

# LARSEN'S

## AIR CONDITIONING

### HIRE - PH 0448 818 466

#### RENTAL TERMS & CONDITIONS

Revision "K"

#### 1. TERMINOLOGY

In these conditions:

- 1.1 The "Owner" is LARSEN AIRCON HIRE PTY LTD as DM & CJ LARSEN (LACH)
- 1.2 The "Customer" is the person, firm or corporation renting Equipment from the Owner.
- 1.3 The "Equipment" means all plant, equipment, vehicles and machinery, including tools, accessories and parts supplied to the Customer.
- 1.4 "Insurer" meaning a person, firm or corporation insuring the Equipment and any authorised officer or employee.
- 1.5 Personnel means:
  - In relation to the Customer, the Customer's employees, agents, consultants and contractors (often than the Owner); and
  - In relation to the Owner, the Owner's employees, agents, consultants, subcontractors, invitees and their respective employees, agents, consultants, contractors and invitees.

#### 2. RENTAL TERM

- 2.1 The rental rate has been structured upon a standard 10 hours working period unless a quoted Standby Rental applies. If the Equipment is used outside of this standard, then the rental rate will be quoted and adjusted accordingly.
- 2.2 Subject to clause 2.1, the term of the rental commences on the date on which the Equipment leaves the Owners depot and will terminate on the date the equipment returns to the Owner's depot and confirmed fully operational. 48 Hrs notifications to complete hire requirements on air conditioning equipment, a further hire period will apply should this not be received via written or phone notification.
- 2.3 Rental period is to be continued until the equipment is fully operational, if found to be defective on return, or as otherwise agreed in writing.
- 2.4 The minimum rental period is one day completing and returned by 4.30pm, and air conditioning per calendar week unless otherwise stated on quotation.
- 2.5 Any Customer failing to return the Equipment to the Owner's depot within the period of rental quoted/ordered will incur additional charges as per 2.3.

#### 3. RETURN OF EQUIPMENT

If the Customer does not return the Equipment, the Customer must pay to the Owner on demand the replacement cost of the equipment and remains liable for rental charges along with ancillary costs, until the replacement cost is paid or the Equipment is returned to the Owner.

#### 4. LOADING & UNLOADING AND CLEANING OF THE EQUIPMENT

- 4.1 The Customer shall at its cost unload the equipment upon delivery & load the equipment for return to the Owner. A maximum of 1.5 hrs is allowed for loading / unloading if transport is offered by LACH, delays to this automatically incur charges at \$ 165.00/Hr and nightly accommodation of \$250.00 if exceeds fatigue management requirements NHVR.
- 4.2 The Customer must follow LACH's safety requirements and responsibilities as per defined by the NHVR Transport Chain of Responsibility (COR).
- 4.3 The Customer must forward all relevant Chain of Responsibility COR information and Site access information, to LACH that pertains to site, access and travel in a timely fashion as to enable procedures to be amended if so required.
- 4.4 The Customer shall be responsible for cleaning the equipment back to a rehire condition. Should the equipment be returned without being cleaned, than service charges will be forwarded for the costs to make ready for rehire.

#### 5. SERVICE OF EQUIPMENT

- 5.1 Subject to clauses 5.2 to 5.6, the Owner will at its cost service & repair the equipment. Under no circumstances does the Customer have the right to repair the equipment. Any modifications to the equipment made by the Customer will be inspected and placed back to original hire condition by LACH and all direct costs incurred born by the Customer.
- 5.2 If the Equipment requires repairs:
  - 5.2.1 For minor faults, rectification will be affected by the Owner at the Customers site if possible, and
  - 5.2.2 For major breakdowns not caused by the Customer breaching this agreement, the Owner will replace the Equipment, if possible, should replacement Equipment be available. The Owner will not be responsible for any costs incurred should a major breakdown happen that causes loss to the Customer.
    - 5.2.2.1 Equipment (Delivery and Service only) - Transport and delivery to site required to replace the equipment is at the Owners cost. All associate costs to removal and installation from where the Customer has installed will be at the Customers cost.
    - 5.2.2.2 Equipment (Delivery, Install, Service) - All associated costs to replace unit IE transport, craneage, electrical disconnect/reconnects, required to replace unit is at the Owner cost.
- 5.3 The Customer must:
  - 5.3.1 Give written notice to the Owner immediately after the Equipment has operated for 250 hrs past the date of the preceding service or the completion date of the rental term whichever is the later; and
  - 5.3.2 Email 'Daily Record Sheet' for the Equipment to the Owner each Monday morning (generators only); and
  - 5.3.3 Seek prior written approval from the Owner before moving any Equipment to a different site.
- 5.4 The Owner will give written notice to the Customer, that it will service the Equipment with 1 week notice. The Customer will not unreasonably withhold or deny access to the Owner if less than 1 week.
- 5.5 If the Customer does not comply with clauses 5.3.1 & 5.3.2, or the Owner is unable to access the Equipment to carry out the service during normal business hours within the period set out in clause 5.4 due to act or omission of the Customer, then the Customer must pay to the Owner costs incurred to meet site requirements IE inductions to enable servicing to be carried out, will be charged separately
- 5.6 The Customer must pay for damage caused to the Equipment which are due to the Customer not providing the Owner reasonable access to the Owner to undertake the servicing and repairs of the Equipment.
- 5.7 Overtime costs incurred by the Owner or its authorised service agents and the costs of the next service.
- 5.8 If the Customer does not comply with clause 5.3.3, and the Owner's service mechanic attends the site only to find the Equipment has been moved to another site, then the Customer must pay the costs of the Owner for the service call on demand.

#### 6. ACKNOWLEDGEMENT BY OWNER

- 6.1 The Owner shall make the Equipment available to the Customer at the Owner's premises, or if so required, deliver the Equipment to a site nominated by the Customer providing the Customer has an established credit rating with the Owner.
- 6.2 Breakdowns of the owner's equipment and subsequent loss to the customer will not be cause for liability to the owner.
- 6.3 The owner shall not be obligated to consider any claim for a credit against any invoice, unless such claim is lodged within 7 days of the date shown on the Invoice.
- 6.4 The Owners' total liability under the Contract is limited to 100% of the Contract Price.
- 6.5 Have made request to confirm that as per 7.19 we are free of any claw back from INSOLVENT TRANSACTIONS – section 588FC for any unfair payments given.
- 6.6 The Owner warrants and represents that the Equipment:
  - 6.6.1 is of good and merchantable quality;
  - 6.6.2 shall be fit for purpose for the activity for which it was designed;
  - 6.6.3 shall be free from defects;
  - 6.6.4 shall meet all relevant Australian Standards, Laws and Good Industry Practice; and
  - 6.6.5 be safe and without risk to health.
- 6.7 The Owner shall comply with any acts, regulations, ordinances, and bylaws enacted by any government or semi government authority including occupational health and safety legislation.
- 6.8 The Owner shall not be liable to the Customer for damage to equipment as a result of incorrect installation and use by Customer's servants or agents. Where possible, the Owner will provide replacement equipment at the cost of the Customer, including all associated costs to replace equipment IE transport, craneage, electrical disconnect/reconnects, installation.

## 7. ACKNOWLEDGEMENT BY CUSTOMER

The Customer shall:

- 7.1 Determine suitability of the Equipment for the purpose required.
- 7.2 Use the Equipment in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner will provide the nominal capacity of the equipment. Ensure that a suitably certified operator operates the Equipment.
- 7.3 Complete daily service checks on belts, and all fluid levels & sign log book. Top up fluids only with approved materials.
- 7.4 At its own expense, clean, fuel, lubricate the Equipment (reasonable wear and tear excepted unless caused by negligence or misuse on the part of or attributable to the Customer) except for pre-arranged major servicing, which will be carried out by the Owner during normal working hours, and all associated costs involving inductions to be charged back to customer.
- 7.5 Accept full responsibility for flat and or damaged tyres.
- 7.6 Comply with any acts, regulations, ordinances, and bylaws enacted by any government or semi government authority including occupational health and safety legislation.
- 7.7 Permit access to the Equipment on reasonable request from Owner.
- 7.8 Clean the Equipment upon completion of the rental period or accept a cleaning fee by the Owner for any cleaning required as a result of the rental operating environment conditions.
- 7.9 Indemnify and keep indemnified and save harmless the Owner and the Owner's servants and agents from all damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from the use, maintenance, transport, operation of the Equipment or otherwise and whether resulting from negligence of the Owner, its servants or agents or otherwise.
- 7.10 Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the rental period however arising, whether from negligence of the Customer or Owner or otherwise.
- 7.11 Not be entitled to a lien over the Equipment, nor without the Owner's prior written consent part with possession of the Equipment or assign the benefit of the Agreement, nor remove the Equipment or allow it to be moved from the agreed rental site.
- 7.12 Not alter, make any additions to deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- 7.13 Subject to clause 12, pay the full replacement or reinstatement cost (whichever is applicable) for any loss, theft of or damage to the Owner's Equipment.
- 7.14 Acceptable insurance cover held.
- 7.15 Pay to the Owner all rental charges and associated costs as included in this agreement.
- 7.16 Pay to the Owner all costs/commissions, fees and other expenses including the Owner's legal fees associated with any default by the Customer under the terms and conditions of the customer's credit account with the owner, including without limitation, the collection of any outstanding moneys owed by the Customer to the Owner.
- 7.17 Pay to the Owner interest at the rate of 2.5% per month on any charges due by the Customer to the Owner that remain unpaid over 30 days.
- 7.18 Confirm that they are not presently trading insolvent or could possibly become insolvent whilst the hire is in place, as per STATUTORY DEFENCE – Section 588FG(2). Confirmation is by way of acceptance of hire arrangements.
- 7.19 The Customer will be liable for all direct costs associated with damage to Owner's equipment, as a result of incorrect installation and/or incorrect use by the Customer's servants or agents. All direct costs to replace unit IE transport, craneage, electrical disconnect/reconnects, installation required to replace unit is at the Customers cost.
- 7.20 The Owner will not be liable for damage caused to the Customer's property due to incorrect usage or installation by the Customer.

## 8. IDENTIFICATION & INSTRUCTION MARKS

The Owner may affix or cause to be affixed on the Equipment or any part thereof, such plates or marks as the Owner may think fit.

## 9. TERMINATION ON DEFAULT

- 9.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of rental specified, the Owner may terminate the Rental:
  - 9.1.1 If the rent is not paid 7 days after the date appointed for payment (whether or not formally demanded) or
  - 9.1.2 Without notice, if the Customer shall commit any material breach of these terms & conditions or have a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
- 9.2 Upon termination of the Rental as aforesaid, the Owner shall be entitled to take possession of the Equipment and for this purpose the Customer irrevocably appoints the Owner its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Customer, upon which the Equipment is then situated, and agrees to indemnify the Owner in respect of any claims, damages or expenses arising out of any action taken under this condition.
- 9.3 Upon termination of the Rental as aforesaid, the Customer shall be liable for rental charges until the Owner is provided access by the Customer to take possession of the Equipment. A reasonable time period for collection needs to be agreed upon which the Equipment is then situated, and agrees to indemnify the Owner in respect of any claims, damages or expenses arising out of any action taken under this condition.

## 10. WARRANTIES EXCLUDED

- 10.1 Any warranty, condition, description or representation whether express or implied, as to the state, quality or fitness of the Equipment for the purpose for which the same is let on rental is excluded. The Owner shall not be responsible or liable to the Customer, whether on the ground of breach of a contractual duty or on the ground of negligence, for any loss or damage, directly or indirectly suffered or sustained by the Customer and arising from defects in or malfunctions, breakdown or failure or performance of the Equipment or otherwise and the Customer exonerates and releases the Owner from all claims and demands in respect thereof.

## 11. RENT

The rental charges are exclusive of:

- 11.1 Government charges including but not limited to taxes, levies, GST, duties and excise payable in respect of the Rental. These will be charged as additional on all rental transactions.
- 11.2 Damage Waiver charges, lifting and transport charges, fuel and oils & an Environmental Levy for each item of equipment.
- 11.3 Costs not covered by the quotation but incurred by the Owner caused by changes, errors or omissions in the specification provided by the Customer.

## 12. CANCELLATION OF HIRE, AFTER ACCEPTANCE OF PROPOSAL

- 12.1 Cancellation by customer in writing, 21 days before delivery of equipment will not incur any charges from the owner.
  - 12.1.1 Cancellation by Customer in writing within 7 to 21 days from delivery of equipment will incur a cancellation fee of 20% or \$ 1000.00 whichever is lesser from the Owner.
  - 12.1.2 Cancellation by Customer in writing within 2 to 7 days from delivery of equipment will incur a cancellation fee of 40% or \$ 3000.00 whichever is lesser from the Owner.
  - 12.1.3 Cancellation by Customer in writing within 24hrs from delivery of equipment will incur a cancellation fee of 60% or \$ 6000.00 whichever is lesser from the Owner.

## 13. FORCE MAJEURE

- 13.1 The Customer will not be entitled to give notice to the Owner to terminate the rental or to terminate an order if the Owner does not perform any of its obligations due to Force Majeure.
- 13.2 Force Majeure includes but is not limited to a breakdown of plant & machinery, war or terrorist attack, strike or other industrial dispute, government interference, pandemic, transport delay, act of god including flood, an accident, a non delivery or shortage of supplies and any other cause not under the control of the Owner.

## 14. NOTICES

- 14.1 Any notice, demand or other similar communication to the Owner or the Customer made under these terms & conditions must be in writing signed by a duly authorised officer and delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender.
- 14.2 Such notices will be taken to have been given or made:
  - 14.2.1 In the case of delivery by post, three days after the day of posting.
  - 14.2.2 In the case of delivery by hand, when delivered and
  - 14.2.3 In the case of delivery by email, on receipt by the sender of the first to occur of:
    - 14.2.3.1 receipt by the sender of an electronic acknowledgement from the recipient's information system showing confirmation of delivery to the recipient's email address; and
    - 14.2.3.2 12 hours after the time sent (as recorded on the sender's information system ) unless the party sending the email receives an automated message that the email has not been delivered

## 15. GENERAL

- 15.1 To the extent that Conditions 6.2 and 7.10 hereof are inconsistent with any other clauses in the quotation, these rental terms and conditions are to override such conditions and are to be of paramount force.
- 15.2 In these terms & conditions, unless repugnant to the context, words importing the singular number shall include the plural and words importing the plural only shall include the singular number and words importing the masculine gender shall include the feminine and, if applicable, a corporation.
- 15.3 These terms & conditions are governed by and interpreted in accordance with the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction and any appeal courts from them.
- 15.4 The Owner may only assign all of its rights, benefits and interests under these terms & conditions to any other entity, on the approval of the Customer, not to be unreasonably withheld. The assignment will not affect the rights, claims or interests of the Customer or the Owner, which are present prior to the date of assignment.
- 15.5 The Customer must not assign, transfer or novate its rights and obligations under these terms & conditions without the prior written consent of the Owner.
- 15.6 If any provisions of these terms & conditions are, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.
- 15.7 Either failure to exercise, nor any delay in exercising, any right power or remedy by a party operates as a waiver. A single or partial exercise by a party of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on a party unless in writing. A parties rights, powers and remedies under these terms & conditions are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by any other agreement or instrument.
- 15.8 These terms & conditions apply to and bind the Customer's employees, contractors, agents and licensees.
- 15.9 Where the Owner's consent or approval is required that consent or approval may not unreasonably be withheld or granted in the sole and absolute discretion of the Owner.
- 15.10 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of those terms & conditions.

Effective 16<sup>th</sup> of Mar 2022 - Revision "K"