

TERMS & CONDITIONS OF HIRE

1. Definitions

"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth);

"**consumer**" is as defined in the ACL;

"**Goods**" means all plant, equipment and accessories supplied by Us to You;

"**Hire Charges**" means the base charges for the hire of the Goods, as set out overleaf;

"**Hire Contract**" means this contract for the hire of Goods by You;

"**Hire Period**" means the time from when the Goods leave Our depot or place where last issued until received back at Our depot or other place named by Us;

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth);

"**Us**", "**We**" or "**Our**" means Hiredepot Pty Ltd (ACN 118 177 790);

"**You**" or "**Your**" means the person/s, jointly and severally, hiring the Goods from Us.

2. Basis of Hire

2.1 These terms and conditions apply exclusively to the Hire Contract.

2.2 If You place an order in person, or via telephone or electronic means, a Hire Contract is only formed when We accept the order or provide You with the Goods.

2.3 We reserve the right to make changes to the Goods or their specifications at any time, provided that the end performance of the Goods is not materially prejudiced.

3. Hire Charges & Payment Terms

3.1 Unless otherwise stated, the Hire Charges are exclusive of GST, insurance, Damage Waiver, and freight/delivery charges, which are additionally at Your cost.

3.2 If credit is offered: the Hire Charges and all other amounts must be paid within 30 days of the date of Our invoice.

3.3 If credit is not offered: the Hire Charges must be paid in full prior to the start of the Hire Period. Payment of any other amounts must be made in full by the date specified on Our invoice.

3.4 You authorise Us to use the credit card noted overleaf, or any other credit card You provide to Us from time to time, to pay any overdue amounts.

3.5 We reserve the right to require payment of a deposit prior to releasing the Goods.

3.6 To the extent permitted by law, claims for credit will not be considered unless made within 30 days of Our invoice.

4. Delivery and Transport

4.1 Unless otherwise agreed, You must arrange for collection and return of the Goods at Your own cost and risk.

4.2 Any date specified by Us for the start of the Hire Period is an estimate only and not a contractual commitment.

5. Title, Risk and Insurance

5.1 Title in and to the Goods remains vested in Us at all times. You must not sell, hire, lease or otherwise deal with the Goods except as We expressly permit.

5.2 If You sub-lease or sub-hire the Goods in accordance with clause 5.1, You must:

- (a) do so on terms similar to these; and
- (b) comply with the PPSA and undertake a valid registration on the PPS Register in respect of the Goods You sub-hire or sub-lease.

5.3 The risk in the Goods and all insurance responsibility for theft, damage and replacement passes to You immediately at the start of the Hire Period.

5.4 You assume all risk and liability for loss, damage or injury to persons or to property belonging to You or third parties, arising out of the use or possession of the Goods, unless recoverable from Us on a breach of the ACL.

6. Your Obligations

6.1 Unless otherwise agreed, You are responsible for:

- (a) all fuel and consumables required to use the Goods during the Hire Period;
- (b) the safekeeping of the Goods during the Hire Period;
- (c) use of the Goods in strict conformity with Our specifications and instructions;
- (d) complying with all relevant laws regarding the use and operation of the Goods;
- (e) protecting the Goods against fire, theft, distress or seizure;
- (f) any damage sustained to the Goods (other than fair wear and tear);
- (g) maintaining the Goods in good and proper working condition;
- (h) inspecting the Goods on a daily basis and ensuring that they are not operated if they have become defective, damaged or dangerous;
- (i) ensuring that each person that uses or operates the Goods is appropriately qualified to do so; and
- (j) advising Us immediately if the Goods break down or fail to operate properly.

6.2 You must allow Us access to the Goods at all reasonable times for the purpose of inspection, repair, replacement and removal.

7. Breakdown

7.1 You must notify Us immediately of any damage, loss or breakdown to the Goods.

7.2 Subject to clause 7.3, breakdowns or defects in the Goods resulting from:

- (a) proper ordinary usage or fair wear and tear; or
 - (b) the development of an inherent fault or a fault not ascertainable prior to the start of the Hire Period,
- may, at Our option, either be repaired or the Goods replaced at Our expense.

7.3 If repair is impracticable and replacement Goods are not available, We may

terminate the Hire Contract.

7.4 You must not repair or alter the Goods without Our prior written consent.

8. Termination and Default

8.1 If:

- (a) You breach this Hire Contract;
 - (b) the Goods become damaged or lost whilst under Your responsibility;
 - (c) You default in payment by the due date of any amount payable to Us;
 - (d) You become bankrupt or insolvent or have a liquidator or similar functionary appointed in respect of Your assets;
 - (e) in Our reasonable opinion, You are likely to breach Your obligations under this Hire Contract;
- then We may, without prejudice to any of Our other accrued or contingent rights:
- (f) require immediate payment of all money which would become payable by You to Us at a later date on any account;
 - (g) charge You interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2% for the period from the due date until the date of payment in full;
 - (h) charge You for, and You must indemnify Us from, all costs and expenses incurred by Us resulting from the default and in taking action to recover the Goods or to enforce compliance with the Hire Contract;
 - (i) charge You for the cost of repairing or replacing any lost, damaged or destroyed Goods;
 - (j) charge You for subsequent lost Hire Charges as a result of the Goods being lost, damaged or destroyed until the Goods are repaired or replaced and the cost of doing so has been paid by You; and
 - (k) by written notice to You, terminate any uncompleted Hire Contract.

9. Return of Goods

9.1 Upon termination or expiry of the Hire Contract:

- (a) You must immediately return all Goods to Us or as we direct. If You do not, You irrevocably license Us to enter any premises where the Goods are to remove them. We are not liable for any damage caused and You must indemnify Us from any liability to You or any third party in respect of any costs or claims;
- (b) You must immediately return the Goods to Us in a clean and working condition (fair wear and tear excepted). If You do not, You will be charged for the cost of cleaning and restoring the Goods; and
- (c) payment of the Hire Charges and all other charges will continue until the Goods are actually returned.

9.2 If You fail to return the Goods for any reason whatsoever then:

- (a) We may report it as criminal theft; and
- (b) You are liable to Us for the cost of replacing the Goods and all Hire Charges until such replacement costs are paid.

10. Limitation of Liability

10.1 This Hire Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or any contractual remedy for their failure.

10.2 If You are a consumer nothing in this Hire Contract restricts, limits or modifies Your rights under the ACL.

10.3 If you are not a consumer then We are not liable to You in any way arising under or in connection with the hire, use of, storage or any other dealings with the Goods by You or any third party.

11. Personal Property Securities

11.1 If We determine that this Hire Contract is or contains a security interest for the purposes of the PPSA, then You must do all things reasonably required to ensure We have a continuously perfected security interest in the Goods.

11.2 If We determine that the Hire Contract constitutes a PPS Lease, then You are the grantor and We are the secured party holder of a Purchase Money Security Interest.

11.3 You must not allow any third party security interest in the Goods to become perfected or attached, except with Our express prior written consent.

11.4 Where permitted by the PPSA, You waive any right to receive the notifications and other documentation specified in sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

11.5 The parties agree to contract out of sections 96, 125, 129, 142 and 143 of the PPSA.

11.6 To the extent permitted by the PPSA:

- (a) the provisions of Chapter 4 of the PPSA will not apply unless they are mandatory or We agree to them in writing; and
- (b) Our rights in addition to those in Chapter 4 of the PPSA will continue to apply.

12. Cancellation

12.1 If We are unable to provide the Goods, then We may cancel the Hire Contract (even if it has been accepted) by written notice to You.

13. Miscellaneous

13.1 The law of Victoria from time to time governs this Hire Contract.

13.2 Time is of the essence in relation to Your obligations under this Hire Contract.