



Terms & Conditions Of Trade

In this document **equipment** means any item of plant and equipment listed in the Schedule to this master agreement.

The owner and the hirer enter into this master agreement to provide for the hiring of all equipment requested by the hirer from time to time. The owner may decline to hire equipment in its sole discretion. If the hirer wishes to hire equipment, the owner will require the hirer to sign a hire schedule, order, delivery docket or similar document (**Schedule**) in the form of Annexure A or any other form required by the owner from time to time. The Schedule may list the particular equipment taken for hire, applicable charges, hire commencement and termination date and such other information and provisions as the owner requires.

This master agreement provides for the terms of each such hire. Each Schedule shall not constitute a separate hire agreement but must be read together with and form part of this master agreement incorporating all of the provisions of this master agreement. The agreement includes the terms and conditions now set out below, any credit application or related terms, and any other special conditions agreed between the parties in writing.

Terms and Conditions

1 Hire of equipment

- 1.1 The hire will commence from the commencement date specified in the Schedule and continue for the hire period specified in the Schedule.
- 1.2 The hirer is entitled to use the equipment for the hire period subject to the terms of this document. Any extension of the hire period must be expressly agreed to by the owner before the expiration of the hire period.
- 1.3 The hirer agrees to return the equipment to the address identified by the owner on or before the end of the hire period as outlined in the Schedule and acknowledges that failure to do so can be criminal theft and may be immediately reported to the police.

2 No PPS lease without owner agreement

Despite anything else in this document, without the express written consent of the owner, the hire period (including any option or extension of it) cannot be longer than two years (or any other period that is the time threshold for a PPS lease under the PPS Law (as defined below)).

3 Payment for hire

- 3.1 The hirer agrees to pay the owner the hire fee specified in the Schedule for the use of the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.
- 3.2 The required fees must be paid to the owner prior to or on the commencement date of the hire period and when otherwise due and payable periodically under the Schedule or as agreed with the owner. Hirers who do not pay on any terms agreed will be in default. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed hire fee and other charges until return or pick-up (if agreed) is complete, but this will not constitute an extension of the hire period.
- 3.3 The owner may agree to make equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to the owner any charges and expenses incurred in such delivery, installation and/or collection. The owner will use its best endeavours to deliver the equipment at the requested time but will not be liable to the hirer for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 3.4 A reasonable cancellation fee may be charged by the owner where equipment has been reserved by booking and the hirer cancels the booking without reasonable notice or fails to take delivery of the equipment.
- 3.5 The owner may charge the hirer a reasonable fee for accepting payment by credit card and this may be up to the applicable permissible charge under legislation.



- 3.6 Unless otherwise stated, the hire charges payable by the hirer in relation to the equipment will be as stated in the applicable Schedule. The owner reserves the right at any time to revise the hire fees by providing the hirer with notice. However the hire fee cannot be increased during an agreed fixed term hire unless the hirer agrees to the increase. Where the increase in hire fees applies to equipment already on hire by the hirer, the hirer may terminate this agreement and return the equipment to the owner.
- 3.7 We reserve the right to charge interest on all outstanding amounts calculated daily and compounded monthly from the due date for payment until the date of actual payment at the rate which is greater by a margin of 4% per annum than the rate published by the Commonwealth Bank of Australia or its successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment.

4 Use, operation and maintenance

- 4.1 The hirer agrees that the use of the equipment carries with it inherent dangers and risks of injury and the hirer agrees to accept all those dangers and risks.
- 4.2 The equipment must not be used by anyone other than the hirer without the express permission of the owner.
- 4.3 The hirer will ensure that all persons operating or erecting the equipment are instructed in its safe and proper use and where required hold valid proof of training or are fully licenced to use it.
- 4.4 The hirer agrees to operate, clean, fuel, lubricate, maintain, store and transport the equipment in a proper manner and where required strictly in accordance with any instruction provided by the owner and with due care and diligence.
- 4.5 The hirer agrees that the equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment in regard to its operation, maintenance and storage.
- 4.6 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.
- 4.7 The hirer must ensure the equipment is returned to the owner clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the owner.
- 4.8 The reasonable costs of fuel or other consumables provided by the owner and used by the hirer are to be paid to the owner when required by the owner.

5 Hirer's obligations

- 5.1 The hirer agrees that:
- (a) the equipment will be used in accordance with the conditions outlined in the Schedule, or any other special conditions agreed between the parties in writing;
 - (b) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (c) the hirer and/or all its relevant personnel hold a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
 - (d) the equipment will not be used for any illegal purpose;
 - (e) the hirer's vehicle is suitable for towing the equipment if required;
 - (f) the hirer will not, without prior written consent of the owner, tamper with, repair or modify the equipment in any way, or permit another to do so; and
 - (g) the hirer will not remove the equipment from the State or Territory in which it is hired without the prior approval of the owner.
- 5.2 The hirer must take out and maintain a policy of insurance that covers loss or damage to the equipment during the hire period for not less than the full new replacement costs of the equipment (**equipment insurance**).
- 5.3 The equipment insurance shall note the owner as an insured party with the full right of entitlement to claim under the insurance and the insurer shall waive all rights of subrogation against the owner and the owner's insurers.

- 5.4 The hirer must provide a certificate of currency of the equipment insurance upon request by the owner. The hirer will be responsible for the excess and any shortfall in repair or replacement costs from any insurance payout.

6 Indemnity and liability

- 6.1 To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of the use or misuse of the equipment under the hire except to the extent arising from the negligence or wilful default of the owner. The hirer will assume to the exclusion of the owner all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair, storage or transportation of the equipment.
- 6.2 To the full extent permitted by law the owner excludes any implied or imposed guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this document (**Provision**). To the extent to which the owner is not able to exclude a Provision (**Non-Excludable Provision**), and the owner is able to limit the hirer's remedy for a breach of the Non-Excludable Provision, then the owner's liability for breach of the Non-Excludable Provision is limited to (at the owner's election):
- (a) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and
 - (b) in the case of services, the supplying of the services again (or the payment of the cost of doing so).
- 6.3 Subject to the owner's obligations under the Non-Excludable Provisions, the owner is not liable to the hirer or any third party for any indirect loss or consequential loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if the owner has been advised of the possibility of such loss.

7 Loss, damage or breakdown of plant and equipment

- 7.1 The hirer will be responsible for any loss or damage to the equipment during the hire period. The hirer is liable for:
- (a) the payment of the full replacement value of any equipment not returned to the owner; and
 - (b) the ongoing hire fees during the period the equipment is being repaired or replaced.
- 7.2 If there is a breakdown or failure of the equipment the hirer must on the same day as the breakdown or failure notify the owner immediately, at which time the owner will advise the appropriate action to be taken.

8 Termination

- 8.1 Without prejudice to any other remedies the owner may have against the hirer and notwithstanding the period of hire specified in the contract, this hire agreement and any hire may be terminated by the owner as follows:
- (i) upon giving the hirer two days written notice of termination at any time during the period of hire;
 - (ii) without prior notice if the hirer has a winding-up petition presented against it, or is wound up, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if it is placed under administration, or if it ceases to carry on business.
- 8.2 The owner may terminate this agreement at any time if the other party breaches the agreement and the breach cannot be, or is not, rectified within 2 days after the owner sends written notice to the hirer specifying the breach and requesting rectification. The owner may also terminate this agreement if the hirer commits a material breach of it.
- 8.3 The owner may seek compensation from the hirer for a breach of this agreement including for loss of revenue whilst the equipment is not able to be hired to others (for example due to damage) and/or loss of rental that would have been earned had termination not occurred. This does not limit the owner's other rights at law.

8.4 If the hire agreement is terminated under this clause 8, the hirer must immediately pay all outstanding hire fees to the owner and must return the equipment to the owner.

9 Title to equipment

9.1 The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the equipment.

9.2 The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, the equipment.

10 Repossession and remedies on default

10.1 The owner may retake possession of the equipment if:

- (i) the hire is terminated or becomes liable to be terminated by the owner;
- (ii) the hirer does not pay amounts owing to the owner as when due.

10.2 In the case of repossession due to a breach of this agreement the hirer grants the owner permission to enter any premises where the equipment listed in the Schedule is situated to disconnect, decommission and/or remove that equipment.

10.3 In addition to the owner's right to retake possession the owner is entitled in its discretion, following any breach of any provision of this agreement by the hirer, to terminate this agreement and/or sue for recovery of any damages or charges or loss suffered by the owner, and/or to cancel any insurances effective in respect of the equipment hired.

10.4 The hirer furthermore irrevocably authorises the owner to enter the hirer's premises to inspect the equipment from time to time during the hire period.

11 Completion of the hire

11.1 The equipment must be returned to the owner in the same condition as when it was hired. Return must be by the date and time outlined in the Schedule. The owner may agree a date for pick-up.

11.2 Where pick-up is agreed the owner will arrange to pick-up the equipment within a reasonable period after a request to do so and will issue the hirer with a pick-up number on request. The hirer agrees to maintain the responsibility for the equipment whilst it is awaiting pick-up.

12 General

12.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

12.2 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

12.3 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

12.4 The owner will comply with the applicable privacy legislation in all dealings with hirers. Information on our privacy policy is available on request.

12.5 Both the owner and the hirer agree that any disputes arising from the hire and use of the equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association (Tel 02 9998 2255) before litigation is pursued.

13 PPS Law

- 13.1 This clause applies to the extent that this agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPS Law**). References to PPS Law in this Agreement include references to amended, replacement and successor provisions. The owner may register its security interest. The hirer must do anything (such as obtaining consents and signing documents) which the owner requires for the purposes of ensuring that the owner's security interest is enforceable, perfected, first priority and otherwise effective under the PPS Law.
- 13.2 The owner may recover from the hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 13.3 The rights of the owner under this document are in addition to and not in substitution for the owner's rights under other law (including PPS Law) and the owner may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 13.4 To the extent that Chapter 4 of the PPS Law applies to the security interest under this agreement, and the PPS Law requires the owner to give a notice or allow time or provide any account to the hirer the hirer and owner agree that to the extent allowable under the PPS Law that requirement does not apply and, for the purposes of section 115 of the PPS Law it is "contracted out" of this agreement in respect of all goods to which that section can be applied. Provisions of the PPS Law confer rights on the owner. The hirer agrees that in addition to those rights, the owner will, if there is default by the hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the hirer agrees that the owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 13.5 The hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. The owner and the hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing the owner the benefit of section 275(6)(a) and the owner will not be liable to pay damages or any other compensation or be subject to injunction if the owner breaches this sub-clause.

14 Security interests and sub-hire

- 14.1 The hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the equipment other than with the express written consent of the owner.
- 14.2 The hirer must not lease, hire, bail or give possession (**sub-hire**) of the equipment to anyone else unless the owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the owner and must be expressed to be subject to the rights of the owner under this Agreement. The hirer may not vary a sub-hire without the prior written consent of the owner (in its absolute discretion).
- 14.3 The hirer must ensure that the owner is provided at all times with up-to-date information about the sub- hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub- hire and the location and condition of the equipment.
- 14.4 The hirer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the hirer to gain (subject always to the rights of the owner) first priority (or any other priority agreed to by the owner in writing) for the security interest; and
 - (c) enabling the owner and hirer to exercise their respective rights in connection with the security interest.
- 14.5 The owner may recover from the hirer the cost of doing anything under this clause, including registration fees.