HIRE | 24HRS | 7DAYS

Helping your business reach new heights safely

TERMS AND CONDITIONS

1. Definitions

1.1. In these terms and conditions of hire:

(a) **Act of Insolvency** means where the Customer has a winding up petition presented against it, or is wound up, or goes into voluntary liquidation, or commits an act of bankruptcy, or if a receiver of its assets or any of them is appointed, or if it makes an assignment or compromise for the benefit of its creditors, or if its business is placed under administration, or it ceases to carry on business.

(b) **AAH** means Australian Access Hire Pty Limited;

(c) **Claims** means all claims, judgments, damages, loss, expense (including all reasonable legal costs and disbursements of lawyers) or liability incurred or suffered by or brought or made or recovered;

(d) **Customer** means the person, firm, organisation or corporation purchasing Equipment from AAH;

(e) **Equipment** means all material and equipment including tools, leads, plugs, accessories, parts and any other items specified on the face of the hire contract;

(f) **Hire Charges** means the charges agreed between AAH and the Customer from time to time and if no charge is agreed the rate specified in the Hiring & Price List for each item of equipment;

(g) **Hire Period** means the period commencing from when the Equipment is made available by AAH until the Equipment is returned to the transport driver or to AAH's premises;

(h) **Hiring & Price List** means the list maintained by AAH for the charges for the hire of the Equipment as amended from time to time.

1.2. In these terms and conditions, unless the context requires otherwise: -

(a) the singular includes the plural and vice versa;

(b) a gender includes the other genders;

(c) the index (if any) and the headings are used for convenience only and do not affect the interpretation of these terms and conditions;

(d) a reference to a thing includes a reference to a party of that thing;

(e) a reference to a document includes the document as modified from time to time and any document replacing it;

(f) the word "person" includes a natural person and anybody or entity whether incorporated or not;

(g) the word "day(s)" means calendar days "month" means calendar month and the word "year" means twelve months;

(h) the words "in writing" include any communication sent by letter or facsimile transmission;

(i) a reference to any statute, proclamation, rule, regulation or ordinance includes an amendment, consolidation, modification, re-enactment or reprint of its or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item or any statute, proclamation, rule regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule regulation ordinance which is for the time being in force;

(j) wherever "include" or any form of that word is used it must be construed as if it were followed by "(without being limited to)";

(k) money amounts are stated in Australian currency unless otherwise specified;

(l) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closest the functions of the defunct body;

(m) A reference to a clause, annexure or schedule is to a clause of, or annexure or schedule to these terms and conditions; and

(n) A reference to any party to these terms and conditions or any other agreement or document includes the party's successors and permitted assigns.

2. Primary Obligations

2.1. AAH agrees to hire the Equipment to the Customer for the Hire Period.

2.2. The Customer agrees to pay to AAH the Hire Charges for the Equipment for the Hire Period.

3. Customer's Obligations

3.1. The Customer acknowledges that it accepts delivery of the Equipment in "as is" condition unless otherwise specifically agreed and indicated in writing at the time of delivery.

3.2. The Customer accepts that AAH gives no warranty that the Equipment is suitable for the Customer's purpose.

3.3. The Customer acknowledges that it is the Customer's responsibility to have the correct accreditation to use the Equipment.

3.4. The Customer accepts full responsibility for:

(a) the safekeeping and insuring of the Equipment during the period of hire; and

(b) any damage to the Equipment excluding normal wear and tear.

3.5. The Customer shall use the Equipment in a safe, skilful and proper manner in accordance with the law only for its intended use, within the capacity for which it was designed and in accordance with all instructions supplied by the manufacturer and AAH.

3.6. The Customer shall at their own expense clean, fuel, lubricate and maintain the Equipment in good and substantial repair and condition.

3.7. AAH is not liable for any costs, losses, damages or expenses incurred by the Customer as a consequence of a breakdown in the Equipment, or delays in delivery in relation to any other services associated with the Equipment.

3.8. The Customer will be responsible and liable for any damages incurred as a consequence of the Equipment becoming partially or totally immersed in water.

3.9. The Customer shall not alter, make any addition to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

3.10. The Customer must not sub-hire or sub-lease the Equipment. In the event of a change of ownership or possession of the site, the Customer is deemed to retain responsibility for the Equipment unless and until AAH agrees that the Hire Period has been terminated.

3.11. The Customer shall allow and provide access to AAH to inspect or service the Equipment from time to time during the Hire Period and the Customer shall permit or procure admission for the representatives of AAH to the premises upon which the Equipment is situated for that purpose.

3.12. The Customer must return the Equipment clean and free of dirt, mud and debris. The Customer acknowledges that AAH is entitled to levy a cleaning charge plus labour costs on all unclean goods.

3.13. The Customer acknowledges that it is responsible for the return of all keys and will be responsible for the reasonable cost of procuring any replacement key.

3.14. The Customer must pay to AAH the cost of refuelling the Equipment at the time of return to AAH's premises.

3.15. The Customer indemnifies AAH for:

(a) the cost of rectifying damage to the Equipment; and

(b) replacing Equipment which is stolen or lost,

however, caused and, without limiting the generality of the foregoing, whether or not such damage, theft or loss, is attributable to the negligence, failure or omission of the Customer.

3.16. The Customer also indemnifies AAH against all Claims against AAH in respect of any injury to persons or loss or damage to property, arising out of the delivery, servicing, storage, possession or use (including unauthorised use) of the Equipment during the Hire Period howsoever arising, whether from negligence of the Customer or otherwise and without limiting the generality of the foregoing whether or not the Equipment was being operated by a servant of AAH or any other person for whom AAH might be or is held to be responsible in connection with the operation of the Equipment.

4. Terms of Payment

4.1. The Customer acknowledges AAH is entitled to charge a transport charge to deliver and collect hired Equipment and this will be in addition to the Hire Charge.

4.2. The Customer shall pay the Hire Charge for the Hire Period in full within 30 days of issue of invoice by AAH.

4.3. The Customer acknowledges AAH is entitled to charge an environmental levy of 1.0% for the acquisition and disposal of consumables.

4.4. AAH has the right to charge a default charge on all outstanding amounts not paid within the terms set out in clause 4.2, at a rate as determined by the Bank of Queensland Indicator Lending Rate effective from time to time plus 2% per annum compounding daily.

5. Termination of Hire and Recovery of Equipment

5.1. Without prejudice to any other remedies available to AAH and notwithstanding any period of hire agreed or specified, AAH may terminate this Hire Agreement at any time by giving the Customer seven calendar days' notice of its intention to do so.

5.2. If the Customer commits either a breach of the Hire Agreement or an Act of Insolvency, AAH may terminate this Hire Agreement without notice to the Customer.

5.3. It is the customers responsibility to obtain an 'Off Hire Number' as confirmation of the termination of the hire agreement and return of the equipment.

6. Personal Property Securities Act 2009 ("PPSA")

6.1. In this clause financing statement, financing change statement, security agreement and security interest have the meaning given to those terms by the PPSA.

6.2. Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by AAH to the Customer.

6.3. The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which AAH may reasonably require;

(b) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ("PPSR");

(c) register any other document required to be registered by the PPSA;

(d) correct a defect in a statement referred to in clause (a) and (b);

(e) indemnify and on demand reimburse AAH for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Equipment charged thereby;

(f) not register a financing change statement in respect of the security interest without the prior written consent of AAH;

(g) not register or permit to be registered a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of AAH.

6.4. AAH and the Customer agree that Sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

6.5. The Customer waives their right to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

6.6. The Customer waives their right as a grantor and/or a debtor under Sections 142 and 143 of the PPSA.

6.7. Unless otherwise agreed in writing by AAH, the Customer waives their right to receive a verification statement in accordance with Section 157 of the PPSA.

6.8. The Customer must unconditionally ratify any actions taken by AAH under this Hire Agreement.

6.9. Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

6.10. The Customer is liable for any fee incurred in registering an interest on the PPSR.

7. Retention of Title

7.1. The Customer acknowledges that property and title in the Equipment does not pass to the Customer and AAH retains legal and equitable title in the Equipment.

7.2. The Customer agrees that AAH has the right with or without prior notice to the Customer to enter upon any premises occupied by the Customer to repossess the Equipment when payment is overdue. The Customer will be liable for reimbursing AAH for its costs and expenses incurred in exercising its rights under this clause. Where AAH exercises any power to enter the premises, that entry will not give rise to any action or trespass or similar action on the part of the Customer against AAH or its employees, servants or agents.

8. Insurance Levy

An insurance levy will be automatically applied to a hire contract unless the Customer provides evidence of insurance cover (to the satisfaction of AAH) for the Equipment whilst in the Customer's possession. Evidence must be provided prior to the delivery / collection of the Equipment. Unless notified to the contrary, the cost associated to the insurance levy is 12.5% of the Hire Charge, this cost will continue for the duration of the hire period.

8.1. The Customer acknowledges and agrees that the insurance levy applied by AAH will cover the Equipment losses caused by fire, storm, earthquake or equipment theft.

8.2. The Customer acknowledges and agrees that the insurance levy applied by AAH in respect of any Equipment will not apply to:

(a) any loss or damage resulting from the Customer's failure to comply with the obligations in this agreement;
(b) any negligent, wilful or deliberate act or omission including vandalism;
(c) any damage occasioned to the Equipment which is $5,000 or less in value (excluding GST);
(d) damages or breakages to tyres, tubes, windscreens, windows, mirrors, glass or perspex fitted to the equipment;
(e) accidental damage;
(f) damage caused by the use or operation of the Equipment;
  (i) contrary to the manufacturer's instructions contained in any guidebook, logbook, operating manual, guidelines, warranty conditions or other written instructions provided with the Equipment, or standard industry practice;
  (ii) in violation of any law, regulation or by-law;
  (iii) in an unsafe or untradesmanlike manner;
  (iv) by an inexperienced, unlicensed or untrained operator;
  (v) by an operator under the influence of alcohol or drugs
  (vi) a lack of lubrication or failure to properly service the Equipment;
(g) excessive wear and tear;
(h) a collision with any overhead object of structure due to insufficient clearance;
(i) overloading the Equipment;
(j) exposure to any caustic or corrosive substance;
(k) any electric surge or overload, or the use of inadequate or excessive electrical extension leads.

The Customer remains liable for the costs of such damage in respect to any of these matters and indemnifies and holds harmless AAH in relation to this clause.

8.3. The Customer is liable for all insurance excess and any other costs associated with an insurance claim, being a minimum of $5,000 +GST in relation to the Equipment. The customer must meet any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss suffered by AAH as a result of not being able to hire the Equipment.

8.4. In the event of customer damage to equipment AAH retains the right to charge demurrage whilst a machine is under repair or awaiting replacement.

9. General

9.1. Notices

(a) A notice or other communication connected with this agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this agreement or sent by fax to the fax number of the addressee.

9.2. Law and jurisdiction

(a) This agreement is governed by the laws of New South Wales and the parties to this agreement submit to the non exclusive jurisdiction of the Courts of New South Wales and the relevant Federal Courts and courts competent to hear appeals from those Courts.

9.3. Severability

(a) If any provision of this agreement is unenforceable, that provision is severable and its unenforceability will not affect any other part or provision of this contract.

9.4. Joint and several

(a) If this agreement is completed in the name of a partnership, the partners of that business at any one time are jointly and severally liable to AAH for any outstanding account. This will be so notwithstanding any agreement, compromise or arrangement with one or more of partners

9.5. Amendments to Terms And Conditions

(a) AAH reserves the right to update its Terms and Conditions from time to time, the current version being available on the Company's website: www.aah.com.au

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