



# LoadTec Solutions – Terms and Conditions

*LoadTec Solutions is committed to providing high-quality, reliable, and personalized services to our valued clients. To ensure transparency and smooth operations, we have established these terms and conditions.*

*Our terms and conditions are designed with your needs in mind. We recommend downloading, reading, and retaining a copy of this document. It serves as a handy reference in case you have any queries or encounter issues during or after the completion of a contract. We value our clients and aim to make our business relationship clear and beneficial for all parties involved.*

## 1. Definitions

- a) "Agreement", means these Terms and Conditions of Hire.
- b) "Customer" refers to the individual or entity contracting the rental of the Loadbank Unit and or any other equipment, as identified in the quotation, invoice, or purchase order associated with this agreement.
- c) "Entire Hire Period" means the Initial Hire Period together with any Subsequent Hire Period or Period during which the Hirer is holding over.
- d) "Hire Rentals" means the sums due by the Hirer as specified in the latest quotation, invoice, or purchase order provided physically or electronically.
- e) "Hirer" refers to the individual or entity contracting the rental of the Loadbank Unit and or any other equipment, as identified in the quotation, invoice, or purchase order associated with this agreement.
- f) "Hire Period" means the period that starts from the time the Loadbank Unit and or any other equipment leaves the Owners premises till the Loadbank Unit and or any other equipment is returned to Owners premises.
- g) "Hire" means the Hire set up by this Agreement.
- h) 'Invoice' refers to the invoice issued by the Owner physically or electronically, which includes the 'Terms and Conditions of Hire agreement, provided as a link within its contents, forming an integral part of this contractual arrangement.
- i) "Loadbank Unit" means Load bank along with accessories and or other related equipment expressly provided in the latest bill of materials, quotation, invoice or purchase order.
- j) "Loadtec"/"LoadTec" means LoadTec Solutions Pty Ltd.
- k) "Licensed Electrician" means an individual holding valid licence issued by the relevant workplace health and safety departments of each respective state government.
- l) "Minimum Hire Period" means 4 days from the date of this Hire which applies for the Loadbank Unit hired.
- m) "Minimum Call Out" is Four Hours includes travel time.
- n) "Office Hours" means 0800hrs to 1600hrs and "After Hours" is 1600hrs to 0800hrs.
- o) "Owner" means LoadTec Solutions Pty Ltd.
- p) "Owner's premises" means Owner's yard or Owner's location where the Loadbank Unit and or any other equipment is located.
- q) "Purchase Order" refers to the purchase order issued by the Hirer to the Owner physically or electronically, accepting the terms set out in the Owner's quotation, including these Terms and Conditions referenced through a link in the quotation.
- r) "Quote" refers to the Quotation issued by the Owner physically or electronically, which includes the 'Terms and Conditions of Hire agreement, provided as a link within its contents, forming an integral part of this contractual arrangement.
- s) "Start Date" means the start date of this Hire as indicated or updated in the quotation, invoice, or purchase order.
- t) "Subsequent Hire Period" means any period after the expiry of the Initial Hire Period.
- u) "Terms and Conditions" means these Terms and Conditions of Hire



## **2. Basis of Contract**

- 2.1 Loadtec, herein referred to as the "Owner," agrees to rent the Loadbank Unit to the "Hirer," and the Hirer agrees to rent the Loadbank Unit for a "Rental Period," commencing on the date in accordance with the terms and conditions outlined in this agreement.
- 2.2 The parties expressly acknowledge and agree that the terms and conditions stipulated herein, collectively referred to as the "agreement," form the foundation of every Hire Contract. No alterations or substitutions to this agreement shall be valid without the prior written consent of Loadtec, acting in its capacity as the Owner.
- 2.3 Any written quotation from Loadtec to the Hirer regarding the potential rental of the Loadbank Unit remains valid for 30 days and is contingent upon the availability of the equipment.
- 2.4 An order placed with Loadtec becomes mutually binding upon Loadtec and the Customer under the following conditions: if the Customer provides a written acceptance of the quote found in the Loadtec Quote and or Letter, or a written acceptance is signed by or on behalf of the Customer; alternatively, if Loadtec supplies the Loadbank Unit.
- 2.5 Notwithstanding the provisions of this clause or any other in this Agreement, Loadtec retains the right to accept only a part of any order, communicated accordingly to the Customer in writing or by delivering the Loadbank Unit.
- 2.6 Loadtec reserves the right to modify any specifications of the Loadbank Unit and make changes to the Loadbank Unit or its specifications, ensuring that such alterations do not compromise the overall performance.
- 2.7 If Loadtec is unable to provide the Loadbank Unit, Loadtec reserves the right to terminate any order or Hire Contract, irrespective of prior acceptance, by furnishing written notice to the Hirer.

## **3. Hirer's warranties for authority**

- 3.1 The Hirer warrants that they have all necessary authority to enter into this Hire.
- 3.2 The Hirer acknowledges that Loadtec maintains ownership of the Loadbank Unit, preserving this right even in the event of the Hirer entering liquidation or declaring bankruptcy during the Hire Period. It is explicitly clarified that, under no circumstances, shall the Loadbank Unit be construed as a fixture.
- 3.3 No person, nor governmental authority, has any right or claim which could prevent the Hirer at any time, from complying with the terms of this Hire.

## **4. The Hire**

- 4.1 Hiring charges for the Hiring Period shall commence from the time the Loadbank Unit leaves the Owners premises till the Loadbank Unit is returned to the Owners premises.
- 4.2 The Initial Hire Period is as noted in the latest quotation, invoice, or purchase order provided electronically or physically to the Hirer.
- 4.3 The Hirer may extend the Hire for a Subsequent Hire Period by giving notice to the Owner at least 24 hours before the expiry of the Initial Hire Period. The Owner reserves the right to extend the Hire Period at their sole discretion.
- 4.4 The Hirer agrees that the Loadbank Unit complies with the description given in this quotation, invoice or purchase order, is in merchantable condition and is fit for the Hirer's purpose.
- 4.5 The Hirer agrees to fulfill the payment obligations for Hire Rentals by diligently and expeditiously processing the weekly quotations, invoices, or purchase orders issued by the Owner.
- 4.6 All payments that the Hirer may have to the Owner from time to time shall be treated as Hire Rentals for all purposes at law.
- 4.7 The Hirer acknowledges and agrees that a minimum hire period of 4 days is applicable. In the event of the Loadbank Unit being returned for any reason, including termination or cancellation, before the expiration of the Minimum Hire Period, the



Hirer is obligated to pay all Hire Charges associated with the Minimum Hire Period, which include but are not limited to transportation and related expenses.

- 4.8 The Hire Period includes weekends and public holidays.
- 4.9 Throughout the Hire Period, the Hirer is liable for any loss or damage to the Equipment. This responsibility extends to losses caused by the negligence of the Hirer or any individual under their control, or for any other reasons, excluding those resulting from reasonable wear and tear.
- 4.10 The Owner shall not be held responsible for any costs, damages, compensation for delay, inconvenience, or losses incurred by the Hirer, including consequential losses, arising from breakdown, failure, or defects in the Equipment. This exemption applies regardless of whether such issues result from fair wear and tear, lack of repair, negligence, or any other cause.
- 4.11 Upon the Hirer's failure to return the Equipment within two days after the Period of Hire expiration, the Owner may, at the cost and expense of the Hirer, recover possession of the Equipment. This recovery is without prejudice to any claims or demands the Owner may have against the Hirer arising from the hire. The Owner reserves the right to take necessary legal actions for possession or claim the current list price. The determination of the Period of Hire and repossession aligns with contractual obligations, ensuring compliance. The Owner shall not be liable for any losses, damages, fines, or costs incurred by the Hirer due to such actions.

### **5. Hirer's Warranties**

#### **Conditions of Use**

- 5.1. The Hirer shall not purport to sell or sub-Hire the Loadbank Unit nor create any charge or lien over it.
- 5.2. The Hirer shall keep and maintain accurate records of all the maintenance and insurance carried out to the Loadbank Unit.
- 5.3. The Hirer is responsible for ensuring the Loadbank Unit's proper maintenance, including adherence to the manufacturer's guidelines and or Loadtec's instructions.
- 5.4. The Hirer must preserve the Loadbank Unit's original condition and shall not remove identifying plates or markings or make any alterations to the Loadbank Unit without express written consent from Load Tec.
- 5.5. The Hirer assumes sole responsibility for all risks associated with the selection, use, storage, and location of the Loadbank Unit. In the event that the Site is soft or unsuitable, the Hirer must, at its expense, provide necessary solid means of access or structures required for the Loadbank Unit's movement or operation at the Site. Additionally, the Hirer is obliged to safely store the Loadbank Unit throughout the Hire Period and adhere to all pertinent laws, by-laws, and regulations governing the installation, use, and operation of the Loadbank Unit.
- 5.6. At the Hirer's cost, the Hirer is responsible for obtaining all necessary permits, authorities, and licenses for the operation and installation of the Loadbank Unit, ensuring compliance with local standards, and maintaining the required licenses throughout the hire period.

#### **Possession**

- 5.7. Immediately upon possession of the Loadbank Unit, the Hirer shall fully examine it and shall satisfy himself that it is in good order and in safe, clean and usable condition.
- 5.8. In the event there is any defect in the Loadbank Unit, the Hirer shall immediately inform the Owner of such defect. If the Owner receives no notice within 8 hours from time of possession from the Hirer, then it shall be presumed that the Loadbank Unit is in good working order and acceptable to the Hirer.
- 5.9. The Hirer shall operate the Loadbank Unit in accordance with all laws, conduct a job safety analysis before use, and wear suitable clothing and protective gear as required or recommended by law, us and or the manufacturer.
- 5.10. If the Loadbank Unit is lost or damaged, the Hirer shall immediately notify the Owner. The Owner may then choose either that the Hirer shall immediately make good such damage or that the Hirer shall assign to the Owner all the Hirer's rights,





benefits and claims under the relevant policy of insurance and the Hirer should also pay the balance of the money to the Owner that was not covered under Policy of Insurance.

### **Return and Checks**

- 5.11. The Hirer at its own expense arrange for onsite disposal of waste if any in accordance to prevailing laws including but not limited to environmental laws.
- 5.12. The Hirer is obligated to rewind cables and return all materials associated with the Loadbank Unit to their respective receptacles. Upon receiving the load bank, a verification will be conducted against the bill of materials, and any missing items will be notified and charged within 14 days.

### **Moving**

- 5.13. The Hirer bears responsibility for the secure handling of the Loadbank Unit. They must strictly adhere to established protocols provided by the manufacturer and/or Owner, ensuring compliance with legal requirements for the safe handling, loading, unloading, and transportation of the Loadbank Unit. Additionally, the Loadbank Unit should only be moved using the designated bottom lifting points.
- 5.14. The Hirer shall not relocate the Loadbank Unit beyond the State or Territory of the initial hiring without obtaining written consent from the Owner.

### **Use**

- 5.15. The Hirer is prohibited from using the Loadbank Unit in hazardous areas without the Owner's express written consent. If the Loadbank Unit is contaminated by any hazardous substance, the Hirer must, at its expense, decontaminate the unit, providing written details of the process. If decontamination is deemed impossible by the Owner, the Hirer will incur charges for the replacement cost.

### **Environment**

- 5.16. The Hirer warrants to comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by using the Loadbank Unit and the Hirer warrants to bear all and related expenses for the same and recuse itself from any right or related claim.

### **Testing**

- 5.17. Loadbank Unit provided by the Owner will be tested and tagged before hire. However, during the Hire Period, if re-testing and/or retagging of the Loadbank Unit is mandated by Australian Standard(s) and Regulatory Authority requirements, the Hirer is responsible for ensuring compliance. This involves following the manufacturer's instructions and adhering to applicable regulatory standards at the Hirer's cost and risk. The Hirer will be held liable for any damage to the Loadbank Unit resulting from incorrect testing.

### **Operation**

- 5.18. The Hirer shall ensure that only persons concerned with the Hirer's business or authorized by the Hirer use the Loadbank Unit. Additionally, the Hirer shall ensure that persons handling and operating the Loadbank Unit are suitably trained on its safe and proper use, holding a current license to perform high-risk work as required by law and or manufacturer's operating instructions.
- 5.19. The Hirer shall ensure that operators of the Loadbank Unit adhere to all instructions and warnings, display all required safety signs, and erect safety enclosures as stipulated by manufacturer guidelines and applicable laws.
- 5.20. Ensure that no persons carry illegal, prohibited, or dangerous substances in or on the Loadbank Unit and that no persons operating the Loadbank Unit are under the influence of drugs or alcohol.
- 5.21. The Hirer assumes responsibility for all aspects of site management, and the Operator will execute assigned duties under the Hirer's direction.
- 5.22. The Hirer shall not permit any individual, except those authorized to operate the Loadbank Unit.



- 5.23. If, upon Hirer's request, Loadtec supplies technicians for the Loadbank Unit under Wet Hire, the following obligations shall apply:
- a. Technicians/Operators provided by Loadtec to the Hirer will act as agents of the Hirer and are considered related parties.
  - b. The Hirer must promptly settle Loadtec's charges and expenses, as specified in the quotation, invoice, or purchase order related to the provision of technicians.
  - c. Work hours on weekdays are 8 am to 4 pm, and specific rates apply for weekend hours. On Saturdays, the initial four hours incur time and a half charge, followed by double time. Sundays are billed at double time for the entire duration.
  - d. Throughout the Hire Period, the Technicians/Operators will operate under the Hirer's direction and comply with reasonable directives from the Hirer.
  - e. Loadtec commits not to direct or supervise any work conducted by the Technicians/Operators while operating under the direction and control of the Hirer.
  - f. Loadtec bears no liability to the Hirer for the acts or omissions of the Technicians/Operators when operating under the direction and control of the Hirer during the Hire Period.
  - g. Hirer is obligated to furnish the Technicians/Operators with necessary information for the performance of their duties. Additionally, Hirer must ensure a safe workplace in accordance with prevailing OHS legislation and other applicable laws. Furthermore, Hirer must provide all required amenities and first aid services to the Technicians/Operators, adhering to relevant Health and Safety legislation.
  - h. During the Rental Period, the Hirer shall be responsible for any actions undertaken by the Operator/Technicians. The Owner assumes no liability in case of damage caused by the Operator/Technicians to the Goods or other machines owned by the Hirer. The Hirer agrees to indemnify the Owner under the terms outlined in clause 16 of this Agreement in such circumstances.

### **Inspection**

- 5.24. At any time during the Entire Hire Period, the Owner has a right to inspect the Loadbank Unit.
- 5.25. The Owner is entitled to inspection upon prior written notice of 2 hours and shall have the right to observe the Loadbank in operation and see any document relating to the Loadbank Unit in hard and soft copy.
- 5.26. The Hirer shall bear all expenses related to site access, encompassing inductions during the period when Loadtec attends to the Loadbank Unit.
- 5.27. The Owner will ensure that inspection scheduled will not adversely impact or interrupt the Hirer's business operations.
- 5.28. Such inspection will be performed by the Owner himself or an independent third party professional appointed by the Owner.
- 5.29. The Owner shall be responsible for the cost incurred for inspection and for hiring any professional for this purpose.
- 5.30. Suppose the inspection reveals any material defect in the Loadbank Unit. In that case, the Hirer shall be responsible to make good that defect within seven days after completion of the inspection or clause 10.6 of this Agreement will apply.
- 5.31. The Hirer is required to grant access to all authorized agents of Loadtec at reasonable times for purposes including delivery, removal, inspection, testing, adjustment, maintenance, repair, or replacement of the Loadbank Unit. The Hirer must ensure safe and proper access and refrain from impeding or preventing Loadtec's authorized personnel from reaching the Loadbank Unit.

### **Breakdown and Repair**

- 5.32. The Hirer is responsible for ensuring that the Loadbank Unit is not utilized beyond its rated capacity or in a manner that may lead to undue wear.
- 5.33. The Hirer must promptly notify Loadtec in case of a breakdown or improper functioning of the Loadbank Unit and take measures to protect the Loadbank Unit from any and all adverse effects.
- 5.34. No Repair Costs shall be undertaken on behalf of the Owner of the Equipment without prior authorization.

### **Chain of Responsibility**



- 5.35. The Hirer must adhere to all Chain of Responsibility Laws outlined in the Australian Heavy Vehicle National Law (“HVNL”). They are responsible for ensuring that any activity related to the Loadbank Unit, including scheduling, load restraint, and transit movement, aligns with their Chain of Responsibility obligations.
- 5.36. The Hirer is obligated to ensure that any subcontractors engaged for activities covered by this Hire agreement, including transport movement, are contractually bound by similar Chain of Responsibility obligations specified in this clause.
- 5.37. The Hirer agrees to permit Loadtec to audit their Chain of Responsibility documents, policies, procedures, and records to verify the existence of a proper process for managing their Chain of Responsibility obligations.
- 5.38. If the Owner installs the Loadbank Unit at the Hirer’s location, the responsibility rests with the Owner until the Loadbank Unit is tested. Once connected onsite, the responsibility transfers to the Hirer until the Loadbank Unit is returned to the Owner’s premises.
- 5.39. If the Hirer self-installs the Loadbank Unit, the Chain of Responsibility starts when the Loadbank Unit leaves the Owner’s premises and continues until the Loadbank Unit returns to the Owner’s premises.

### **6. Owner’s warranties and exclusions**

The Owner warrants that:

- 6.1. The Owner is the Owner of the Loadbank Unit and has the legal title in the name of LoadTec Solutions Pty Ltd;
- 6.2. the Loadbank Unit is operational, is in good order and in usable condition;
- 6.3. there is no right of any third party which could prevent or prejudice the use of the Loadbank Unit;
- 6.4. the Owner is aware of no contractual obligation or legal right which could prevent them from entering into this Hire.
- 6.5. The Owner, not being the manufacturer or seller of the Loadbank Unit, does not make any representation or warranty concerning:
  - a. any defect that may be present or may arise at the time of delivery of the Loadbank Unit;
  - b. In the event of a breakdown or defect in the Loadbank Unit resulting from standard guideline usage or fair wear and tear, Loadtec will assume the costs associated with technicians’ day wages and materials, excluding travel and accommodation. However, if the breakdown is conclusively attributed to the Hirer’s negligence or misuse, the Hirer shall be responsible for covering these costs.
- 6.6. Loadtec shall not grant any relief from hire charges or entertain claims for stoppages caused by factors beyond Loadtec’s control, including but not limited to adverse weather or site conditions.
- 6.7. Upon acceptance of an order, any purported cancellation or suspension thereof by the Hirer is not binding on Loadtec.
- 6.8. Any modifications, inaccuracies, or exclusions in the specifications furnished by the Hirer leading to additional costs or efforts by Loadtec shall incur charges to the Hirer. These charges will be calculated based on Loadtec’s prevailing rates for such tasks, provided that Loadtec has previously communicated these standard rates to the Hirer failing which standard rates for such tasks apply.
- 6.9. Except so far as provided in this Hire, the Owner warrants that he will not interfere with Hirer’s use of the Loadbank Unit, nor allow anyone else to do so as long as the Hirer follows the terms and conditions with respect to the usage of the Loadbank Unit as per the manual provided and permits to operate the Loadbank Unit only through the approved personnel.
- 6.10. Loadtec is subject to the Privacy Act 1988. Any personal information acquired in relation to the Hirer will be duly collected, stored, utilized, disclosed, transferred, and disposed of in conformity with the Australian Privacy Principles (“APPs”).
- 6.11. Loadtec requires that the Hirer adheres to the APPs concerning any personal information provided by Loadtec in conjunction with this agreement.





## 7. Delivery

- 7.1. In the event that the Owner cannot hand over the possession of the Loadbank Unit to the Hirer at the beginning of the Initial Hire Period, through no fault of the Owner, then the provisions of this Hire shall become effective from the date the Loadbank Unit leaves the Owner's premises to reach the Hirer's location.
- 7.2. In the event that Loadtec is unable to furnish the Loadbank Unit, Loadtec retains the right to terminate any order or Hire Contract by delivering written notice to the Hirer.
- 7.3. Any attempt by the Hirer to cancel or suspend an order, in whole or in part, is not binding on Loadtec once the order has been officially accepted.
- 7.4. The Owner shall, at the cost and expense of the Hirer, assign to the Hirer the benefit of all manufacturers' guarantees in respect of the Loadbank Unit.
- 7.5. The date provided by Loadtec for the delivery of the Loadbank Unit is indicative and serves as an approximation only and not constituting a binding contractual obligation.

## 8. Payment and accounts

- 8.1. The Hirer is obligated to remit the hire charges specified in the Hire Contract to Loadtec. All payments to be made by the Hirer shall be made in full, without any set-off or counter claim.
- 8.2. If any sum payable is not paid when due, the Hirer shall pay to the Owner interest on it, calculated on a daily basis from the due date until payment at the rate of 10% per annum above cash rate of the Reserve Bank of Australia.
- 8.3. The Hirer is not eligible for any discount or rebate in the event that the Loadbank Unit is not utilized for the entire Hire Period.
- 8.4. A fee will be levied for each item listed in the most recent quote, invoice or purchase order that the Hirer fails to return.
- 8.5. Quotations are exclusive of GST, if not stated.
- 8.6. In addition to the hire charges, the Hirer shall reimburse Loadtec for any additional amounts incurred by Loadtec in relation to the Loadbank Unit or services, including but not limited to:
  - a. Applicable sales tax, GST, and any other taxes, duties, or imports imposed;
  - b. Fees or levies, including those payable under the Building and Construction Industry Training Fund and Levy Collection Act 1990 (WA);
  - c. The cost of freight, insurance, and other charges arising from the dispatch of the Loadbank Unit to the Site and its return.
- 8.7. The Hirer assumes full responsibility for all taxes, license fees, and charges associated with the Loadbank Unit. In the event of the Hirer's failure to pay any such tax, fee, or charge, whether contested or not, the Hirer shall indemnify and reimburse the Owner for all resulting damages and expenses incurred by the Owner. This indemnification encompasses any losses or costs directly arising from or connected to the Hirer's non-payment of taxes, fees, or charges related to the Loadbank Unit.
- 8.8. The Hirer is responsible for remitting all pertinent taxes and charges associated with the hire of the Loadbank Unit and its transportation to and from the Hirer's premises. This obligation remains irrespective of explicit mention in any documentation, including but not limited to quotations, invoices, or purchase orders.
- 8.9. The default payment term is 30 days from the date of invoice.



## 8.10. Payment Terms Hierarchy:

- (a) The payment terms specified in LoadTec's quotation and/or invoice shall apply to the Hire. Where neither the quotation nor invoice specifies payment terms, the default payment terms set out in Clause 8.9 shall apply.
- (b) Where LoadTec's quotation and the Hirer's purchase order contain conflicting payment terms:
  - (i) LoadTec shall provide written notice to the Hirer before commencement of the Hire Period, identifying the conflict and confirming that LoadTec's quotation payment terms apply;
  - (ii) If the Hirer does not accept LoadTec's quotation payment terms, the parties shall negotiate in good faith;
  - (iii) If no agreement is reached within 5 business days, either party may decline to proceed without penalty;
  - (iv) If LoadTec fails to provide notice under 8.10(b)(i) and proceeds to deliver equipment, LoadTec is deemed to have accepted the Hirer's purchase order payment terms.

## 9. Damage Waiver

- 9.1. The Damage Waiver is applicable upon the Hirer's acceptance of Damage Waiver as specified in their Purchase Order. The Damage Waiver covers only the repair of physical damages to the Loadbank Unit to the extent of 10% of the replacement value of the Loadbank or \$24,000AUD, whichever is less. The Damage Waiver does not cover theft, loss, or missing items, which are addressed in Clause 5.12.
- 9.2. This waiver, however, excludes damages caused by the Customer's negligence or misuse (Clause 6.5) and damages occurring during transportation, including loading and unloading activities conducted by the Customer.
- 9.3. An inspection of the Loadbank Unit upon return will be conducted by Loadtec, and details of any damage or loss will be communicated to the Customer within 14 days. In cases where the repair costs exceed the Damage Waiver coverage, the Hirer is obligated to pay the difference and any other amounts specified in the claim within 15 days of demand by Loadtec.

## 10. Insurance

- 10.1. The Hirer shall, at its own cost, keep the Loadbank Unit fully insured against all kinds of risks for the Entire Hire Period on a comprehensive insurance policy along with third party liability insurance without restriction or excess.
- 10.2. The Insurance policy will have limits to the extent of the replacement value of the Loadbank Unit.
- 10.3. The Hirer shall produce to the Owner on request the insurance policies together with evidence of payment of the premiums.
- 10.4. The Insurance will be in the joint name of the Owner and the Hirer so that both the Owner and the Hirer will be protected from liability and will provide primary and non-contributing coverage to the Owner.
- 10.5. The Hirer is obligated to provide the Owner with Insurance documents 24 hours before the Loadbank Unit is hired or departs from the Owner's premises. Failure to submit the Insurance documents within the specified time frame, and if the Loadbank Unit departs from the Owner's premises, it implies that the Loadbank Unit is considered insured by the Hirer. In such instance, the Hirer accepts full responsibility for insurance coverage and associated liabilities from the time the Loadbank Unit leaves the Owner's premises until its return.
- 10.6. In the event of loss or damage to the Loadbank Unit, the Hirer must promptly inform the Owner. The Owner has the option to require the Hirer to promptly rectify the damage or loss or to assign to the Owner all rights, benefits, and claims under the relevant insurance policy. Additionally, the Hirer is responsible for paying the Owner the remaining amount not covered by the insurance policy.
- 10.7. Should the Hirer fail to uphold a comprehensive insurance policy cover including but not limited to loss, theft, or damage to the Loadbank Unit, the Hirer agrees to assume full responsibility. The Hirer must promptly reimburse the





Owner for any loss or damage to the Loadbank Unit, up to its full replacement value. This reimbursement is due within forty-five days from the occurrence of the loss or damage.

10.8. Loadtec, without prejudicing any other available remedy, may take the following actions:

- a. Charge the Hirer for subsequent lost rental charges due to the loss, damage, or destruction of the Loadbank Unit until they are repaired or replaced,
- b. Claim damages from the Hirer for the breach of this Agreement,
- c. Temporarily cease or suspend, for a duration determined by Loadtec, the supply of any additional Loadbank Unit to the Hirer; and/or terminate any hiring contract, for the unperformed portion, by providing written notice to the Hirer.

## 11. Default and Termination

11.1. At any time during the entire Hire Period, this Hire stands terminated on the occurrence of an Event of Default.

11.2. There shall be an “Event of Default” if:

- a. in the opinion of the Owner, any representation or warranty made by the Hirer is found to be incorrect,
- b. the Loadbank Unit is lost, destroyed, or damaged to such an extent as to make it unfit for use, for any reason.
- c. the Hire Rentals and or any other money payable to Owner remain outstanding for more than seven days after notice of demand has been received by the Hirer,
- d. the Hirer deals with the Loadbank Unit in a manner that is illegal or beyond the scope of this Hire,
- e. the Hirer makes an arrangement for the benefit of its creditors,
- f. the Hirer or any other person takes any action indicating that it is insolvent.

11.3. Each Event of Default stands on its own, independently from any other Event of Default and shall not be limited by another Event of Default.

11.4. When an Event of Default happens:

- a. this Hire terminates automatically,
- b. the Hirer must inform the Owner immediately,
- c. the Owner may make whatever arrangements it decides in order to retake possession of the Loadbank Unit,
- d. every expense of the Owner arising from the Event of Default shall be a debt due to the Owner by the Hirer.

## 12. Consequences of termination

12.1. When this Hire terminates whether or not by the expiry of the Initial Hire Period or Entire Hire Period:

- a. the Hirer shall immediately deliver the Loadbank Unit to whatever premises the Owner shall specify.
- b. If legal restrictions prevent the Hirer from delivering the Loadbank Unit to the Owner or if the Owner chooses to collect the Loadbank Unit, the Owner may do so. In such a case, all expenses associated with taking possession, transportation, and storage of the Loadbank Unit shall constitute a debt owed by the Hirer.
- c. The Hirer is obliged to cover all expenses and costs associated with the Owner retaking possession of, selling, attempting to sell, or enforcing its rights concerning the Loadbank Unit under this Agreement.
- d. The Owner may enter into any premises to repossess the Loadbank Unit. Repossession doesn't waive the Owner's rights to claims against the Hirer related to the hire of the Loadbank Unit. The Hirer is obligated to pay hiring charges up to the repossession time, based on the rate specified for the hire period. Repossession doesn't compromise the Owner's rights to claims, damages or expenses against the Hirer for any matters arising from the hire of the Loadbank Unit.
- e. During the period in which the Loadbank Unit is in the possession of the Hirer as a bailee, the agreed-upon rental charges specified in this Agreement shall continue to apply. The Hirer remains responsible for the timely payment of rent for the duration of their possession, irrespective of the ownership status.



f. The Hirer shall be responsible for all expenses associated with restoring the Loadbank Unit to a condition consistent with the manufacturer's expectations, considering its age, usage, and assuming it had received full maintenance. Such costs shall constitute a debt owed by the Hirer to the Owner.

g. If any debt remains outstanding, the Owner may utilize the Security Deposit to settle the debt. An account will be reconciled, and any remaining balance owed to the Hirer shall be promptly paid. In cases where no Security Deposit is held or is insufficient to cover the entire debt, the Owner retains the right to pursue alternative legal remedies for recovery. This may involve legal action, seeking a judgment, or any other lawful means, and the Hirer agrees to be liable for the additional costs, including legal fees, incurred by the Owner during the recovery process.

### **13. Limitation of liability**

- 13.1. This provision, along with any other provision limiting or exempting the Owner's liability, extends to the Owner's directors, officers, employees, subcontractors, agents, affiliated companies, legal heirs, and the Owner itself.
- 13.2. Except as expressly set forth in this agreement or any written warranty statement, Loadtec bears no liability to the Hirer in any manner arising from or in connection with the utilization, storage, or any other transactions involving the Loadbank Unit by the Hirer or any third party.
- 13.3. Loadtec assumes no responsibility for indirect or consequential losses or expenses incurred by the Hirer or any third party, however caused, encompassing, but not limited to, loss of turnover, profits, business, goodwill, or any liability to any other party, except to the extent of any liability mandated by the Australian Consumer Law (ACL).
- 13.4. Loadtec shall not be held accountable for any loss or damage suffered by the Hirer due to Loadtec's failure to meet any delivery date, or if Loadtec cancels or suspends the supply of the Loadbank Unit.

### **14. Assignment**

- 14.1. This Agreement remains binding upon any successor, permitted assignee, or transferee of either party.
- 14.2. The Hirer is prohibited from assigning or transferring any of its rights or obligations under this agreement without obtaining the prior written consent of the Owner. Such consent may be withheld without the need for providing a reason.
- 14.3. The Owner holds the right to assign its rights and obligations to any other person without requiring the consent of the Hirer.
- 14.4. The Owner may disclose to a potential assignee information about the Hirer deemed reasonable and appropriate by the Owner.

### **15. Personal Properties and Security Act 2009 (Cth) ("PPSA")**

In the event this Agreement establishes a PPSA lease, the following provisions apply.

- 15.1. The parties acknowledge that terms defined in clause 15 hold the same meanings as stipulated in the PPSA.
- 15.2. Ownership, title, and property of the Loadbank Unit remain vested in the Owner at all times.
- 15.3. Upon default by the Hirer under the Agreement, the Owner, without prior notice, reserves the right to enter the Hirer's premises for the purpose of recovering the Loadbank Unit.
- 15.4. The Agreement constitutes a Security Agreement under the PPSA, favouring the Owner, encompassing the Loadbank Unit supplied to the Hirer, and extending to proceeds, including but not limited to sale or rent monies, and insurance proceeds.
- 15.5. Both parties expressly recognize that the Owner, as the Secured Party, retains the entitlement to register its Security Interest in the Loadbank Unit, whether already supplied or yet to be supplied to the Hirer under this Agreement. Such registration will be executed on the Personal Property Securities Act (PPSA) Register as collateral.



- 15.6. The Loadbank Unit, supplied under this Agreement and slated for supply, fall within the PPSA classification of “Other Goods” leased by the Owner. Consequently, these Goods assume the status of Commercial Property for the Hirer, distinctly separate from and not constituting part of the Hirer’s Inventory.
- 15.7. The Hirer commits not to grant any other person a security interest in the Loadbank Unit.
- 15.8. To the extent permissible by law, the Hirer:
- a. Waives the right to receive notification or a copy of any Verification Statement confirming the registration of a Financing Statement or Financing Change Statement related to a Security Interest granted to the Owner by the Hirer.
  - b. Agrees to indemnify the Owner for all associated costs, including legal costs on a solicitor/client basis, related to the registration, amendment, or discharge of any Financing Statement registered by or on behalf of the Owner, and enforcement or attempted enforcement of any Security Interest granted by the Hirer.
  - c. Both parties mutually acknowledge that, pursuant to section 109(1) of the Personal Property Securities Act (PPSA), each lease governed by this Agreement is not intended to secure payment or performance of any obligation. However, in the event that Chapter 4 of the PPSA becomes applicable to enforce a security interest arising under or in connection with a lease covered by this Agreement, the Hirer consents, to the extent allowed by law, to the following terms:
    1. Agree that the provisions outlined in sections 130 to 143 of the PPSA will have no application to this agreement or the Security established under this Agreement.
    2. Expressly waive the right to undertake any of the following actions under the PPSA:
      - i. Receive notice of removal of an Accession under section 95.
      - ii. Receive notice of an intention to seize Collateral under section 123.
      - iii. Object to the purchase of the Collateral by the Secured Party under section 129.
      - iv. Receive notice of disposal of Collateral under section 130.
      - v. Receive a Statement of Account if there is no disposal under section 130(4).
      - vi. Receive a Statement of Account under section 132(3)(d) following a disposal, providing details of amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
      - vii. Receive notice of retention of Collateral under section 135.
      - viii. Redeem the Collateral under section 142.
      - ix. Reinstate the Security Agreement under section 143.

### 16. Photography and Videography Clause

- 16.1. LoadTec Solutions may, at its discretion, photograph or record video footage of the job works or services performed on the client's site for analysis, reporting, and promotional purposes.
- 16.2. LoadTec Solutions acknowledges its responsibility to handle these materials with care, ensuring not to compromise the client’s business, security, or reputation.
- 16.3. If the client wishes to restrict or prohibit the use of specific images or videos for promotional and marketing purposes, they must notify LoadTec Solutions in writing.
- 16.4. Loadtec Solutions is committed to addressing the client's concerns and will promptly remove or cease the use of any videos or photographs upon the client's written request.

### 17. Indemnity

To the extent permitted by law, the Hirer agrees to indemnify the Owner against all costs, claims and expenses arising directly or indirectly from:

- 17.1 Hirer’s failure to comply with the law,





17.2 Hirer's breach of this Agreement,

17.3 Any act, neglect or default by any agent, employee, licensee or related party of the Hirer,

17.4 A contractual claim arising from Hirer's use of the Loadbank Unit, non-payment of the Hire Rentals or any other payment due under this Agreement.

The Hirer shall indemnify the Owner against any and all costs, actions, claims, demands, losses, or damages arising from or in connection with the storage, location, and use of the Loadbank Unit by the Hirer or any person under their control throughout the Entire Hire Period.

### 18. Miscellaneous matters

- a. If any provision of this Agreement is held to be invalid, illegal, or unenforceable under any applicable law, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If modification is not possible, the invalid, illegal, or unenforceable provision shall be severed from this Agreement, and the remaining provisions shall continue in full force and effect. The intent of the parties and the enforceability of the other provisions shall not be affected.
- b. The rights and obligations of the parties set out in this Agreement shall pass to any permitted successor in title.
- c. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- d. The parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
- e. Any communication to be served on either party by the other may be delivered by hand or sent by first class post or recorded delivery or by e-mail. It shall be deemed to have been delivered:
  - a. if delivered by hand: on the day of delivery.
  - b. if sent by post to the correct address: within 72 hours of posting.
  - c. if sent by e-mail to the receiving party's last known email address: on the date of sending.
- f. The 'Terms and Conditions of Hire' agreement is made available to the Hirer as an online link within the quotation, invoice, or purchase order. The act of accepting any of the aforementioned documents, or upon the Loadbank Unit leaving the Owner's premises to the Hirer's premises, constitutes the Hirer's acknowledgment of having reviewed, comprehended, and consented to and legally bound by the 'Terms and Conditions of Hire' agreement.
- g. The headings to the paragraphs and schedules (if any) to this Agreement are inserted for convenience only and do not affect the interpretation.
- h. LoadTec reserves the right to periodically modify these terms and conditions and will promptly provide the Hirer with a copy of the revised version. The Hirer is granted a period of 30 days from the date of receiving such variations to reject them and terminate any Hire Contract. In the absence of such rejection, the Hirer is obliged to accept and be bound by the variations. Subsequently, the Hirer shall have no entitlement to dispute the said variations, regardless of their applicability.
- i. Unless otherwise stated, this Agreement does not give any right to any third party.
- j. In the event of any conflict between any term of this Agreement and the provisions of the constitution of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this Agreement shall prevail.
- k. In the event of a dispute between the parties to this Agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- l. This agreement is governed by the laws of New South Wales, Australia. The parties consent to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and appellate courts with jurisdiction over appeals from these courts.



# LoadTec Solutions – Terms and Conditions

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