

Complete Hire Equipment General Terms and Conditions

1. Definitions

In this Agreement:

- (a) **Agreement** means these General Terms and Conditions, together with the Credit Application, the Terms and Conditions of Credit Application and the Guarantee (if applicable);
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and includes any associated legislation as amended from time to time;
- (c) **Business Day** means a day that is not a Saturday, Sunday, public holiday or a bank holiday in Victoria;
- (d) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (e) **Customer** means the person, firm or corporation hiring the Equipment from the **Owner** (as specified in the Credit Application);
- (f) **Equipment** means all plant equipment, vehicles and machinery, including tools, accessories and parts supplied to the Customer by the Owner;
- (g) **Event of Default** means in relation to a party to this Agreement, the occurrence of any one or more of the following events or circumstances:
 - (i) the party fails to comply with any of its obligations under this Agreement;
 - (ii) an Insolvency Event occurs in relation to the party (or any person comprising the party);
 - (iii) a notice of deregistration of the party (or any person comprising the party) is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
 - (iv) the party fails to pay by the due date any amount due and payable by it under this Agreement;
 - (v) the party becomes unable to perform all of its obligations and take all actions contemplated under this Agreement; and
 - (vi) the party ceases or threatens to cease to carry on business or a substantial part of it;
- (h) **Force Majeure Event** means any act, event or cause, other than a lack of funds:
 - (i) as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under this Agreement; and
 - (ii) that is beyond the reasonable control of that party;
- (i) **Governmental Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;
- (j) **GST** has the meaning given to that term in the GST Act;
- (k) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (l) **Insolvency Event** means in relation to a party to this Agreement, any one or more of the following events or circumstances occurring in relation to the party (or any person comprising the party):
 - (i) being in liquidation or provisional liquidation or under administration;
 - (ii) having a controller or analogous person appointed to it or any of its property;
 - (iii) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (iv) being unable to pay its debts or being otherwise insolvent;
 - (v) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
 - (vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
 - (vii) any analogous event or circumstance under the laws of any jurisdiction;
- (m) **Law** means:
 - (i) principles of law or equity established by decisions of courts;
 - (ii) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and
 - (iii) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law;
- (n) **Owner** means Complete Hire Equipment Pty Ltd ACN 104 455 996;
- (o) **Premises** means the Owner's business premises; and
- (p) **Services** means any services to be performed by the Owner under this Agreement.

2. Hire Rates

- 2.1 The hire rates payable by the Customer to the Owner for the Equipment will be the price listed in the current price list for that item of Equipment by the Owner and provided to the Customer at the time the Equipment is ordered by the Customer, plus GST (**Hire Rates**).
- 2.2 The Hire Rates have been structured on the standard of a working period of 8 hours. If the Equipment is used outside of these times, then the Hire Rate may be adjusted accordingly.
- 2.3 Hire Rates will commence from the time the Equipment is collected by the Customer from the Premises until returned to the Premises in accordance with clause 3.

3 Delivery and Hire Period

- 3.1 Subject to clause 3.2, the period of hire commences from the time the Equipment leaves the Premises until the time the Owner the Equipment is collected by or otherwise delivered back to the Owner at the Premises (**Hire Period**).
- 3.2 If the Customer requires the Owner to collect the Equipment, the Customer must provide the Owner with reasonable notice of collection and in any event no less than 24 hours must be given by the Customer for the Equipment to be picked up and returned to the Owner's nominated depot.
- 3.3 If return delivery is required by the Customer, the Customer must contact the Owner, advise that the Equipment is available for collection and obtain an "off hire" number as verification that such notification has been received.
- 3.4 The minimum Hire Period is one day unless otherwise specified in writing. A Customer who fails to return the Equipment to the Premises within the Hire Period may incur additional charges.

4 Payment

- 4.1 All accounts must be paid in full within 30 days of the date of receipt by the Customer of an invoice (**Invoice**) from the Owner.
- 4.2 If the Customer defaults in payment of any monies due under this Agreement then:
 - (a) any monies due to the Owner will immediately become due and payable and must be paid by the Customer within seven (7) days of demand; and
 - (b) the Owner may do one or both of the following:
 - (i) suspend performance of its obligations under this Agreement until all amounts owing by the Customer to the Owner (whether under this Agreement or otherwise and whether or not actually payable at that time) are paid in full; and
 - (ii) charge interest on the amount outstanding at the rate of 15% per annum accruing daily from and including the due date for payment until the date of payment in full.
- 4.3 Any expenses, costs or disbursements incurred by the Owner in recovering any outstanding monies including debt collection agency fees and solicitor costs must be paid by the Customer.
- 4.4 The Owner may withhold supply of the Equipment or under the Credit Application until security or additional security is obtained.
- 4.5 The exercise by the Owner of any of its rights under clause 1.1(b) does not affect:
 - (a) the Customer's obligations; or
 - (b) any other rights or remedies the Owner may have in relation to any failure by the Customer to pay an amount due (including a right to terminate this Agreement), whether under this Agreement or otherwise.

Complete Hire Equipment General Terms and Conditions
5 Title

- 5.1 Title to all Equipment hired by the Owner to the Customer remains with the Owner and does not pass to the Customer on any account whatsoever.
- 5.2 During the Hire Period, the Customer must:
- store the Equipment separately from the Customer's own goods and those of third parties, to enable them to be readily identified as the Owner's property;
 - hold the Equipment as the bailee and fiduciary agent of the Owner;
 - not supply or sell the Equipment to any person, other than with the Owner's prior written consent;
 - when requested by the Owner, allow the Owner to enter the premises where the Equipment is stored to inspect the Equipment and provide to the Owner the consent of any person whose consent is required for that entry;
 - keep records that relate to the Equipment separately identifiable and readily distinguishable from those that relate to any other goods in its possession;
 - not allow any person to have or acquire any encumbrance or security interest in the Equipments; and
 - keep the Equipment insured against theft, damage and destruction (and if the Customer fails to insure the Equipment, the Owner may do so and the Customer must reimburse the Owner for the cost of insurance).
- 5.3 The Customer has no right to sell the Equipment or deal with the Equipment during the Hire Period.
- 5.4 In the event that the Owner agrees to sell (rather than hire) any Equipment to the Customer, title in that Equipment will remain with the Owner until the price for that Equipment (together with all other moneys owing by the Customer to the Owner on any account whatsoever (whether under this Agreement or otherwise)) (**Amount Outstanding**) is paid to and received in full by the Owner in cleared funds. Until title to any Equipment purchased by the Customer in accordance with this clause 5.4 passes to the Customer, the Customer must comply with the obligations set out in clauses 5.2(a) to (g) (inclusive) and must not sell or otherwise dispose of the Equipment until the Amount Outstanding is paid in full (and in cleared funds) to the Owner.

6 Breakdown of Equipment

If the Customer notifies the Owner within 2 hours of a breakdown occurring, the Hire Rates will be suspended for the period the Equipment is unserviceable unless this condition is due to negligence, misuse or is directly or indirectly caused by the Customer.

7 GST

- 7.1 In this clause 7.1:
- the expressions **Consideration, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
 - Owner** means any party treated by the GST Act as making a Supply under this Agreement.
- 7.2 Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- 7.3 If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Owner an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.
- 7.4 Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

8 Owner's obligations

The Owner must make the Equipment available to the Customer at the Premises, or if so requested, deliver the Equipment to a site nominated by the Customer providing the Customer has satisfied the requirements in the Credit Application to the satisfaction of the Owner in its absolute discretion.

9 Customer's obligations

- 9.1 The Customer must:

- determine that the Equipment hired is suitable for the purpose required;
- use the equipment in a skilful and proper manner and only for the purpose and within the capacity for which it was designed;
- ensure that the Equipment is operated by a suitably certificated operator (whether supplied by the Customer at its cost, or employed and provided by the Owner) who will work entirely in accordance with the direction of the Customer;
- at its own expense, service, clean, fuel, lubricate and maintain the Equipment in good and substantial repair and condition (reasonable wear and tear excepted unless caused by negligence or misuse on the part of or attributable to the Customer) except for pre-arranged major servicing which will be carried out by the Owner during normal working hours;
- accept full responsibility for any flat and/or damaged tyres;
- clean the Equipment upon completion of the hire period or be charged a cleaning fee for any cleaning required by the Owner;
- not alter, make any additions to deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- pay the full replacement or reinstatement cost (whichever is applicable) for any loss, theft or damage to the Owner's Equipment;
- pay the LTD Waiver Fees in accordance with clause 13; and
- pay to the Owner the Hire Rates and any other applicable costs and charges under this Agreement.

10 Force Majeure

- 10.1 The obligations of the Owner will be suspended during the time and to the extent that the Owner is prevented from or delayed in complying with those obligations as a result of a Force Majeure Event.
- 10.2 If the Owner is affected by a Force Majeure Event, it must:
- as soon as reasonably possible after being affected give the Customer particulars of the Force Majeure Event and the manner in which the Owner's performance will be prevented or delayed; and
 - take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that the Owner is not obliged to settle a strike, lockout or other labour difficulty.

11 Termination

- 11.1 Subject to clause 11.2, if an Event of Default, other than an Insolvency Event, occurs in relation to a party (Relevant Party), the other party may give a notice (**Default Notice**) to the Relevant Party specifying the Event of Default and requiring the Relevant Party to remedy the default within 5 Business Days after the Default Notice is given to the Relevant Party.
- 11.2 Subject to this clause 11.2, if a party (**Defaulting Party**):
- receives a Default Notice and does not comply with the notice within the relevant period referred to in clause 11.1;
 - receives a Default Notice on 2 or more occasions in any period of 12 months; or
 - is the subject of an Insolvency Event,
- then any other party, without limiting its other rights and remedies, may terminate this Agreement by giving to the Defaulting Party notice with immediate effect (**Termination Notice**).
- 11.3 Neither a Default Notice nor a Termination Notice can be issued by the Customer, if the Guarantor is the Relevant Party or Defaulting Party.
- 11.4 Neither a Default Notice nor a Termination Notice can be issued by the Guarantor, if the Customer is the Relevant Party or Defaulting Party.
- 11.5 On termination of this Agreement:
- the Owner may, as agent of the Customer, enter the premises where the Equipment is located and do all things

Complete Hire Equipment General Terms and Conditions

- necessary to retake possession of the Equipment, without liability for trespass or any resulting damage;
- (b) the Owner may keep or resell any of the repossessed Equipment; and
- (c) the Customer is liable for all costs associated with the exercise by the Owner of its rights under this clause 11.5, which costs are payable to the Owner on demand.
- 11.6 The Customer indemnifies and must keep indemnified the Owner against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Owner or which the Owner may pay, sustain or incur as a direct or indirect result of the exercise by the Owner of its rights under in respect of any claims, damages or expenses arising out of any action taken under this clause 11.5.
- 11.7 On the termination of this Agreement, this Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.
- 12 Limitations on Liability**
- 12.1 The Owner will not be liable to the Customer or the Customer's servants or agents for any damages, suits, actions, claims and demands of every description arising either directly or indirectly from use, maintenance, transport or operation of the Equipment or otherwise and whether resulting from the negligence of the Owner, its servants or agents or otherwise.
- 12.2 Subject to a failure to meet any consumer guarantees which may apply under the Australian Consumer Law, and to the extent permitted by law, the Owner will not be responsible or liable to the Customer, whether on the ground of breach of contractual duty or on the ground of negligence, for any loss or damage, directly or indirectly sustained by the Customer and arising from malfunctions, breakdown or failure or performance of the Equipment or otherwise and the Customer exonerates and releases the Owner from all claims and demands.
- 12.3 Not including any consumer guarantees which may apply under the Australian Consumer Law, any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by Law.
- 12.4 To the maximum extent permitted by Law, the liability of the Owner for a breach of a non-excludable condition or warranty referred to in clause 12.3 is limited, at the Owner to:
- (a) in the case of goods, any one or more of the following:
- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of Services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 13 Loss, Theft Damage Waiver**
- 13.1 The Customer's liability may be limited to the damage waiver excess in accordance with this clause 13.
- 13.2 Subject to clause 13.3, the Customer must pay the loss, theft and damage waiver fee (**LTD Waiver Fee**) to the Owner.
- 13.3 The Customer will not be required to pay the LTD Waiver Fee where the Customer produces a certificate of currency for an insurance policy which covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the full replacement value of the of the Equipment, to the satisfaction of the Owner.
- 13.4 Where the LTD Waiver Fee has been paid by the Customer, the Owner must not claim against the Customer for loss, theft or damage to the extent of that covered by the LTD Waiver Fee, provided that:
- (a) the Customer promptly provides the owner with a written police report (in the case of theft);
 - (b) the Customer fully co-operates with the Owner and provides the Owner details of the incident including evidence as required;
 - (c) adequate precautions have been taken by the Customer to safeguard the Equipment;
 - (d) the Customer pays the loss, damage and theft excess set out in clause 13.5 (**LTD Excess**); and
 - (e) none of the circumstances in clause 13.6 apply.
- 13.5 If clause 13.4 applies, the customer must pay the LTD Excess as follows:
- (a) in the event of loss or theft of the Equipment, \$200 per item or 12% of the replacement cost of the Equipment (whichever is greater);
 - (b) in the event of damage to the Equipment, other than as a result of it overturning, \$200 per item or 12% of the cost of the repairs to the Equipment (whichever is greater);
 - (c) in the event of damage to the Equipment as a result of overturning, subject to clause 13.5(d) the actual cost of repairs up to \$5000 or 12% of the repair cost of the equipment (whichever is the greater); or
 - (d) in the event of damage as a result of overturning resulting in the Equipment being written off, \$5000 per item or 12% of the replacement cost of the Equipment (whichever is the greater).
- 13.6 Despite any other provision the Agreement, the Owner may claim for any theft, loss or damage in the event that the loss, theft or damage:
- (a) is due to misuse, abuse or overloading of the Equipment;
 - (b) occurred in contravention of the conditions of this Agreement;
 - (c) resulted from use in violation of any statutory laws or regulations;
 - (d) applies to tools, accessories, grease guns, hoses or similar, electric cords, welding cable, pneumatic tools, steels and other similar accessories;
 - (e) applies to tyres and tubes by blow-out, bruises, cuts or other causes inherent in the use of the Equipment;
 - (f) relates to lack of lubrication or other normal servicing of the Equipment;
 - (g) occurred whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - (h) applies to motors or other electrical equipment or devices caused by overloading or artificial electrical current, including use for underrated extension leads on electrical powered tools and machines;
 - (i) was caused by wrongful conversion of the Equipment;
 - (j) occurred during transport, except where transported by the Owner;
 - (k) applies to items or Equipment in respect of which the Owner or the Customer has not paid a waiver premium;
 - (l) was caused by theft or burglary at a site location where the Equipment is not placed in a secured building or enclosure with adequate security; and
 - (m) any insurer of the Equipment states that the Customer contributed or failed to provide adequately secured premises at the site location.
- 14 Indemnity**
- 14.1 Each party (**Indemnifying Party**) must indemnify each other party (**Indemnified Party**) against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Indemnified Party or which the Indemnified Party may pay, sustain or incur as a direct or indirect result of any one or more of the following:
- (a) any breach or non-performance of this Agreement by the Indemnifying Party, including a breach of a warranty;
 - (b) any wrongful, wilful or negligent act or omission of the Indemnifying Party or any of its employees, agents or contractors;
 - (c) if the Indemnified Party is the Owner, the storage, handling or use of any Equipment sold under or in connection with

Complete Hire Equipment General Terms and Conditions

this Agreement, except to the extent that the relevant action, claim proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, wilful or negligent act or omission of the Owner or any of its employees, agents or contractors; and

- (d) any injury or loss sustained by any person who is employed or engaged by the Indemnifying Party as an employee, agent or contractor for the purpose of (possibly among other things) the performance by the Indemnifying Party of its obligations under this Agreement and who suffers any injury or loss arising out of or in the course of such employment or engagement.

15 PPS

15.1 For the purposes of this clause 15, the following definitions apply:

- (a) **CHE Property** means all Equipment in which the Owner has an interest under the terms of this Agreement or a Security Interest for the purposes of the PPS Law;
- (b) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (c) **PPS Law** means the PPSA and any amendment made at any time to any other law as a consequence of the PPSA; and
- (d) **Security Interest** has the meaning given to that term in section 12 of the PPSA.

15.2 If, in the Owner's opinion:

- (a) this Agreement contains or constitutes a Security Interest for the purposes of the PPSA, or such a Security Interest is created by a party complying with this Agreement; or
- (b) the PPS Law does or could affect the Owner's rights or obligations under or in connection with this Agreement, (each a **PPSA Event**), then the Owner may, at its discretion, do any of the following:
- (i) register or give any notification in connection with any relevant Security Interest and exercise rights in connection with the Security Interest; and
- (ii) give notice to the Customer requiring that the Customer to do anything, at the Customer's expense, (including amending this Agreement, executing any new document or agreement, obtaining consents and supplying information) that the Owner requires for the purposes of the relevant PPSA Event.
- (c) The Customer must comply with any notice received pursuant to clause 15.2(b)(ii) within the time stipulated in the notice.

15.3 If:

- (a) any action referred to in clause 15.2(b)(ii) is not taken to the Owner's satisfaction; or
- (b) despite such action the Owner determines that its rights or obligations under or in connection with this Agreement have been or will be materially adversely affected,

the Owner may give notice to the Customer terminating this Agreement and requiring the immediate return of all CHE Property within the control of the Customer.

16 General

16.1 Nature of obligations

- (a) Any provision in this Agreement which binds more than one person binds all those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

16.2 Entire understanding

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

16.3 Severability

Any provision of the Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) must be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

16.4 Successors and assigns

This Agreement binds and benefits the parties and their respective successors and permitted assigns under clause 16.5.

16.5 No assignment

A party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party(s).

16.6 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

16.7 Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

16.8 Counterparts

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

16.9 Relationship of parties

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

16.10 Interpretation

In this Agreement, unless the context requires otherwise, words importing the singular include the plural and words importing the plural include the singular and words importing the masculine gender include the feminine and, if applicable, a corporation.