

Terms and Conditions of Hire – (“Hire Terms”)

1 Application of Hire Terms

- 1.1 These Hire Terms, together with the Hire Schedule, govern our hire of Equipment to you.
- 1.2 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

2 Quotations

- 2.1 Each quotation that we issue, unless stated otherwise:
 - (a) is an estimate only;
 - (b) is not an offer or obligation to hire any Equipment to you;
 - (c) is exclusive of GST;
 - (d) does not include the costs of delivering the Equipment; and
 - (e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a hire contract is formed
- 2.2 Quotations provided orally are subject to written confirmation.

3 Formation of a hire contract

- 3.1 If you request to hire Equipment from us we may issue you a Hire Schedule. The Hire Schedule contains details of the hire and may include additional terms and conditions which will supplement these Hire Terms.
- 3.2 We are not obliged to hire any Equipment to you until after a hire contract is formed.
- 3.3 A hire contract is formed, and you have accepted these Hire Terms, when:
 - (a) you sign the Hire Schedule in-store; or alternatively
 - (b) you have directed us to mobilise or otherwise deliver the Equipment and have received a Hire Schedule.
- 3.4 If you revoke an Order after the formation of a hire contract then unless we are in breach of the hire contract:
 - (a) you must pay all our reasonable costs associated with fulfilment of your Order; and
 - (b) we may apply any deposit you have paid towards those costs.

4 Hire Period

- 4.1 The Hire Period will commence:
 - (a) (where you collect the Equipment):
 - (I) the On-Hire Date and time; or alternatively
 - (II) if the Equipment is collected after the On-Hire Date, when the Equipment leaves the point of hire; or
 - (b) (where we deliver the Equipment) the date and time we or our nominated carrier deliver the Equipment to the Site (or to such other location as agreed in writing).
- 4.2 For the removal of doubt, you must pay the full Hire Rate for the Minimum Hire Period, together with all other fees and charges stated in the Hire Schedule, even if you return the Equipment, or arrange for us to collect the Equipment, prior to the expiry of the Minimum Hire Period.

5 Delivery and risk

- 5.1 You are responsible for:
 - (a) arranging the collection or delivery of the Equipment; and
 - (b) the costs of collecting or delivering the Equipment, unless the Hire Schedule states otherwise.
- 5.2 You acknowledge and agree that any timeframe or date for delivery is an estimate only and is not a contractual commitment.
- 5.3 Risk of loss, damage, or deterioration to the Equipment passes to you, and delivery is deemed to occur, at the time:
 - (a) (where you collect the Equipment) you or any third party on your behalf collects the Equipment from the point of hire; or
 - (b) (where we deliver the Equipment) we or our nominated carrier delivers the Equipment to the Site (or to such other location as agreed in writing).

- 5.4 Risk in the Equipment remains with you until such time as:
 - (a) you return the Equipment to us or our nominated carrier; or
 - (b) we repossess the Equipment, **(Risk Period).**
- 5.5 You must inspect the Equipment on delivery for any damage and you must satisfy yourself that:
 - (a) you have received the Equipment in good order and condition;
 - (b) you, and any of your Personnel operating the Equipment, understand its safe and proper operation; and
 - (c) the Equipment is fit for the purpose for which you require it.
- 5.6 You must notify us within twenty-four (24) hours if you are not so satisfied. Failing such notification, you will be deemed to have accepted the Equipment in the condition in which it was delivered and as fit for the purpose for which you require it.

6 End of Hire Period

- 6.1 Unless the Hire Schedule contemplates we are to collect the Equipment, you must return the Equipment during Business Hours to the point of hire or to such other location agreed by us:
 - (a) on the Off-Hire Date (or such other date as agreed between the parties); or otherwise
 - (b) as soon as possible if the hire contract is terminated.
- 6.2 Subject to subclauses 4.2, you may terminate a hire contract early by returning the Equipment to us at the point of hire (during Business Hours).
- 6.3 You must return or deliver up the Equipment to us in the same state of cleanliness and in substantially similar condition that the Equipment was in when you took possession of it (Fair Wear and Tear excepted).
- 6.4 If:
 - (a) the hire contract expires or is terminated; and
 - (b) you fail to comply with subclause 6.1,then you:
 - (c) permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to repossess the Equipment; and
 - (d) authorise us to disconnect, dismantle, and remove the Equipment (whether or not it is affixed to the Site).
- 6.5 Where the Equipment is not returned to the original point of hire by the Off-Hire Date, we are entitled to charge you, and you agree to pay to us additional hire charges at our then applicable daily rate for each day until the Equipment is back in our custody and possession.

7 Hire Rate and other charges

- 7.1 In consideration of us hiring the Equipment to you, unless the Hire Schedule states otherwise, you agree to pay us:
 - (a) the Hire Rate;
 - (b) mobilisation and demobilisation costs (where applicable);
 - (c) all other amounts, charges, levies, and fees stated in the Hire Schedule;
 - (d) cleanings costs (if the Equipment is returned to us in an unclean state);
 - (e) top up charges, if the Equipment is returned with oil, lubricant, or fuel not at the same level as the On-Hire Date;
 - (f) decontamination costs (if the Equipment is contaminated with any hazardous substance, such as asbestos); and
 - (g) any tolls, levies, fines, or penalties we incur arising out of or in connection with your use or operation of the Equipment.
- 7.2 The Hire Rate will be charged weekly in advance unless otherwise agreed.
- 7.3 We will not be required to adjust the Hire Rate based on the hours recorded by the Equipment's hour meter or the number of days the Equipment is in operation.
- 7.4 Any excess usage of the Equipment will be calculated and charged on a pro-rated basis of the Hire Rate, unless stated otherwise in the Hire Schedule.

8 Payment terms

- 8.1 Unless you have a Credit Facility with us which is not in default:
- (a) deposits we have requested must be paid before we hire any Equipment to you; and
 - (b) you must pay us the Hire Rate, together with any other amounts, fees, and charges, on or before the On-Hire Date or otherwise by the date specified on our invoice.
- 8.2 Payment may be made by cash, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 8.3 Unless we agree otherwise, your first payment must be made by credit card. In making your first payment you;
- (a) agree to provide us with the credit card details necessary to effect payment
 - (b) authorise Us to use this credit card, or any other credit card You provide to Us from time to time, to pay any overdue amounts
- 8.4 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

9 Hirer's obligations

- 9.1 Unless the Hire Schedule states otherwise, you must:
- (a) comply with all laws relating to the transportation, storage, and operation of the Equipment;
 - (b) protect the Equipment from loss or damage, and store the Equipment safely and securely;
 - (c) keep the Equipment in good working order and condition;
 - (d) where applicable, each day:
 - (i) complete the pre-start safety checklist and logbook provided with the Equipment; and
 - (ii) check the Equipment for fluid levels, any sign of looseness or wear;
 - (e) ensure any Personnel operating the Equipment do so:
 - (i) properly and skilfully in accordance with the manufacturer of the Equipment's manuals and guidelines and our directions;
 - (ii) in accordance with any workplace health and safety laws;
 - (iii) in accordance with warranties and guidelines given by the manufacturer of the equipment
 - (iv) under competent supervision; and
 - (v) in a manner which will minimise damage to the Equipment;
 - (f) use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances;
 - (g) allow our Personnel to at all reasonable times to enter upon the Site or any other premises you occupy to inspect the Equipment, and otherwise enforce our rights and carry out our obligations under the hire contract; and
 - (h) immediately give us any notice or order received from any government authority about the operation or condition of the Equipment.
- 9.2 You must not, without our prior written and fully informed consent:
- (a) remove the Equipment from the Site;
 - (b) make any replacements, modifications, alterations, additions, or improvements to the Equipment;
 - (c) alter, remove, deface, or cover up labels, decals, and/or plates;
 - (d) exceed the recommended or legal load and capacity limits of the Equipment;
 - (e) place any identifying mark on the Equipment or allow it to become an accession (within the meaning of the PPS Act);
 - (f) lease, licence, or lend the Equipment to any other person (or otherwise deal with the Equipment in a manner inconsistent with our rights and interest in the Equipment); or
 - (g) do or allow to be done any act, matter, or thing which may invalidate or prejudice any:

- (i) insurance policy effected and maintained by us or you;
- (ii) defence or prosecution of any Claim; or
- (iii) Claim or right we may have against any person.

10 Breakdowns

- 10.1 During the Hire Period we will carry out, at our own expense:
- (a) any repair which is necessary to rectify any damage to, or malfunction of, the Equipment, including where caused by Fair Wear and Tear where the damage or malfunction renders the Equipment unsafe or unsuitable for normal use or operation; and
 - (b) any service, maintenance, or repair items which are noted to be our responsibility,
- provided that such damage or malfunction was not caused by you, your Personnel, or any third party.
- 10.2 Where we are responsible for carrying out any repairs to the Equipment:
- (a) we will do so as soon as possible after being notified by you of the damage or malfunction, and if it is necessary for the Equipment to be returned to our premises for repairs, then we will collect the Equipment from you and will re-deliver the repaired Equipment or a suitable replacement as soon as reasonably practicable; and
 - (b) you must not carry out any repairs on our behalf without our prior written and fully informed consent. If you carry out repairs without first obtaining our consent, we will not be liable for the cost of those repairs.
- 10.3 You acknowledge that we may carry out pre-arranged repairs or servicing during Business Hours.
- 10.4 We accept liability for the Fair Wear and Tear of major and minor components of the Equipment.

11 Damage, loss, and theft

- 11.1 You are strictly liable for any damage, loss, or theft to the Equipment that occurs during the Risk Period.
- 11.2 If the Equipment breaks down, is damaged, or otherwise becomes inoperable (for whatever reason, including due to it being deemed unsafe to operate), you must promptly:
- (a) notify us by telephone and in writing; and
 - (b) take all reasonable steps to secure and safeguard the Equipment from any potential damage or injury to any person or property (including further damage to the Equipment); and
 - (c) not attempt to make any repairs to the Equipment.
- 11.3 Upon receipt of your notice under subclause 11.2(a):
- (a) the Hire Rate will be suspended until such time as the Equipment is repaired or we have provided you with a suitable replacement (unless you or your Personnel have caused the damage); and
 - (b) we will take all reasonable steps to repair the Equipment or provide you with a suitable replacement as soon as reasonably practicable.
- 11.4 If the Equipment breaks down, is damaged, needs to be recovered (due to it being bogged or stuck), or otherwise becomes inoperable due to any act or omission of yours, your Personnel, or any third party, you agree to:
- (a) pay us any costs we incur to repair or recover the Equipment (as the case may be); and
 - (b) continue to pay us the Hire Rate during the period in which we are recovering or repairing the Equipment or procuring a suitable replacement.
- 11.5 If the Equipment is unable to be returned to us (for example, if it is lost, stolen, damaged beyond economic repair, or if title to the Equipment is lost) then you must pay us the aggregate of the following:
- (a) all money past due but not yet paid under the hire contract;
 - (b) any salvage costs we incur in salvaging the Equipment; and
 - (c) the replacement cost of the Equipment (calculated in accordance with then prevailing market value of the Equipment).
- 11.6 If the Equipment is stolen during the Risk Period, you must promptly (and in any event within forty-eight (48) hours of the date the Equipment was stolen) provide us with a copy of a police report explaining the circumstances of the theft.

12 Stand downs

Subject to subclause 11.3, you acknowledge and agree you are not entitled to any discount or rebate for any period in which the Equipment is not in use by you.

13 Property and title in the Equipment

- 13.1 You acknowledge and agree that we are the owner of the Equipment and retain title to the Equipment in all circumstances. Your right under the hire contract to possess the Equipment is as a bailee only.
- 13.2 For the removal of doubt, neither payment of compensation nor any other event or circumstances will amount to, constitute, or result in any transfer of property or interest in the Equipment from us or any related body corporate of ours.

14 Security interest

- 14.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- (a) register a financing change statement in respect of a security interest in our favour; or
 - (b) create, or purport to create, any security interest in the Equipment, nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Equipment in favour of any third party.
- 14.2 You:
- (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
 - (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 14.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 14.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

15 Default

- 15.1 Subclauses 15.2 to 15.4 apply if you fail to pay sums to us when they fall due.
- 15.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.
- 15.3 We may suspend or cease the supply of any further Equipment to you.
- 15.4 We may require pre-payment in full for any Equipment which has not yet been supplied.

16 Indemnity

- 16.1 If you default in the performance or observance of your obligations under any hire contract of which these Hire Terms form part, then:
- (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
 - (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
 - (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 16.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 16.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any hire contract of which these Hire Terms form part.

17 Limitation of liability

- 17.1 No party is liable to the other party for any Consequential Loss, including under clause 16, however caused arising out of or in connection with any hire contract of which these Hire Terms form part.
- 17.2 While we will take reasonable endeavours to meet any estimated delivery date for Equipment, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.
- 17.3 If the hire contract is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:
- (a) (in the case of the hire of Equipment):
 - (i) us repairing the Equipment or providing a suitable replacement; or
 - (ii) us paying you the cost of having the Equipment repaired or procuring a suitable replacement.
 - (b) (in the case of a supply of services):
 - (i) us supplying the services again; or
 - (ii) us paying you the cost of having equivalent services supplied.

18 Termination

A party may, with immediate effect, terminate any hire contract of which these Hire Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Hire Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
 - (i) has committed an act of bankruptcy; or
 - (ii) has been made bankrupt;
- (g) comprises a corporation which:
 - (i) enters into voluntary administration;
 - (ii) is subject to a deed of company arrangement; or
 - (iii) is subject to the appointment of liquidators or provisional liquidators.

19 Variation

We may amend these Hire Terms in the future by notifying you in writing. The amended Hire Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

20 Assignment

A party may only assign its rights under the hire contract with the written consent of the other party.

21 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) the Hire Schedule;
- (b) any terms governing your Credit Facility; and
- (c) these Hire Terms.

22 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that

is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

23 Governing law and jurisdiction

- 23.1 Our relationship is governed by and must be construed according to the law applying in the State of Victoria.
- 23.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Victoria with respect to any proceedings that may be brought at any time relating to our relationship.

24 Definitions

In these Hire Terms, unless the context otherwise requires, the following apply.

- 24.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act* 2010 (Cth), as amended.
- 24.2 **Business Hours** means between 07:00am to 5:00pm Monday to Friday (other than gazetted public holidays), and 07:30am to 1:00pm on Saturdays, in the place where the Equipment is to be hired
- 24.3 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a hire contract.
- 24.4 **Consequential Loss** includes any:
- (a) consequential loss;
 - (b) loss of anticipated or actual profits or revenue;
 - (c) loss of production or use;
 - (d) financial or holding costs;
 - (e) loss or failure to realise any anticipated savings;
 - (f) loss or denial of business or commercial opportunity;
 - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
 - (h) loss or corruption of data;
 - (i) downtime costs or wasted overheads; or
 - (j) special, punitive, or exemplary damages.
- 24.5 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.
- 24.6 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for the hire of Equipment and associated charges.
- 24.7 **Equipment** means the plant, machinery, vehicles, tools, or equipment described in the Hire Schedule (including, unless otherwise agreed in writing, any replacement parts, components, tools, and other items used to service and maintain the Equipment), including manuals and logbooks, associated or attached tools, accessories and parts we have agreed to hire to you in accordance with the hire contract.
- 24.8 **Fair Wear and Tear** means wear and tear which would be normal for similar Equipment operated under normal operating conditions (and within its design parameters and recommended procedures), but expressly excludes:
- (a) dents or other impact damage;
 - (b) damage to glass or instrumentation; and
 - (c) panel or structural damage from collision or abuse and damage to the drive system.
- 24.9 **Hire Period** means the period the Equipment is to be hired by you, as stated in the Hire Schedule.
- 24.10 **Hire Rate** means the rate payable by you to hire the Equipment, calculated in accordance with rates stated in the Hire Schedule.
- 24.11 **Hire Schedule** means the document, if any, provided by us which includes particulars of the Equipment, the Site, the Hire Rate, any other applicable charges, and the Off-Hire Date.
- 24.12 **Hirer, you** means the person or other entity hiring Equipment from us.
- 24.13 **Minimum Hire Period** means the minimum Hire Period stated in the Hire Schedule (if any).
- 24.14 **Off-Hire Date** means the date you expect the Hire Period to end, as stated in the Hire Schedule or the date otherwise agreed by us.
- 24.15 **On-Hire Date** means the date stated in the Hire Schedule as the on-hire date.

- 24.16 **Order** means a written or oral order from you requesting to hire Equipment from us.
- 24.17 **Personnel** means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of the Supplier includes its subcontractors (and any employee of those subcontractors).
- 24.18 **PPS Act** means the *Personal Property Securities Act* 2009 (Cth), as amended.
- 24.19 **Site** means the land (including any structure or other facility on the land) upon, over, below, or through where the Equipment will be used, as stated in the Hire Schedule.
- 24.20 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
- 24.21 **Supplier, we, us** means Hiredepot Pty Ltd (ACN 118 177 790).

25 Interpretation

In these Hire Terms, unless the context otherwise requires:

- 25.1 A time is a reference to the time zone of Victoria, Australia unless otherwise specified.
- 25.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.
- 25.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 25.4 A right includes a benefit, remedy, authority, discretion, or power.
- 25.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 25.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 25.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 25.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 25.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.