Rights, neither party shall be liable to the other, for any Consequential Loss under this Agreement.

15. Force majeure

- 15.1 It is agreed notwithstanding anything to the contrary contained herein, neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from causes beyond its reasonable control such as, but not limited to, Acts of God, civil or military authority, acts of public enemy, war, riot, civil disturbance, insurrection, accident, fire, explosion, earthquake, flood, the elements, strike, labour dispute, shortage of suitable parts, materials, labour or restrictions and inability to obtain, import and export licences and each party shall have the right to elect at any time during such delay to terminate this Agreement.

16. Termination

- 16.1 The Tool Store may, notwithstanding the specified period of hire or any waiver of some previous default, forthwith terminate this Agreement and repossess the Equipment in any of the following events:
- (a) if the Hirer fails to pay any hiring charges within seven (7) days of the due dates;
 - (b) if the Hirer does or permits any act or thing whereby The Tool Store's rights in the Equipment may be prejudiced;
 - (c) if the Hirer becomes insolvent or bankrupt or makes any arrangement or composition with its creditors or, in the case of a Hirer being a limited company, if an order is made or a resolution passed for the winding up of such company; or
 - (d) if the Hirer breaches a material term of this Agreement.
- 16.2 For the purposes of repossessing or determining the state and condition of the Equipment, The Tool Store may enter into or upon any premises where the Equipment may be found without prejudice to the rights of The Tool Store to recover from the Hirer any monies due hereunder or any damages for breach hereof and the Hirer indemnifies The Tool Store in respect of any claims, damages or expenses arising out of any action taken under this clause, apart from any loss caused or contributed to by The Tool Store's negligence.

17. General

- 17.1 Neither party may assign its rights under this Agreement without the other party's written consent.
- 17.2 The person signing this document for and on behalf of the Hirer warrants to The Tool Store that he or she has the authority of the Hirer to enter into this Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Agreement and indemnifies The Tool Store against all losses arising from any breach of this warranty.
- 17.3 The granting of time or any other indulgence shall not affect the strict rights of The Tool Store hereunder.
- 17.4 The Hirer shall not assert or exercise any right of set off against monies payable by it to The Tool Store under this Agreement in respect of any claims which the Hirer may have against The Tool Store under this Agreement.
- 17.5 If the provisions (or part thereof) contained herein is found to be invalid, illegal, or unenforceable for any reason, this Agreement shall remain otherwise in force and effect apart from such provision which shall be deemed to be deleted.
- 17.6 The Tool Store may alter these terms from time to time by publishing an updated version of the terms on its website. The updated terms will apply to the hiring of any Equipment after the date of publication and will not affect any Equipment hired before the date of publication. It is the Hirer's responsibility to check the current terms that apply on The Tool Store's website before hiring Equipment, which can be accessed using the following link: <https://www.thetoolstorehire.com.au/gallery/webdoc/policies/Terms%20and%20Conditions.pdf>

18. Terms of payment

- 18.1 The Hirer must pay the hiring charges for the Equipment by the due date and using the method stated in The Tool Store's invoice or in the Credit Application. If no time is stated in these documents, then the Hirer must pay the hiring charges when the Hirer collects, or The Tool Store delivers, the Equipment.
- 18.2 The Tool Store may refuse to supply the Equipment to the Hirer in future if the Hirer does not pay to The Tool Store all amounts that the Hirer owes on or before the date that such amounts are due. The Tool Store may require the Hirer to pay a deposit, which must be paid when The Tool Store accepts the Hirer's request to hire the Equipment.
- 18.3 Without limiting any of The Tool Store's other rights or remedies, if the Hirer fails to pay any amounts by the due date for payment, then the Hirer must pay interest on the unpaid amount at 2% per annum above the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the ANZ Bank, and such interest will accrue from the date payment was due to the date payment is made, and will be calculated daily and capitalised monthly, and must be paid by the Hirer on demand.
- 18.4 If The Tool Store takes steps to recover any amount the Hirer owes due to a payment failure, the Hirer will be responsible for all reasonable loss that The Tool Store incurs in recovering the amount owing.

19. Personal Property Securities Act

- 19.1 The parties acknowledge and agree that:
- (a) this Agreement is a security agreement for the purposes of the PPSA;
 - (b) the Tool Store has a security interest in the Equipment and any present or after-acquired property that represents the proceeds of the Equipment; and
 - (c) the security interest secures all amounts owing by the Hirer to the Tool Store in connection with the Equipment.
- 19.2 If the Equipment is hired for a period of more than 2 years, then that hire is a PPS Lease as defined in section 13 of the PPSA.

- 19.3 The Tool Store may at any time register a financing statement (or, if relevant, a financing change statement) on the Register in relation to its security interest in the Equipment that may include terms that:
- (a) describe The Tool Store as the “secured party” and the Hirer as the “grantor”;
 - (b) describe the Equipment supplied by the Tool Store to the Hirer from time to time pursuant to this Agreement as collateral in the class of “other goods” (or such other class as The Tool Store may reasonably determine is applicable to the Equipment);
 - (c) specifies that the security interest that The Tool Store holds in the Equipment is a PMSI in accordance with item 7 of the table in section 153(1) of the PPSA to the extent that it is a PPS Lease; and
 - (d) specifies that the security interest affects proceeds and, in particular, all present and after-acquired property that represents proceeds of the Equipment.
- 19.4 The Tool Store may register a financing statement or financing change statement on the PPSA Register for any period that the Tool Store determines (in its discretion).
- 19.5 Upon request by The Tool Store, the Hirer must pay to The Tool Store all fees, charges and expenses that The Tool Store may reasonably incur in:
- (a) preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to the Tool Store under the agreement;
 - (b) maintaining any such registration;
 - (c) enforcing any security interest granted to the Tool Store under the agreement; and
 - (d) any fees, charges and expenses that may be incurred by or with an agent that acts on behalf of The Tool Store.
- 19.6 A security interest in the Equipment created according to this Agreement will attach to the Equipment at the time that the Hirer obtains possession of them and not at any later time.
- 19.7 The Hirer must do anything reasonably required by The Tool Store to enable The Tool Store to register the security interest as a PMSI and to maintain that registration.
- 19.8 The Tool Store and the Hirer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275(1) of the PPSA save that The Tool Store may disclose that information to an interested person where section 275(7) of the PPSA applies.
- 19.9 The Hirer agrees that it will not authorise the disclosure of any information of the kind described in section 275(1) of the PPSA.
- 19.10 If the Hirer fails to pay an amount due or if it fails to perform any of its obligations in connection with the supply of the Equipment, the Hirer agrees that The Tool Store shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize the Equipment by any method permitted by law. For these purposes, and without limiting any other rights of The Tool Store under the PPSA as a secured party, the Hirer further agrees:
- (a) upon demand made by The Tool Store, to immediately deliver up the Equipment to The Tool Store;
 - (b) that it irrevocably authorises The Tool Store to enter the premises occupied by the Hirer in order to search for, retrieve and remove the Equipment;
 - (c) to do all things necessary to immediately facilitate The Tool Store's access to the Hirer's premises and to assist The Tool Store to locate and identify the Equipment; and

(d) to authorise The Tool Store to resell the Equipment seized and apply the proceeds of sale in payment of any monies that the Hirer owes it.

- 19.11 The Hirer agrees that The Tool Store does not need to give the Hirer any notice under the PPSA (including without limitation a notice of a verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 19.12 In the event of a default by the Hirer in performing any of its obligations in connection with the supply of the Equipment under this Agreement, the Hirer agrees that (as between the parties to them) The Tool Store is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Equipment.
- 19.13 In this clause the following words have these meanings unless the contrary intention appears:
- (a) **"PMSI"** means Purchase Money Security Interest as defined in section 14 of the PPSA.
 - (b) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) and regulations.
 - (c) **"Register"** means the Personal Property Securities Register as referred to in Chapter 5 of the PPSA.
 - (d) **"Registrar"** means the Registrar of the Personal Property Securities Register as referred to in section 146 of the PPSA.

20. Debt recovery

- 20.1 In addition to clause 19, the Hirer grants a charge over all of its interests in real property as security for the performance of its obligations under the terms and conditions of this contract (including, but not limited to, the payment of any money).
- 20.2 Where the value of the hiring of the Equipment exceeds \$100,000, the Hirer agrees that The Tool Store has the right to register a caveat over the Hirer's interests in real property, but acknowledges that The Tool Store will only register caveats in respect of a charge if the Hirer defaults on payment under this Agreement and fails to remedy such payment within 30 days after The Tool Store gives notice of the default to the Hirer.
- 20.3 The parties agree that documents that are required to be served under any Act or Regulation of the State of New South Wales or Commonwealth, whether such service requires personal service or otherwise, can be served by mail to the nominated address of a party.

The following deed of guarantee must be completed if requested by the Tool Store.

21. Deed of guarantee

- 21.1 The person named below (Guarantor) irrevocably and unconditionally guarantees to The Tool Store the due and punctual payment of all monies owed by the Hirer to The Tool Store under the agreement to which this deed is annexed, as well as the punctual performance of all of the Hirer's obligations, undertakings and provisions contained in or implied by such agreement.
- 21.2 The Guarantor irrevocably and unconditionally indemnifies The Tool Store against all loss, damage, liability, costs and expenses suffered or incurred by The Tool Store as a result of any failure by the Hirer to pay in a due and punctual manner the amount owed by the Hirer to The Tool Store when due or as a result of any breach of any of the Hirer's covenants and conditions contained in or implied by this Agreement.
- 21.3 The Guarantor must, immediately on demand: (a) pay to The Tool Store any money which is not paid when due by the Hirer to The Tool Store; and/or (b) perform any of the other obligations, undertakings and provisions referred to in this clause 21.
- 21.4 As security for the performance of its obligations under this Agreement, the Guarantor hereby grants to The Tool Store: (a) a security interest in and over all of its present and after-acquired personal property; and (b) a

charge over all of its interests in real property. The Guarantor agrees that The Tool Store has the right to register a caveat over the Guarantor's interests in real property, but acknowledges that The Tool Store will only register caveats in respect of a charge if the Guarantor defaults on its obligations under this deed and fails to remedy such default within 30 days after The Tool Store gives notice of the default to the Guarantor.

Details of Guarantor

Name	
Address	
Is the Guarantor the trustee of a trust? (Answer "yes" or "no")	
Does the trust have an ABN? (Answer "yes" and provide the ABN, or "no")	

Executed as a deed poll

Dated: _____

Signed, sealed and delivered by

(Insert name of Guarantor, if an individual)

Signature of Guarantor

in the presence of:

Signature of witness

(Insert name of witness)

OR

Executed by

(Insert name of Guarantor, if a company)

in accordance with section 127 of the
Corporations Act 2001 (Cth) by:

Signature of Director

Full name (print)

Signature of Director/Company
Secretary

Full name (print)