

Terms of Hire

To the fullest extent legally permissible* ALL dealings between SS Hire (whether trading as “SS Hire” or otherwise) [“SS Hire”] and the hirer as defined in Sub-clause 1.5 below [“Hirer”] are strictly subject to the following binding and enforceable terms and conditions [this “Agreement”] unless otherwise agreed in writing:

1. Definitions

The following words and phrases shall have the meanings set out in this clause:

- 1.1 **Deposit** means a non-refundable amount which is not less than 25% of the Hiring Fee and which is payable on entering into this Agreement by signing the Hirer Quote (as defined in Sub-clause 1.6 below) where indicated;
- 1.2 **Equipment** means all items of SS Hire property so identified in the Hirer Quote or otherwise made available to the Hirer for any reason;
- 1.3 **Finish Date** means the date so identified in the Hirer Quote;
- 1.4 **Guarantor** means the party so named in the Hirer Quote;
- 1.5 **Hirer** means the party or parties with whom SS Hire is dealing as set out in the Hirer Quote (if more than one then jointly and severally);
- 1.6 **Hirer Quote** means the document so headed which is provided to and signed by or on behalf of the Hirer and the Guarantor (if applicable) in order to give effect to this Agreement and which is no longer valid if not so signed within 7 days of issue;
- 1.7 **Hiring Fee** means the total amount payable by the Hirer to SS Hire pursuant to the Hirer Quote;
- 1.8 **Insurance Cover** means a current insurance policy or policies provided by an appropriate and reputable commercial insurer which is sufficient to provide full indemnity cover for all loss and damage to the Equipment and/or arising from any acts and/or omissions in any way associated with any of the Services (including but not limited to public liability cover of not less than \$10 million);
- 1.9 **No Insurance Contribution** means an additional amount which shall not exceed 5% of the Hiring Fee, which is payable at the Hirer's option and which subject to Clause 5 below is intended by the Hirer and SS Hire to be adequate compensation to SS Hire for the non-provision by the Hirer of Insurance Cover pursuant to Sub-clause 4.1 below;
- 1.10 **Overdue Monies** means all monies payable pursuant to this Agreement which are not paid on time as set out in this Agreement;
- 1.11 **Services** means any and all activities by SS Hire which are reasonably associated with:
 - (a) making the Equipment available for hire;
 - (b) delivering the Equipment within a reasonable period before or on the Start Date; and/or
 - (c) removing the Equipment on or within a reasonable period after the Finish Date;
- 1.12 **Site** means the relevant location(s) set out in the Hirer Quote;
- 1.13 **Start Date** means the date so identified in the Hirer Quote.

2. SS Hire Obligations

SS Hire agrees to do the following:

- 2.1 provide the Services in exchange for the Hiring Fee in such manner as SS Hire reasonably considers to be appropriate; and
- 2.2 subject to Sub-clause 7.2 below refund such portion of the Hiring Fee (not exceeding 75%) as SS Hire reasonably considers to be appropriate after forming the view that it cannot provide part or all of the Services at the Site for any reason.

3. Hirer Obligations

The Hirer agrees to do the following:

- 3.1 pay the Deposit and the No Insurance Contribution (if applicable) on entering into this Agreement and pay the balance of the Hiring Fee not less than 2 days before the Start Date or as a Fee otherwise directed by SS Hire;
- 3.2 be solely responsible for obtaining entirely at the Hirer's own expense all necessary permission, licences and/or permits from all relevant responsible authorities and/or governing bodies (or the like) so that SS Hire is in no way obstructed from providing the Services;
- 3.3 at all times fully and without argument comply with all reasonable directions given by or on behalf of SS Hire with regard to conduct at or near the Site and inspection of and use of all Equipment (including but not limited to all health and safety and all security directions and/or requirements);
- 3.4 entirely at the Hirer's expense be solely responsible for doing all things reasonably necessary to ensure that SS Hire is able to provide the Services without damaging the Site and without being compromised by any hidden obstacles or obstructions (including but not limited to any pipes, wiring and/or cabling);
- 3.5 at all times refrain from in any way tampering with or doing anything which might cause damage to any of the Equipment;
- 3.6 entirely at the Hirer's expense be solely responsible for ensuring that the Site and the Equipment is safe and secure at all times (including but not limited to providing adequately trained and suitably qualified security personnel to properly guard and protect the Equipment while at the Site);
- 3.7 forfeit all monies already paid to SS Hire prior to any breach by the Hirer of any of the Hirer's obligations under this Agreement and accept without dispute any decision by SS Hire to terminate this Agreement and repossess the Equipment because of any breach by the Hirer of any of the Hirer's obligations under this Agreement;
- 3.8 in addition to the Hiring Fee pay without dispute the daily applicable rate for any Equipment not returned on time as reasonably determined by SS Hire at any time and from time to time;

*The Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) [“**ACL**”] provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning goods and/or services (see www.consumerlaw.gov.au). Any rights you may have under the *ACL* shall apply notwithstanding any inconsistent provisions in this Agreement which shall be read down to the extent necessary to comply with the *ACL* and which shall otherwise apply to the fullest extent legally permissible.

- 3.9 pay any additional monies reasonably calculated by SS Hire as compensation for any damage to the Equipment and/or any impediment(s) to the provision of the Services predominantly caused by a breach or breaches by the Hirer of any of the Hirer's obligations under this Agreement;
- 3.10 pay to SS Hire immediately on demand all monies payable under this Agreement on time and without deduction; and
- 3.11 pay interest on all Overdue Monies at a rate which is 2% higher than the rate for the time being prescribed by Section 2 of the *Penalty Interest Rates Act 1983* (Vic.).

4. Insurance

The Hirer agrees to do the following:

- 4.1 provide to SS Hire adequate written evidence of Insurance Cover not less than 2 days before the Start Date or as otherwise directed by SS Hire; or
- 4.2 pay to SS Hire as part of the Hiring Fee the No Insurance Contribution at the same time as paying the Deposit.

5. Indemnity and release

Notwithstanding payment of the No Insurance Contribution the Hirer shall to the fullest extent legally permissible release and indemnify SS Hire and its servants and agents from and against all claims and/or liability for all damage, loss and/or injury arising from any act and/or omission by the Hirer and/or the Hirer's servants, agents and/or invitees.

6. Circumstances beyond SS Hire's control (*force majeure*)

The Hirer agrees to do the following in the event of unavoidable delays or any reasonable decision by SS Hire to suspend and/or cease providing the Services with or without notice (whether due to bad weather, any "act of God" and/or otherwise):

- 6.1 negotiate a compromise arrangement in good faith with SS Hire on such reasonable terms as SS Hire agrees; or
- 6.2 allow SS Hire to immediately terminate this Agreement, retain the Deposit and otherwise refund such monies received by SS Hire prior to termination as SS Hire reasonably considers to be appropriate.

7. Cancellation for other reasons

On termination of this Agreement by SS Hire and/or the Hirer for any reason(s) other than pursuant to Clause 6 above the Hirer agrees that:

- 7.1 the Deposit is non-refundable and entirely forfeit; and
- 7.2 SS Hire may retain as reasonable compensation an additional amount which is equivalent to (but not more than) the Deposit if and only if termination occurs for any reason less than 2 days before the Start Date (or such shorter time period as SS Hire allows).

8. Guarantee and indemnity

In consideration for SS Hire entering into this Agreement the Guarantor:

- 8.1 guarantees the payment to SS Hire of all monies payable to SS Hire pursuant to this Agreement and the performance of all obligations of the Hirer arising out of this Agreement and/or from any present and/or future dealing(s) between SS Hire and the Hirer in accordance with the terms of this Agreement and/or otherwise;
- 8.2 indemnifies SS Hire against all losses SS Hire sustains as a consequence of any act and/or omission by the Hirer and/or the Guarantor under this Agreement and/or otherwise including all legal costs calculated on a full indemnity basis;
- 8.3 agrees to be liable for the full amount owed to SS Hire by the Hirer and/or the Guarantor and the Guarantor agrees that SS Hire may make any arrangement and/or compromise with the Hirer, obtain additional guarantees, indemnities and/or securities from any other person(s) and/or release and/or compromise the liability

of any such person(s) without affecting the liability of the Guarantor to SS Hire;

- 8.4 agrees that the guarantee and indemnity given by the Guarantor in this clause is unlimited and continuing and shall not be wholly or partially discharged by the payment at any time of any monies payable by the Hirer and/or by any other intervening payment;
- 8.5 agrees that the guarantee and indemnity given by the Guarantor in this clause shall remain effective notwithstanding any conduct or event (including any agreement or deed of company arrangement whether or not agreed to by SS Hire) which but for the clause may have released or varied any obligation of the Hirer and/or the Guarantor and even if the Hirer and/or the Guarantor execute(s) in favour of SS Hire any later agreement, guarantee and/or security;
- 8.6 agrees that this clause survives termination of this Agreement for any reason; and
- 8.7 agrees that he or she has read and understood this Agreement before signing it and he or she acknowledges that it is his or her responsibility to obtain his or her own legal advice as to the meaning and effect of this Agreement.

9. Personal Property Securities Register

The Hirer agrees that the Hirer retains full ownership of and title in the Equipment at all times and that this Agreement constitutes a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) ["PPSA"] and that Sections 95, 118, 121(4), 125, 129(2), 129(3), 130 132(3)(d), 132(4), 137, & 157 of the PPSA shall not to the fullest extent legally permissible apply to any "security interest" and all other rights SS Hire has whether under the PPSA and/or this Agreement or otherwise.

10. Privacy Act

This Agreement may be produced as conclusive evidence of the Hirer's consent to SS Hire at any time collecting, holding, using and/or disclosing personal, credit and/or credit eligibility information in accordance with the *Privacy Act 1988* (Cth) and SS Hire's Privacy Policy and Credit Reporting Policy available upon request.

11. Limitation of Liability

To the fullest extent legally permissible the Hirer agrees to limit any claim to the cost of re-supply of services and SS Hire shall not be liable for any consequential loss and/or any special and/or punitive damages through any fault and/or negligence of SS Hire.

12. General

- 12.1 The Hirer agrees that this Agreement and any claim or dispute between SS Hire and the Hirer shall be governed by the law applicable in the State nominated by SS Hire and the Hirer agrees to submit to the jurisdiction of the appropriate Court nominated by SS Hire in the capital city of that State. If no State is nominated, then Victoria shall be deemed to be the nominated State.
- 12.2 No variation, modification or waiver of any provision of this Agreement shall be of any force or effect unless the same shall be confirmed in writing and signed by all parties and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.
- 12.3 The provisions of this Agreement constitute the sole and entire agreement between the parties and no warranties, guarantees or other terms or conditions not contained and recorded in this Agreement shall be of any force or effect.
- 12.4 If any provision(s) of this Agreement shall be invalid and/or unenforceable all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid and/or unenforceable provision(s) shall be and continue to be valid and enforceable in accordance with their terms.