



## EQUIPMENT HIRE RENTAL

### TERMS AND CONDITIONS

#### 1. Hire of Equipment

- (a) The hiring of the Equipment in this Agreement will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.
- (b) The Hirer is entitled to use the Equipment for the hire period as outlined in the Schedule ("**Hire Period**") and for any agreed extension of the period.
- (c) The Hirer agrees to return the Equipment to the address of the Owner on or before the end of the Hire Period as outlined in the Schedule.
- (d) The Owner will not refund any hire fee monies if the Hirer elects to return the Equipment prior to the end of the Hire Period, regardless of reason.

#### 2. Payment for rental

- (a) The Hirer agrees to pay the Owner the hire fee specified in the Schedule ("**Hire Fees**") for the Equipment for the Hire Period, which includes any applicable GST.
- (b) The Initial Payment must be paid to the Owner prior to or on the commencement date of the Hire Period.

#### 3. Use, operation and maintenance

- (a) The Hirer agrees that the use of the Equipment carries with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.
- (b) The Equipment must not be used by anyone other than the Hirer. The Hirer will use the Equipment in a good and careful manner and will comply with all of the manufacturer's requirements and recommendations, respecting the Equipment and with any applicable law, whether local, state or federal respecting the use of the Equipment.
- (c) It is expected that all reasonable care will be taken with the use and transport of the equipment, and that it is in accordance with the instructions for use in the Manual provided:
- (d) The Equipment requires a 6 monthly mechanical check for routine maintenance. This will be paid for by the Owner. The Hirer has the responsibility to comply with transporting the Equipment to the Service Centre nominated by the Owner.
- (e) The Hirer will use the Equipment for the purpose for which it was designed and not for any other purpose.
- (f) The Hirer agrees to comply with all occupational health and safety laws relating to the use of the Equipment and related operations.
- (g) The Hirer must ensure the Equipment is returned to the Owner in good working order apart from reasonable wear and tear.
- (h) Unless the Hirer obtains the prior written consent of the Owner, the Hirer must not alter, modify or attach anything to the Equipment unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the Equipment.

#### 4. Hirer's warranties

The Hirer warrants that:

- (a) the Equipment will be used in accordance with the conditions outlined in the Schedule;
- (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 holds 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 or transporting the Equipment;
- (f) the Hirer will not, without prior written consent of the Owner, modify, or permit any modification of, the Equipment in any way;
- (g) the Hirer agrees that the Equipment complies with its description, is in merchantable condition and is fit for the Hirer's purpose; and
- (h) the Hirer will not encumber the Equipment or allow the Equipment to be encumbered or pledge the Equipment as security in any manner.

## **5. Taxes**

- (a) Any reference to Goods and Services Tax (GST) in this Agreement or the Schedule is deemed to be excluded unless expressly stated otherwise. Each party is responsible for managing their own tax affairs.
- (b) The Hirer will pay all taxes, fees and charges associated with the Equipment, with the use of the Equipment, and with revenues and profits arising out of the use of the Equipment, including, but not limited to, income taxes, licence and registration fees.
- (c) The Hirer will pay all penalties and interest for failure to pay any tax, fee or charge on or before the date on which the payment is due. The Hirer will pay all penalties and interest for failure to report required information to any taxing authority with jurisdiction over the Hirer or the Equipment. If the Hirer fails to perform the obligations in this clause, the Owner may, but is not obligated to, do so at the Hirer's expense.
- (d) Notwithstanding any other provision of this Agreement, the Hirer will not be required to pay any tax, fee or charge if the Hirer is contesting the validity of same in the manner prescribed by the legislation governing the imposition of same, or in the absence of a prescribed form, in a reasonable manner. However, the Hirer will indemnify and reimburse the Owner for damages and expenses incurred by the Owner arising from or related to the Hirer's failure to pay any tax, fee or charge, regardless of whether the Hirer is contesting the validity of the same or not.
- (e) If the Hirer fails to pay any and all taxes, fees, and charges mentioned in this Agreement and the Owner, on behalf of the Hirer, pays the same, the Hirer will reimburse the Owner for the cost upon notification from the Owner of the amount.

## **6. Indemnity**

The Hirer will indemnify and hold harmless the Owner against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees and costs, arising out of or related to the Hirer's use of the Equipment.

## **7. Loss, damage or breakdown of Equipment**

- (a) The Hirer will be responsible for any loss or damage to the Equipment irrespective of how the loss or damage occurred (normal wear and tear excepted) during the Hire Period.
- (b) If there is a breakdown or failure of the Equipment, then the Hirer must return the Equipment to the Owner at the Hirer's expense and the Hirer must not attempt to repair the Equipment.

## **8. Insurance**

The Hirer must maintain current insurance policies in respect of the Equipment during the Hire Period to its full insurable value.

## **9. Liability**

The Hirer will assume 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 or storage of the Equipment.

#### **10. Disclaimer**

To the extent permitted by law the Owner disclaims all liability for and does not give any warranties to the Hirer as to the condition of the Equipment.

#### **11. Title**

- (a) 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 does not have any right to pledge the Owner's credit in connection with the Equipment and agrees not to do so.
- (b) 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 Equipment or make any addition or alteration to, or repair of, the Equipment.
- (c) The Hirer acknowledges and accepts that legal title to the Equipment is retained by the Owner and shall not pass to the Hirer unless an option to purchase is executed in writing between the Owner and Hirer. This clause shall survive in the event of any insolvency or administration of the parties.

#### **12. Repossession**

- (a) The Owner may retake possession of the Equipment if the Hirer breaches any provision of this Agreement, notwithstanding anything else contained in this Agreement.
- (b) If repossession occurs, the Owner will only charge the Hire Fee up to and including the time of repossession plus the End of Hire Fees and any legal fees or disbursements incurred by the Owner.

#### **13. Completion of the Hire Period**

The Hire Period is completed when the Equipment has been returned to the Owner:

- (a) in the same condition (apart from reasonable wear and tear) as when it was hired; and
- (b) on or by the expiry of the Hire Period defined in the Schedule or as extended by agreement of the parties in writing.

#### **14. Option to Renew or Extend the Hire**

The Hire Period is completed when the Equipment has been returned to the Owner or one of the following options is exercised by agreement of the parties:

- (a) An option to renew/extend the Hire is available at the discretion of the Owner.
- (b) If the renewal/extension is offered, the Owner notify the Hirer at least 45 days prior to the expiry of the Hire Period.
- (c) Should the Hirer wish to accept this offer, they should do so in writing within 30 days prior to expiry of the Hire Period.
- (d) An extension to the Hire Period may be provided at the discretion of the Owner on a month to month basis, with a 30-day notice period required to terminate the Hire, by either party.

#### **15. Option to Purchase**

- (a) The Hirer has the option to purchase the Equipment at the end of the Hire Agreement. The Purchase price can be negotiated at the end of the Hire Period, or agreed to in this Contract, and included in Conditions in the Schedule.

#### **16. Signage**

- (a) The Trailer is supplied clean of any signwriting, or if preferred, may include a generic word.
- (b) The Hirer may brand the Trailer as they see fit, however must keep in mind that it is to be returned free of any signage or in original condition at the end of the Hire Period. If the Trailer is

purchased at the end of the Hire Period, the Hirer may update the signage following change of registered ownership of the Trailer.

## 17. Default

- (a) The occurrence of any one or more of the following events will constitute an event of default ("**Event of Default**") under this Agreement:
  - (i) The Hirer fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches the Hirer's obligations under this Agreement.
  - (ii) The Hirer becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the bankruptcy law of Australia or another competent jurisdiction.
  - (iii) A writ of attachment or execution is levied on the Equipment and is not re-hired or satisfied within 10 days.

## 18. Remedies

- (a) On the occurrence of an Event of Default, the Owner will be entitled to pursue any one or more of the following remedies ("**Remedies**"):
  - (i) Declare the entire amount of the Rent for the Term immediately due and payable without notice or demand to the Hirer.
  - (ii) Commence legal proceedings to recover the Rent and other obligations accrued before and after the Event of Default.
  - (iii) Take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law. The Hirer waives all damage occasioned by such taking of possession.
  - (iv) Terminate this Agreement immediately upon written notice to the Hirer.
  - (v) Pursue any other remedy available in law or equity.

## 16. Non-merger

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.

## 17. Severance

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.

## 18. Governing law

This Agreement will be construed in accordance with and governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of the courts of Victoria there in connection with matters concerning this Agreement.

## 19. Interpretation

- (a) In this Agreement, unless the context otherwise requires:
  - (i) A reference to the singular includes the plural and vice versa;
  - (ii) A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;
  - (iii) A reference to an individual will include corporations and vice versa; and

- (iv) If a word or expression is defined, its other grammatical forms have a corresponding meaning.
- (v) Headings are for convenience only and do not affect interpretation.

Executed as an agreement and the Hirer hereby confirms they have read and understood the Schedule, including all the stated terms and conditions