

HP HIRE

Terms & Conditions

Definitions

Commencement Date means the date set out in the Hire Agreement.

Contract Schedule means the schedule outlining the maintenance program responsibilities for the Equipment and attached to this agreement.

Customer means the customer set out overleaf and includes the Customer's employees, executors, administrators and representatives.

Equipment means the equipment set out overleaf including any and all accessories, tools, attachments, parts, manuals, instructions and packing and transferable materials, substitute and replacement Equipment, unless indicated to the contrary in these terms.

HP HIRE (VIC) means HP Hire (Vic) Pty Ltd ABN 29 642 705 379 and includes its officers, employees, agents, contractors, successors and any related body corporate of HP Hire (Vic).

Operation and Service Manual means the manual issued or approved by HP HIRE (VIC) from time to time containing the operating and service instructions for the Equipment and includes all other manuals, Manufacturer's instructions or HP HIRE (VIC) requirements as to the Equipment issued to the Customer from time to time.

Payment Dates means the date set out overleaf on which the Customer must pay Rental Charges to HP HIRE (VIC).

Rental Charges means the rental charged by HP HIRE (VIC) to the Customer for the rent of the Equipment as set out overleaf.

Site means the location at which the Equipment is to be located as set out overleaf, or such other location as agreed by HP HIRE (VIC).

Term means the period from the Commencement Date until the termination of this agreement.

1 Agreement

- (a) HP HIRE (VIC) rents the Equipment to the Customer on the terms set out overleaf in these rental terms. This agreement constitutes the entire agreement between the parties.
- (b) This agreement may only be varied by an agreement in writing signed by both parties.
- (c) This agreement only binds HP HIRE (VIC) when it has been accepted by a director by signing on the front page.
- (d) This agreement commences on the Commencement Date and continues for the Term unless terminated sooner in accordance with this agreement.

2 Rental Charges and Other Charges

- (a) Rental Charges are payable from the Commencement Date and until this agreement is terminated in accordance with clause 7.
- (b) The Customer must pay all amounts specified overleaf together with:
 - (i) A charge for delivery and commissioning, and decommissioning return of the Equipment;
 - (ii) Any taxes, duties (including stamp duty) levies, charges or imposts payable in respect of this agreement or the transactions contemplated by it;
 - (iii) A sum equal to the amount of any goods and services tax (GST) payable by HP HIRE (VIC) on any supplies made by HP HIRE (VIC) under or in connection with this agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate;
 - (iv) Any costs or expenses reasonably incurred by HP HIRE (VIC) in enforcing this agreement, as a result of Customer's breach of this agreement or in order to return the Equipment to the same condition as at the Commencement Date (including cleaning costs);
- (c) Customer must pay the Rental Charges on the Payment Dates.

3 Use of Equipment (Customer Obligations)

- (a) The Equipment always remains HP HIRE (VIC) 's property and Customer only has right to use it. Customer has no option or right to purchase the Equipment.
- (b) Customer must do everything necessary to protect the interests of HP HIRE (VIC) in the Equipment, making it clear to others that HP HIRE (VIC) is the owner of the Equipment.
- (c) Customer must inform any repairer or person who does any work to the Equipment that HP HIRE (VIC) is the owner of the Equipment.
- (d) Customer must permit HP HIRE (VIC) to affix plates or marks of ownership on the Equipment to indicate HP HIRE (VIC)'s ownership.
- (e) Customer must not part with possession of the Equipment without HP HIRE (VIC)'s prior written consent.
- (f) Customer must not give any other person an interest in or any form of security over the Equipment.
- (g) Prior to the Commencement Date, a report as to the condition of the Equipment must be signed by both parties.
- (h) Risk in the Equipment passes to Customer on delivery of the Equipment and remains with Customer until the Equipment is collected by HP HIRE (VIC)'s.
- (i) Customer bears all risk of loss of or damage to, or caused by the Equipment or its operation and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at full Replacement Value, salvage costs and Rental Charges incurred while the Equipment is repaired or replaced during the Term whether or not it is insured.
- (j) The Customer must ensure that the Equipment is:
 - (i) Operated by a suitably trained, licensed, experienced and (if necessary) certified operator and is operated in accordance with the Operation and Service Manual and HP HIRE (VIC)'s instructions and all relevant laws, regulations, rules and regulatory guidelines;
 - (ii) Returned to HP HIRE (VIC) in same condition and repair (fair wear & tear excepted) as at the Commencement Date (refer to Contract Schedule for actual allocations of individual parties' responsibilities) and returned with a full tank of fuel or Customer will pay HP HIRE (VIC) the cost of filling that tank. Unacceptable wear will be charged to and paid by the Customer;
 - (iii) Used for the purpose for which it was designed, in suitable terrain and in a manner which has regard for the capacity, capabilities and limitations of the Equipment;
 - (iv) Is not removed from the Site without HP HIRE (VIC)'s prior written consent.
- (k) Customer must, at its expense;
 - (i) Maintain the Equipment in accordance with the Operation and Service Manual using recommended lubricants, parts manufactured by OEM Group (or equivalent quality parts approved by OEM) and properly trained and competent persons;
 - (ii) Unless otherwise detailed in the Contract Schedule, pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment including services, fittings, accessories;
 - (iii) Unless otherwise detailed in the Contract Schedule, engage OEM to complete 1000 hours inspections Preventative Maintenance Clinic tests;
- (l) If the Equipment breaks down or becomes unsafe to operate, Customer shall immediately stop using the Equipment, ensure that it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.
- (m) Customer must not repair or attempt to repair the Equipment without HP HIRE (VIC)'s prior written consent.
- (n) Customer must immediately notify and provide full details to HP HIRE (VIC) of any loss, theft, breakdown or damage to the Equipment.

4 Access and Inspection

- (a) Customer must provide access by HP HIRE (VIC) to the Site to inspect the state of repair of the Equipment and to exercise its rights under this agreement. This will be during normal business hours and reasonable notice will be given to Customer (except in an emergency when no notice is required).
- (b) HP HIRE (VIC) may do anything that Customer should have, but has not, done under this agreement and Customer must reimburse HP HIRE (VIC) for all its costs so incurred by HP HIRE (VIC).

5 Privacy

The Customer agrees that HP HIRE (VIC) may obtain, disclose or use information:

- (a) About Customer's credit worthiness, or for the purpose of obtaining and maintaining credit information file about the Customer or collecting overdue payments;
- (b) About the Customer for the purpose of providing services to Customer.

6 Insurance

- (a) During the Term, Customer, at its own expense, must effect the following insurances in the joint names of HP HIRE (VIC) and Customer for their respective interests with a reputable insurance company in Australia:
 - (i) Physical loss of or damage to the Equipment for the replacement value (refer to Contract Schedule);
 - (ii) Third party and public liability in respect of bodily injury (including death) and property damage for not less than AUD20 million for any one occurrence; and
 - (iii) Such other insurance as HP HIRE (VIC) may reasonably require.
- (b) Customer must provide evidence of the currency of these insurances to HP HIRE (VIC) on request.

7 Expiry, Repudiation and Termination

Return of Equipment

- (a) At the end of the Term:
 - (i) A report as to the condition of the Equipment must be signed by both parties. All expenses required to bring the Equipment to the condition required by clause 3 must be paid by the Customer;
 - (ii) Any money owing under this agreement must be paid by the Customer;
 - (iii) Customer must make the Equipment available to HP HIRE (VIC) at the Site and provide all reasonable assistance for its removal. Unless otherwise detailed in the Contract Schedule, all costs of decommissioning and transport from the Site will be paid by the Customer;
 - (iv) Customer must return the Operation and Service Manual and all instruction and maintenance manuals provided with the Equipment. If the Operation and Service Manual is not returned, Customer must pay HP HIRE (VIC) the replacement cost at the OEM's then current price list rate..
- (b) If Customer fails to return the Equipment to HP HIRE (VIC) at the end of the Term, Customer must continue to pay the Rental Charges and observe its other obligations under this agreement. Continued payment of the Rental Charges does not give Customer any right to retain possession of the Equipment or limit any other rights which HP HIRE (VIC) may have.

Repudiation and Termination

- (c) The fundamental provisions of this agreement are that Customer pays all money due under this agreement on time and fulfils its obligations under clause 3 (Use of Equipment), clause 7 (Return of Equipment) and clause 6 (Insurance).
- (d) HP HIRE (VIC) may terminate this Agreement under any of the following circumstances if:
 - (i) The Customer does not comply with a fundamental provision of this agreement;
 - (ii) The Customer is in breach of any other provision of this agreement and that breach is not remedied within 30 days of receipt of notice from HP HIRE (VIC);
 - (iii) If an order is made or proceedings are taken for the winding up of Customer;
 - (iv) Customer becomes insolvent or a receiver, manager, provisional liquidator or administrator/s appointed or an encumbrancer takes possession of the whole or a substantial part of the assets of Customer.
- (e) On termination of this agreement by HP HIRE (VIC), Customer must:
 - (i) Return the Equipment to HP HIRE (VIC) in accordance with clause 7(a), failing which the Customer must pay HP HIRE (VIC) the replacement value;
 - (ii) Pay HP HIRE (VIC) the present value of all Rental Charges that would have been payable during the Term (assuming a rate of usage the same as that prior to termination). The present value will be calculated using the Westpac Banking Corporation's indicator lending rate on the date of termination.
- (f) HP HIRE (VIC) may enter any premises on which the Equipment is located and take possession of the Equipment.
- (g) Any termination of this agreement does not affect any other right or remedy which HP HIRE (VIC) might have.

8 Indemnities

- (a) Customer indemnifies against and holds HP HIRE (VIC) harmless from:
 - (i) All loss or destruction of or damage to the Equipment however caused;
 - (ii) All costs, charges, expenses, liabilities, losses, damages, claims, fines and penalties (including legal costs on a full indemnity basis) suffered or incurred by HP HIRE (VIC), its officers, directors, employees or agents in connection with:
 - (A) the condition, use, operation, control, maintenance, repair or storage of the Equipment;
 - (B) any breach of or non compliance with any registration, licence permit, authorisation; statute, regulation or by-law relating to the use of the Equipment;
 - (C) any breach of this agreement by Customer or HP HIRE (VIC) exercising any of its rights under this agreement.
- (b) Customer is not liable under this clause to the extent that the relevant matter was caused or contributed to by the negligent act or omission of HP HIRE (VIC) nor in respect of matters for which HP HIRE (VIC) is liable under this agreement.
- (c) These indemnities continue after this agreement expires or terminates.

9 Repair and Limitations of Liability

- (a) HP HIRE (VIC) shall have no liability under this clause, and this clause will not apply if:
 - (i) The Customer breaches or does not comply with any of its obligations under this agreement;
 - (ii) If the defects or malfunctions are caused by or in connection with the misuse, negligence, accident or failure to maintain or use the Equipment in accordance with the maintenance program and current applicable instructions issued by HP HIRE (VIC);
 - (iii) If the defect or malfunctions arise out of, or in connection with a condition identified through application of the maintenance program and for which HP HIRE (VIC) recommended to the Customer the way in which to remedy the condition and the Customer fails to observe HP HIRE (VIC)'s recommendation for the remedy of that condition;
 - (iv) In relation to alterations, modifications or repairs to the Equipment, including the fitting of attachments, that are not authorised or approved by HP HIRE (VIC) and that in the sole judgment of HP HIRE (VIC) adversely affect the performance or safety of Equipment;
 - (v) In relation to the supply of normal maintenance or operating services for the Equipment, including but not limited to providing inspections, adjustments, tune-ups, fuel, lubricants, or consumable parts, where such parts are replaced as a part of normal maintenance or operating services;
 - (vi) If the Customer has delayed providing the Equipment after the Customer has notified HP HIRE (VIC) of the potential defect;
 - (vii) If the Customer fails to comply with any manual or adhere to any recommendation made by HP HIRE (VIC);
 - (viii) If HP HIRE (VIC) in its sole discretion determines any use of the Equipment to be improper.
- (b) **Limitations of Liability**

To the extent permitted by law, all warranties, representations and conditions (including, without limitation, fitness for purpose) are expressly excluded. To the extent that any such warranty, representation, promise or condition cannot be excluded, HP HIRE (VIC)'s liability is limited at HP HIRE (VIC)'s option to:

- (i) the repair of the Equipment; or

Notwithstanding anything to the contrary in this agreement, neither party will be liable for any loss of profits, savings or opportunity nor for any indirect, consequential or special losses, damages, costs or expenses of any kind.

These limitations of liability continue after this agreement expires or is terminated.

10 General Provisions

- (a) Customer must not assign this agreement without the prior written consent of HP HIRE (VIC).
- (b) No time or indulgence by HP HIRE (VIC) shall be deemed to be a waiver of any of HP HIRE (VIC)'s rights.
- (c) Notices and other communications under this agreement must be in writing sent by mail to or left at the addresses set out on the front page (or as subsequently advised in writing by the relevant party).
- (d) This agreement is governed by the laws of the State of Vic and the parties submit to then non-exclusive jurisdiction of the courts of that State and all courts which may hear appeals there from.
- (e) HP HIRE (VIC) does not provide any performance guarantee of the Equipment nor of its availability.