

TERMS AND CONDITIONS OF HIRE

1 DEFINITIONS:

- a) The Hirer agrees that, without limitation, any of the following
- b) **"Additional Costs"** means any direct costs to which TEN Hire is given an express entitlement under this Agreement to claim from the Hirer in addition to the Hire Fee.
- c) **"Agreement"** means the Quote and these Terms and Conditions of Hire.
- d) **"Commencement Date"** means the earlier of the date stated in the Quote and the date the Equipment is dispatched to or collected by the Hirer.
- e) **"Collection Notification Statement"** means the notification of collection of personal information as required under Australian Privacy Principle 5 of the Privacy Act 1988.
- f) **"Competent Operator"** means persons who have been provided with:
 - (i) the Operating Manual in respect of the Equipment; and
 - (ii) sufficient information, training, instruction and supervision to safely operate the Equipment,
 by the Hirer.
- g) **"Operating Manual"** means the operating manual(s) in respect of the Equipment provided by TEN Hire upon delivery of the Equipment.
- h) **"Confidential Information"** means any information communicated by one party to the other whether in writing, orally or in any other form or medium in relation to this Agreement and includes, but is not limited to; a party's operations, business or customers; marketing and financial data; commercialisation; methodology; pricing, concepts; product plans, drawings and product specifications; manufacturing processes; future market and product plans; trade secrets; know-how; technical economic or other information not already in the public domain
- i) **"Depot"** means the location notified to the Hirer from where the Equipment is to be dispatched or collected.
- j) **"Equipment"** means the equipment listed in the Quote.
- k) **"Event of Default"** means:
 - (i) the Hirer is in default of any payment due under this Agreement or any other agreement with TEN Hire or in the performance of any of the Hirer's obligations under this Agreement or any other agreement with TEN Hire; or
 - (ii) a receiver is appointed in respect of any of the Hirer's assets; or
 - (iii) the Hirer makes any arrangement or enter into any compromise with any of the Hirer's creditors; or
 - (iv) the Hirer fails to operate and maintain the Equipment in accordance with the terms of this Agreement;
 - (v) (if the Hirer is a natural person) the Hirer commits an act of bankruptcy or the Hirer becomes bankrupt or dies; or
 - (vi) the Hirer does anything that prejudices our rights in the Equipment or this hire or we have reasonable grounds to believe that the Equipment is in jeopardy; or
 - (vii) the Hirer goes into liquidation or a petition to liquidate or a notice of intention to propose a resolution to liquidate is presented to the Hirer.
- l) **"Expiry Date"** means the date stated in the Quote that the Equipment is returned to the Depot.
- m) **"GST"** means the goods and services tax under the A New Tax System (Goods & Services) Tax Act 1999 (Cth) ("GST Act").
- n) **"Hire Fee"** means the Equipment rental prices shown in the Quote.
- o) **"Hirer"** means the person or entity named in the Quote.
- p) **"Initial Term"** means the period stated in the Quote, If there is no such period in the Quote, the period from the Commencement Date until the Expiry Date.
- q) **"Losses"** includes all losses and damages (including consequential loss or damage), costs and expenses of any nature whatsoever.
- r) **"PPSA"** means the Personal Property Securities Act 2009 (Cth).
- s) **"PPS Property"** means any property over which a security interest (as that term is defined under the PPSA) can be legally granted under the PPSA.
- t) **"PPSR"** means the Personal Property Securities Register established under section 147 of the PPSA.
- u) **"Privacy Law"** means the *Privacy Act 1988* (Cth).
- v) **"Quote"** means the page entitled "Quote" to which these terms form part.
- w) **"Site"** means the place or places in the Quote to where the

Equipment will be delivered to and/or used by the Hirer.

- x) **"TEN Hire"** means TEN Hire Pty Ltd ACN 131 907 554
- y) **"Term"** means the Initial Term, and any renewal or extension of the Term agreed to by TEN Hire.

2 GOVERNING TERMS

Only these Terms and Conditions bind TEN Hire. All other conditions (including Hirer's conditions of purchase or hire, if any), warranties and representations are excluded.

3 ACCEPTANCE OF QUOTES

shall be evidence of the Hirer's acceptance of a Quote and these Terms and Conditions:

- (i) a purchase order from the Hirer;
 - (ii) written communication of any sort including email from the Hirer;
 - (iii) oral communication from the Hirer; or
 - (iv) acceptance of the Equipment by the Hirer.
- b) For clarity, the absence of a purchase order from the Hirer shall not invalidate any prior acceptance of a Quote.
 - c) The Hirer warrants that all persons who accept a Quote on its behalf are duly authorised by the Hirer.

4 TERM OF HIRE

- a) During the Term, TEN Hire shall hire the Equipment to the Hirer on the terms and conditions contained in this Agreement.
- b) Unless previously terminated, the Equipment order shall end on the Expiry Date.
- c) Renewal or extension of the Initial Term is at TEN Hire's discretion and will require the issue of a new or supplementary order.
- d) If the Initial Term is extended then all the terms and conditions of this Agreement shall apply to the extended period of Hire.

5 HIRE CANCELLATIONS

Where a Hire is cancelled less than 1 week before the Commencement Date a cancellation fee may, at TEN Hire's discretion, be charged that is equivalent to 1 week hire period for each piece of Equipment listed in the Quote.

6 HIRE CHARGES

- a) The Hirer shall pay:
 - (i) the Hire Fee from the time the Equipment leaves the Depot or specified pick up address until the later of the time it is returned to the Depot and the return date set out in the Quote;
 - (ii) transportation costs to and from the Site; and
 - (iii) any other Additional Costs (e.g. rental fees payable while damaged Equipment is repaired).
- b) Each Equipment hire is subject to a minimum hire period of 1 week unless otherwise agreed in writing by TEN Hire.

7 ACCESS

Hirer is responsible for access. Should the Equipment require to be lifted or towed into or out of a site, the cost shall be additional to the Hire Fee quoted and will be for the Hirer's account or payable directly by the Hirer to the tow company. There will be no reductions to the hire period or charge, for time lost associated with poor access. Where access is required through private property all arrangements and costs associated with it are the sole responsibility of the Hirer.

8 HANDLING OF EQUIPMENT

- a) The Equipment is supplied on the understanding that it is used only for the express purpose for which it was hired and is not used beyond its rated capacity. The Equipment must be operated in accordance with any Operating Manual or training provided by TEN Hire, provided that TEN Hire is not obligated to provide any training in respect of the Equipment unless otherwise agreed in writing between the parties.
- b) The Hirer shall provide all fuel, oil, lubricating oil and grease, cleaning and other materials, and labour required for the operation of the Equipment, and only use fuel and lubricating oils approved by TEN Hire shall be used for the same during the hire period.
- c) Only Competent Operators must be given charge of the Equipment while in the Hirer's possession.
- d) The Hirer must carry out the "Pre-Start Checklist" at the intervals and

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in the manner notified by TEN Hire - failure to comply with this requirement may result in damage to the Equipment for which the Hirer will be entirely responsible;

- e) TEN Hire reserves the right to inspect, test and maintain the Equipment during the progress of the hire. TEN Hire will endeavour where practical to co-ordinate any inspections and maintenance so as to limit any inconvenience caused to the Hirer.

9 HIRER'S RESPONSIBILITY

The Hirer agrees to:

- a) operate the Equipment within its specifications and ability;
- b) store the Equipment in a safe and secure environment such that it may not be tampered with, damaged or stolen by any other person;
- c) return the Equipment to TEN Hire in reasonably clean condition and free of oil, debris and seeds;
- d) return at the end of the hire any item, article, document or thing supplied in conjunction with the Equipment including operating manuals. Any such items not returned shall be charged to the Hirer at full replacement cost or \$50.00 whichever shall be the greater amount;
- e) be responsible for any loss or damage to the Equipment whether such loss is caused by the negligence of the Hirer or any persons under its control during the hire period;
- f) indemnify TEN Hire for any costs, expenses or Losses if the Equipment requires alterations and repairs by TEN Hire as a result of damage or neglect by the Hirer;
- g) not alter, mark or 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;
- h) assumes all risks and liability for the Equipment and the use, maintenance, repair and storage of the Equipment (including liability for injury to any person or damage to any property, whether direct or consequential but excluding liability to the extent caused by the TEN Hire's negligence or wilful misconduct).
- i) release and discharge TEN Hire from all claims that the Hirer has or may have against TEN Hire, in relation to the Equipment, including in respect of:
 - (i) any damage to property or death of, or injury to, any person caused directly or indirectly by the Equipment;
 - (ii) any claim against TEN Hire in relation to the Equipment or the use or operation of it; or
 - (iii) any other thing in relation to which the Hirer has assumed responsibility for under clause 9(h).
- j) indemnify TEN Hire and keep TEN Hire indemnified against all claims, taxes, liabilities, losses and expenses incurred by TEN Hire as a result of:
 - (i) any damage to property or death of, or injury to, any person caused directly or indirectly by the Equipment;
 - (ii) any claim against TEN Hire in relation to the Equipment or the use or operation of it; or
 - (iii) any other thing in relation to which the Hirer has assumed responsibility for under clause 9(h).
- k) provide on demand to TEN Hire, any information in respect of the use of the Equipment, including without limitation daily logs and condition monitoring information.

10 PAYMENT OF HIRE FEE

The Hirer must pay the Hire Fee and any Additional Costs in accordance with the terms set out in the Quote. If no terms of payment are set out in the Quote then payment in full for the Term shall be made on the Commencement Date. If payment is not received by the due date, then:

- a) interest at Australia and New Zealand Banking Group Limited's "Indicator Interest Rate for that day plus 2% per annum, calculated daily, may be charged on overdue accounts; and
- b) any costs incurred by TEN Hire in the recovery of overdue accounts including any debt collection and legal costs (on a full indemnity basis) will be paid by the Hirer.

11 HIRE FEE

The Hire Fee and conditions are subject to change by notice in writing from TEN Hire to the Hirer with the date of the change being as specified in the notice or if no date is specified, effective immediately.

12 GST

If GST is imposed on the hire of the Equipment or other supplies by TEN Hire which are taxable supplies for the purposes of the GST Act, then unless the hire price is expressed in this Agreement to be GST inclusive, the amount the Hirer must pay is increased by the amount of the GST.

13 ADDITIONAL COSTS

Any de-mobilisation costs (including travel and accommodation of TEN Hire's representatives) cleaning, repairs and other services that may be required in respect of the Equipment on return will be charged to the Hirer at cost price plus 30%.

14 SAFETY

The Hirer is responsible for all training, instruction, supervision and safety requirements in respect of the Equipment. Without limiting the generality of the foregoing, the Hirer acknowledges and agrees that it is the person conducting a business or undertaking (PCBU) at the workplace at which the Equipment is to be operated and, as PCBU, the Hirer is responsible for providing all training, instruction and supervision as is necessary to ensure that persons operating or using the Equipment are Competent Operators. The Hirer must not make any claim against TEN Hire (and/or its authorised training providers) and further indemnifies TEN Hire against any and all Losses or damage (to person or property) arising from, or contributed to by, the Hirer's failure to provide or follow training, instruction, supervision or safety requirements.

15 RESPONSIBILITY FOR LOSS, INCLUDING CONSEQUENTIAL LOSS

Under no circumstances whatsoever shall TEN Hire be liable whether in contract or tort or otherwise for any direct, indirect or consequential loss or damage arising out of any breakdown or stoppage or out of the delayed arrival or non-arrival of the Equipment at the job site or otherwise arising out of, or in connection with the hiring of the Equipment to the Hirer.

16 SUBLETTING

The Hirer shall not sublet or otherwise part with possession of the Equipment or any part thereof, to any third party without first obtaining the written consent of TEN Hire. The Hirer, at the Hirer's own expense, shall protect and defend TEN Hire from all claims, liens and legal processes of creditors of the Hirer and shall keep the Equipment and any part thereof free and clear of any such claims.

17 INSURANCE AND INDEMNITY

The Hirer shall be solely liable for and shall indemnify TEN Hire from and against any actions, claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect of loss or damage to the Equipment or to any property of the Hirer or third party. The Hirer shall effect and maintain during the period of the hire public liability and property damage insurance for the minimum amount of \$20,000,000 in any one occurrence against any liability, loss, claim or proceedings, in respect of which the Hirer is required to indemnify TEN Hire and shall on request produce to TEN Hire the relevant policy of insurance and receipt for the renewal of during the period of hire.

18 TRANSPORT OF THE EQUIPMENT

Costs of transportation of the Equipment to and from the job shall be met by the Hirer. Where the Equipment is already on a site and another party wants to hire the machine on that site, that person will pay travel costs back to the depot.

19 BREAKDOWNS AND REPAIRS

- a) The Hirer will be responsible to TEN Hire for the cost of any repair, replacement, reinstatement or re-calibration of any Equipment lost, damaged, destroyed, stolen or returned in an unusable condition during the period of this agreement caused as a result of the Hirer and/or its contractors, workmen or agents, negligence or misuse of the Equipment. The amount payable by the Hirer shall be the cost of repair, replacement or re-calibration as assessed by TEN Hire.
- b) TEN Hire may at its absolute discretion and for such period as is expedient replace the Equipment with alternative equipment with similar specifications. These Terms and Conditions shall apply to the hire of any replacement equipment.
- c) The Hirer must notify TEN Hire as soon as reasonably practicable of any mechanical breakdown of Equipment by giving notice of the nature of the breakdown and the repairs that are required to be undertaken to the Equipment to rectify the breakdown. The Hirer must seek written authority from TEN Hire, which shall be

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granted at TEN Hire's absolute discretion, to organise repairs to the Equipment.

- d) In respect of the damage or loss of Equipment of a kind set out in sub-clause (a) the Hirer shall continue to pay rental until the equipment has been replaced or repaired such that it is suitable for re-hire. All other charges will be passed on to the Hirer e.g. Transportation and handling costs.

20 PRIVACY LAW

- a) The Hirer agrees to comply with Privacy Law.
- b) The Hirer acknowledges that it has read and agrees to the Collection Notification Statement and the Supplier's Privacy Policy.
- c) The Hirer consents, acknowledges and agrees that:
- (i) any personal information provided to Supplier may be transferred to and stored at a destination outside Australia, or processed by Personnel or other third parties operating outside of Australia, being New Zealand where it utilises third party service providers to assist TEN in connection with this Agreement; and
 - (ii) by entering into the Agreement and submitting personal information to TEN, the Hirer expressly agrees and consents to the disclosure, transfer, storing or processing of any personal information outside of Australia in the manner permitted by paragraph 20c)(i).
- d) In providing this consent, the Hirer understands and acknowledges that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to personal information.

21 PROPERTY RIGHTS

- a) The Hirer is entitled to the possession and use of the Equipment for the Term, unless TEN Hire becomes entitled under this hire to inspect or repossess the Equipment (for example, where the Hirer breaches the terms of this hire). TEN Hire will retain ownership of the Equipment and nothing in this hire will give any form of ownership of the Equipment to the Hirer.
- b) The Hirer must not sell, lend, lease, transfer, grant any security interest in, modify or otherwise deal with the Equipment (or even attempt to do so) without first obtaining TEN Hire's written consent.

22 EVENT OF DEFAULT

If an Event of Default occurs, then without prejudice to TEN Hire's other rights, TEN Hire may without notice to the Hirer enter any premises occupied by the Hirer or any other place where the Equipment may be and recover possession of it.

23 ALLOCATION OF FUNDS

TEN Hire may at its discretion and in such manner as they determine allocate payments made by the Hirer for the Equipment supplied by TEN Hire or any other amount that may be due to TEN Hire by the Hirer.

24 PPSA

For the purposes of the PPSA:

- a) PPSA terminology
In this clause 24, the terms "accession", "account", "amendment demand", "control", "financing change statement", "financing statement", "perfected", "proceeds", "purchase money security interest", "registration event", "security interest" and "verification statement" have the meanings given to them under the PPSA.
- b) Proceeds and accessions
The Hirer acknowledges and agrees that any security interest created by the Agreement, or the transactions contemplated by it:
- (i) extends to, and acts as a security interest in respect of, any:
 - (a) proceeds (including any account) derived from, or from a dealing with, the Equipment;
 - (b) accession to the Goods; and
 - (ii) continues in the Equipment if the Equipment becomes an accession.
- a) Registration and priority
The Hirer agrees to do anything which TEN Hire may require from time to time to:
- (i) enable TEN Hire to register fully valid and effective financing statements or financing change statements with respect to any security interest over PPS Property created by this Agreement

- or the transactions contemplated by it; and
- (ii) ensure that any security interest which is purported to be reserved or created by this Agreement, or the transactions contemplated by it, is:

- A. a first ranking perfected security interest over all PPS Property;
- B. perfected by control to the extent possible under the PPSA; and
- C. if applicable, recorded as a purchase money security interest on the PPSR.

- b) Undertakings

The Hirer undertakes and agrees:

- (i) to not, without first giving TEN Hire 10 business days' written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any security interest created by this Agreement or any transaction contemplated by it;
- (ii) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement;
- (iii) to not, without the prior written consent of TEN Hire, lodge or serve a financing change statement or an amendment demand in relation to any security interest created by this Agreement or any transaction contemplated by it;
- (iv) that the Equipment supplied or to be supplied by TEN Hire to the Hirer under this Agreement are not intended, and shall not be used, for personal, household or domestic purposes.

- c) Verification Statements

The Hirer irrevocably waives its right to receive from TEN Hire any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPSA.

- d) Enforcement

TEN Hire and the Hirer agree that:

- (i) to the extent that section 115(1) of the PPSA allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 136B(4), 142 and 143; and
- (ii) to the extent that section 115(7) of the PPSA allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137,

- e) do not apply to any enforcement by Ten Hire of any security interest created by this Agreement or any transaction contemplated by it.

- f) Re-lease of Collateral

If TEN Hire repossesses the Equipment, for the purpose of the PPSA it shall be permitted to re-hire the Equipment in any manner and on terms that it sees fit.

- g) Confidentiality

Each party agrees that it will not disclose information of the kind referred to in section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement for the purposes of section 275(6)(a) of the PPSA and other provisions of the PPSA. The Hirer agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

25 TERMINATION OF HIRE

- a) The hire shall be suspended or terminated by notice from TEN Hire by any of the following:
- (i) any breach of its obligations under this Agreement; or
 - (ii) in any other case where justified by job conditions or job management.
- b) The Hirer agrees that it will deliver the Equipment to TEN Hire or the relevant Depot in accordance with any such direction on termination of this Agreement or at the end of the Term (whichever is the earlier).

26 CONFIDENTIALITY

Each Party agrees:

- a) that the Confidential Information of a party remains the property of that party;
- b) to keep the Confidential Information of the other party secret and confidential;

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- c) to keep the terms of this Agreement and any Quote confidential; and
- (d) all information they supply to each other is supplied in strict confidence and is to be used solely by the recipient for the purpose carrying out its respective obligations under this Agreement.

27 ORAL AGREEMENT AND STIPULATIONS

No oral agreement, promise, collateral, stipulation, representation, condition or warranty given or entered into by TEN Hire or by any agent or employee of TEN Hire and not in conformity with this Agreement shall be binding upon TEN Hire unless confirmed in writing by TEN Hire.

28 VALIDITY OF QUOTATIONS

Equipment hire quotations given by TEN Hire are valid for up to 30 days from the date of issue. However, all quotations are subject to availability at the time of placing the order as all Equipment is constantly being offered to other potential hirers.

29 VARIATION

- a) TEN Hire may vary this Agreement from time to time upon notification by TEN Hire to the Hirer in writing.
- b) If the Supplier varies this Agreement in accordance with clause 29a), the Hirer may terminate this Agreement within 30 days from the date the notification of the variation is given to the Hirer by providing written notice to the Supplier.
- c) If the Hirer does not terminate this Agreement within the period referred to in clause 29b), the Hirer is deemed to have accepted the variation of this Agreement made in accordance with clause 29a).

30 GENERAL MATTERS

- a) The Hirer acknowledges that it has inspected the Equipment and confirms that it is fit for the purpose for which the Hirer requires it.
- b) The Hirer acknowledges that the Equipment may differ from the images or description stated on the website of TEN Hire or its catalogues, product datasheets, advertising documents and TEN Hire is not liable for any loss, claim or liability associated with any difference between the Equipment and any description of it.
- c) Time is of the essence in respect of the Hirer's obligation under this Agreement.
- d) If any of the provisions of this Agreement are unenforceable, void, voidable or illegal, then such shall be severed and the other provisions of this Agreement remain in full force and effect.
- e) Any failure or delay by TEN Hire to exercise a power, right or remedy pursuant to this Agreement does not operate as a waiver of that power, right or remedy nor does it constitute a waiver or release of any breach by the Hirer.
- f) The waiver of any right of TEN Hire under this Agreement is only valid if made by notice in writing from TEN Hire to the Hirer. The waiver of a power or right is effective only in respect of the specific breach by the Hirer to which it relates and for the specific purpose for which it is given.
- g) This Agreement shall be governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.
- h) The Hirer declares that it has read this Agreement and agrees that it is the complete and exclusive statement of the agreement between the parties.
- i) The Hirer must not assign this Agreement or any of its rights under it. Where TEN Hire reasonably considers there will be no detriment to the Hirer, TEN Hire may assign or charge this Agreement, and any of its rights to any other party.