

HIRE CONTRACT CONDITIONS

NOTE TO CUSTOMER – These Hire Contract Conditions are subject to change by Online Hire without notice, from time to time.

1. Definition of terms in this document

- 1.1. **Agreement** has the same meaning as **Hire Contract**.
- 1.2. **Charges** – All of the amounts listed in clause 3.
- 1.3. **Commencement** – The time when the hirer takes possession of the equipment.
- 1.4. **Completion** – The earlier of:
 - (a) The time shown as "Hire Return Time" on the "Hire Return Date" noted on the front page of the Hire Contract; or
 - (b) The time of issue of an Off Hire Number.
- 1.5. **Included Kilometres** – For a Motor Vehicle, the distance of 100 kilometres per day the Motor Vehicle is hired.
- 1.6. **Hirer** – The person, persons, body or corporate entity that is nominated on the front page of the Hire Contract.
- 1.7. **Equipment** – The equipment, tools, Motor Vehicles (and the accessories hired therewith) listed or described on the front page of the Hire Contract.
- 1.8. **Hire Contract** – This contract, including any amendments made to this contract.
- 1.9. **Hire Fees** – The amounts listed on the front page of the Hire Contract.
- 1.10. **Hire Period** – The period between Commencement and Completion. The Hire Period may be extended for one or more definite periods by agreement between the Hirer and Online Hire. Online Hire may require the Hirer to sign an amended front page of the Hire Contract for any extension of the Hire Period.
- 1.11. **Motor Vehicle** – A truck, utility or car but not any other Equipment.
- 1.12. **Online Hire** – Online Hire Pty Ltd ACN 076 722 980.
- 1.13. **Kilometre Rate** – Where the Equipment is a Motor Vehicle, the amount listed on the front page of the Hire Contract for each kilometre, other than Included Kilometres, that the Equipment travelled, in the reasonable opinion of Online Hire, during the Hire Period.
- 1.14. **Off Hire Number** – A number issued by Online Hire to the Hirer when acknowledging the Hirer's request for the Hire period to cease.
- 1.15. **PPS Law** – The Personal Property Securities Act 2009 (Cth), as amended from time to time, or any successor Act.

2. The Obligations of Online Hire

Online Hire will:

- 2.1. Allow the Hirer to utilise the Equipment for the Hire Period;
- 2.2. Provide the equipment to the Hirer clean and in good working order and condition;
- 2.3. For a Motor Vehicle, arrange comprehensive motor vehicle accident damage insurance. Insurance will not cover the Hirer, and the Hirer is responsible for the following:
 - (a) The loss or theft of the Motor Vehicle;
 - (b) All costs of repairing damage in the following circumstances:
 - (i) Where the Equipment is lost or stolen;
 - (ii) Where the Hirer has breached any clause of this Agreement;
 - (iii) Where the vehicle is used to carry or tow a load, or carry a number of passengers, in excess of that for which the Motor Vehicle was designed;
 - (iv) In relation to any property damage to any property belonging to the Hirer or in the Hirer's physical or legal possession or control;
 - (v) Where the damage is caused by the unsafe operation of the Motor Vehicle, unless the unsafe condition could not reasonably be detected by the Hirer;
 - (vi) Where the damage is caused, in Online Hire's reasonable opinion, by use or operation contrary to the manufacturer's guidelines;
 - (vii) Where the Motor Vehicle is used in any experiment or type of test or in preparation for or involved in racing, speed testing, reliability trial, pace making, hill climbing, trial or demonstration;
 - (viii) Where the Motor Vehicle is used for conveyance of passengers for hire, fare or reward;
 - (ix) Where the Motor Vehicle is used for a purpose other than travelling, transporting or carting goods on a public road;
 - (x) Where the Motor Vehicle is used or operated in any Airside Area of an airport that handles commercial flights. For this clause, Airside Area means an area where airships or aeroplanes take off, land, taxi, load and/or unload, including runways, taxiways, aprons adjacent to runways and/or taxiways, aerobridges and aircraft standing areas.
 - (xi) Where, following an accident, the driver of the Motor Vehicle refuses to provide or allow the taking of a sample of breath, blood or urine for testing or analysis as required by the law of the State or Territory in which the accident occurred;
 - (xii) Where the Motor Vehicle is used to carry dangerous goods
 - (xiii) Where the damage is to tyres;
 - (xiv) Where the damage is caused while the motor vehicle is being driven on any road that is unsealed or is not a public road;
 - (xv) Where the damage is caused whilst not adhering to the rules of the road according to law.
- 2.4. Subject to subclauses 3.2 and 3.3, be responsible for repairing any damage to the Equipment caused by the Hirer;
- 2.5. Re-supply or repair the Equipment if it fails to operate properly;
- 2.6. Collect the Equipment within 5 days of:
 - (a) The Hirer requesting Online Hire to collect the Equipment; and
 - (b) Online Hire issuing to the Hirer an Off Hire Number.

3. Payments by the Hirer to Online Hire

- 3.1. On or before commencement (or as otherwise specifically arranged with Online Hire), the Hirer will pay the Hire Fees.
- 3.2. Immediately on request by Online Hire, the Hirer will pay:

- (a) The market price, as new, of any Equipment, other than a Motor Vehicle, which is for whatever reason not returned to Online Hire;
NOTE TO HIRER:- You are responsible for the loss or theft of the Equipment
- (b) All costs incurred in cleaning the Equipment;
- (c) All costs of repairing any damage caused by the ordinary use of the Equipment other than a Motor Vehicle.
- (d) All costs of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;
- (e) Subject to paragraph (f), the cost of repairing any damage to the Equipment, other than a Motor Vehicle, caused, in Online Hire's reasonable opinion, by vandalism or in any other way whatsoever other than by the ordinary use of the Equipment.
- (f) Where the Equipment is a Motor Vehicle, the amount not covered by the insurance referred to in clause 2.3;
- (g) Goods & Services Tax, any other taxes or duties and all toll fines, penalties, levies or charges payable in respect of this Agreement;
- (h) All costs incurred by Online Hire in delivering and recovering possession of the Equipment;
- (i) Interest calculated daily at 2% per month on all unpaid charges;
- (j) The Kilometre Rate and any additional Hire Fees;
- (k) The cost of fuels and other consumables provided by Online Hire and used by the Hirer;
- (l) Any expenses or legal costs (including commission payable to a commercial agent) incurred as a result of the failure of the Hirer to pay any charges when due; and
- (m) All costs of repairing or replacing tyres or tracks, including call out fees and service calls.

3.3. For a Motor Vehicle:

- (a) The Hirer agrees to indemnify Online Hire for any amounts payable to Online Hire's insurer by way of excess in relation to any claim Online Hire makes under an insurance policy covering the Motor Vehicle.
- (b) Except where the Hirer is responsible under this Agreement, in the event that Online Hire does not make such a claim, the Hirer is liable to Online Hire for the amount of damage up to a limit of:
 - (i) If the Hirer pays an optional fee of \$25.00 prior to Commencement -- \$2,000; or
 - (ii) \$3,000.
- (c) Where the Hirer is responsible for damage under this Agreement, the Hirer is liable to Online Hire for the full amount of the damage.

3.4. For subclause 3.3, in the event of damage, Online Hire may make a claim under its insurance policy at its sole discretion.

3.5. Without limiting the liability of Online Hire to recover all amounts owing to it, the Hirer authorises Online Hire to charge any amounts owing by the Hirer to any credit card or account details of which are provided to Online Hire.

4. Return of Equipment by the Hirer to Online Hire

Unless the Equipment is collected from the Hirer by Online Hire, the Hirer will:

- 4.1. Deliver the Equipment to Online Hire at the end of the Hire Period; and
- 4.2. Return the Equipment to Online Hire clean and in good order & repair.

5. Other obligations of the Hirer

The Hirer will:

- 5.1 Satisfy itself at commencement that the Equipment is suitable for its purpose;
- 5.2 Operate the Equipment safely strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Online Hire or posted on the Equipment;
- 5.3 Indemnify Online Hire for all injury and/or damage caused to persons and property in relation to the Equipment and its operation and have adequate insurance to cover any legal liabilities incurred as a result of the use of the Equipment.
- 5.4 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of Competency and/or are fully licensed;
- 5.5 Comply with all work health and safety laws relating to the Equipment and its operation;
- 5.6 Safely secure all items loaded in or on the Equipment or in or on the Hirer's vehicle and indemnify Online Hire in relation to any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by the Hirer;
- 5.7 Operate the Equipment with an adequate motor vehicle and/or power source;
- 5.8 Notify Online Hire immediately of any loss or damage to or malfunctioning of the Equipment that renders it liable to be unsafe or may cause further deterioration, and refrain from using the Equipment until it is repaired.

The Hirer will not:

- 5.9 Tamper with, damage or repair the Equipment;
- 5.10 Alter any identifying number or mark on the Equipment;
- 5.11 Assign this Agreement or the Hirer's rights under this Agreement;
- 5.12 Attempt or purport to sell, dispose of or encumber the Equipment in any way;
- 5.13 Use or install the Equipment in a manner which could cause the Equipment to become a fixture to land;
- 5.14 Lose or otherwise part with possession of the Equipment;
- 5.15 Rely upon any representation relating to the Equipment or its operation other than those contained in the agreement;
- 5.16 Allow any person to drive a Motor Vehicle if the person:
 - (a) Does not hold an unrestricted licence to drive that class of motor vehicle; or
 - (b) Is affected by drugs and/or alcohol; or
 - (c) Is under 21 years of age.

- 5.17 Exceed the recommended or legal load and capacity limits of the Equipment;
- 5.18 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- 5.19 Travel outside the state where the Equipment is hired unless Online Hire approves the destination in advance;
- 6. Hirer not to Claim damages**
The Hirer cannot recover from Online Hire compensation for any damages (including consequential loss) arising in respect of this Hire Agreement or the hiring or the use of the Equipment. This clause does not affect any rights the Hirer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not be lawfully excluded or modified under this Agreement.
- 7. Fundamental Breach of this Agreement**
A fundamental breach of this agreement occurs if:
- 7.1. The Hirer makes a false statement to Online Hire relating to this Agreement;
- 7.2. The Hirer loses possession of the Equipment
- 7.3. The Hirer fails to pay the Hire Fees or other Charges within thirty days of the date of an invoice rendered by Online Hire;
- 7.4. The Hirer is in breach of any term or condition of this Agreement and has failed to rectify the breach within fourteen days after receiving notice by Online Hire to do so;
- 7.5. The Hirer commits any act of bankruptcy or, being a company, goes into liquidation or receivership, stops payment, is unable to pay its debts when they fall due, ceases to carry on its business or a material part of it, or an order is made or a resolution is passed for an arrangement with creditors or the winding up of the Hirer;
- 7.6. Execution or distress is levied against the Hirer;
- 7.7. The Hirer shall do or cause to be done or permit any act or thing likely to endanger life, safety or condition of the Equipment;
- 7.8. The Hirer is convicted of an indictable offence or is sentenced to imprisonment.
- 8. In the Event of a Fundamental Breach of this Agreement**
- 8.1. If a fundamental breach of this agreement occurs, whether by one of the events listed in clause 7, or in any other way recognised by law, Online Hire may at its absolute discretion and without prejudice to any other remedies take whatever action it considers appropriate to enforce the performance of this Agreement by the Hirer or accept repudiation of this Agreement.
- 8.2. If Online Hire accepts repudiation, the Hirer is obliged immediately to:
- (a) Return the Equipment and all items ancillary to it to a place specified by Online Hire;
- (b) Pay Online Hire all moneys then payable to Online Hire under this Agreement;
- (c) Pay Online Hire the balance of the unpaid Hire Fees or other Charges still to fall due discounted to their present value at a rate chosen by Online Hire;
- (d) Pay Online Hire any costs incurred in repossessing, storing, valuing, insuring, repairing and selling the Equipment and any other amounts to compensate Online Hire for the loss suffered.
- 8.3. The Hirer authorises Online Hire to enter any premises where the Equipment may be located in order to repossess the Equipment and waives and releases Online Hire from any liability for any damage or loss occasioned thereby. Online Hire agrees to account to the Hirer for any proceeds in excess of its loss calculated at the date of repudiation. These proceeds shall be reduced by the costs incurred by Online Hire in trying to reduce its loss plus any other amount the Hirer owes under this Agreement.
- 9. No warranties**
All warranties and conditions are excluded to the full extent permitted by law and Online Hire's only obligation resulting from a breach by it of any condition or warranty is limited to supplying the Equipment again, or repairing the Equipment. This clause does not affect any rights the Hirer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not be lawfully excluded or modified under this Agreement.
- 10. PPS Law**
- 10.1. This clause applies to the extent that this Agreement provides for a "security interest" for the purposes of the PPS Law.
- 10.2. References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 10.3. Online Hire may register its security interest as a PMSI. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:
- (a) Ensuring that Online Hire's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) Enabling Online Hire to gain first priority (or any other priority agreed to be the Owner in writing) for its security interest; and
- (c) Enabling Online Hire to exercise rights in connection with the security interest.
- 10.4. Online Hire may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 10.5. The rights of Online Hire under this document are in addition to and not in substitution for Online Hire's rights under other law (including PPS Law) and Online Hire may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 10.6. To the extent that Chapter 4 of the PPS Law applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of Section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Online Hire to give notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Online Hire to give notice to the Hirer); section 129(2) and 129(3)(d) (contents of statement of account after disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 10.7. The following provisions of the PPS Law confer rights on Online Hire; section 123 (seizing collateral); section 126 (apparent possession); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The Hirer agrees that in addition to those rights, Online Hire shall, 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 Online Hire may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 10.8. 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.
- 10.9. Online Hire 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 subclause is made solely for the purposes of allowing Online Hire the benefit of section 275(6) (a) and Online Hire shall not be liable to pay damages or any other compensation or be subject to injunction if Online Hire breaches this subclause.
- 11. Security interest and sub-hire**
- 11.1. 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 Online Hire.
- 11.2. The Hirer must not lease, hire, bail or give possession ("sub-hire") of the Equipment to anyone else unless Online Hire, in its absolute discretion, first consents in writing. Any such sub-hire must be in writing in a form acceptable to Online Hire and must be expressed to be subject to the rights of Online Hire under this Agreement.
- 11.3. The Hirer must ensure that Online Hire 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.
- 11.4. 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 rights of Online Hire in writing) for the security interest; and
- (c) Enabling Online Hire and the Hirer to exercise their respective rights in connection with the security interest.
- 11.5. Online Hire may recover from the Hirer the cost of doing anything under this clause including registration fees.
- 12. Governing Law and Jurisdiction**
- 12.1. This Agreement is governed by the laws of New South Wales.
- 12.2. Online Hire and the Hirer irrevocably submit to the jurisdiction of the courts of New South Wales.
- 13. Interpretation**
- 13.1. In this Agreement:
- (a) Clause headings are inserted for convenience only and do not affect interpretation of this Agreement;
- (b) The singular includes the plural and vice versa;
- (c) Words denoting gender include all other genders;
- (d) A reference to a company includes its successors and permitted assigns;
- (e) A reference to a natural person includes their personal representatives, successors (including successors in title) and permitted assigns;
- (f) A reference to a time is to that time in New South Wales;
- (g) A word that is derived from a defined word has a corresponding meaning;
- (h) Monetary amounts are expressed in Australian dollars;
- (i) A reference to any legislation or legislative provision includes any statutory modifications or re-enactment of, or legislative provision substituted for and any subordinate legislation issued under that legislation or legislative provision.
- 14. Severability**
- 14.1. If any clause of this Agreement is or becomes wholly or partly invalid or unenforceable then, from the date of the invalidity or unenforceability:
- (a) If the offending clause can be read down to make it valid and enforceable without substantially changing its effect, it must be read down to the extent necessary to achieve that result; and
- (b) Otherwise, the offending clause must be severed from this Agreement and the remaining clauses will operate as if the severed clause had not been included.