

HIRE TERMS AND CONDITIONS

1. Hire of Equipment

1.1 On and from the Commencement Date, WESS will hire the Equipment to the Customer and the Customer will take the Equipment on the hire from WESS for the Hire Term and on the terms and conditions set out in this document.

2. Hire Fee

2.1 The Customer must pay the Hire Fee (plus GST) to WESS on the first day of each [month / week] during the Hire Term for that [month / week] in advance.

2.2 WESS may charge the Customer interest at a rate of 5% per annum or the maximum amount permitted by law, whichever is less, on all overdue amounts.

2.3 If WESS must take steps or action to recover any amount due to it, the Customer is responsible for all reasonable costs and disbursements (including legal fees on a full indemnity basis) incurred by WESS in recovering the monies due.

3. Delivery

3.1 The Customer must, at its cost, arrange for delivery of the Equipment to the Delivery Address.

4. Customer's Warranties

4.1 The Customer warrants to WESS that:

- a) the Customer is a **competent user** of the Equipment and acknowledges review of product Safety Warning information and Product Safety Data Sheet (if applicable) and understands the dangers of incorrect use or installation of the Equipment;
- a) the Customer has not relied on any representations made by or on behalf of WESS; and
- b) the Equipment is fit for the Customer's purpose.

5. Customers Obligations

5.1 The Customer must:

- a) use, operate and possess the Equipment at the Customers risk;
- b) keep and maintain the Equipment properly serviced and in working order;
- c) report any damage to, or loss of the Equipment to WESS immediately;
- d) operate the Equipment in accordance with recognised methods and standards for equipment of its type and only by competent and properly qualified, trained and licenced personnel;
- e) comply with the instructions and recommendations of WESS relating to the Equipment; and
- f) comply with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Equipment.

6. Release and Indemnity

6.1 To the extent permitted by law the Customer releases and discharges WESS and its agents and employees from any claims and demands on WESS and from any loss or damage caused to the Customer or its agents or employees whether by way of:

- a) death of, or injury to any person
- b) accident or damage to property; or
- c) delay or financial loss arising from a breakdown of or defect in the Equipment or any accident to or involving the Equipment or their use, operation, repair, maintenance or storage.

6.2 The Customer is liable for and indemnifies WESS against any actions, proceedings, claims, liabilities, losses, damages, costs, penalties and expenses arising from:

- a) loss or damage to the Equipment or
- b) the delivery, selection, acceptance or rejection, possession, use, repair, maintenance or storage of the Equipment.

6.3 The indemnities and assumptions of liability contained in this clause 7 continue after the termination of this agreement.

7. Title to Equipment and Repossession

7.1 The Customer acknowledges that WESS retains full title to the Equipment and that the Customer has only the right to possess and use the Equipment as bailee in accordance with these Hire Terms.

7.2 WESS may at any time repossess the Equipment if the Customer breaches these Hire Terms or where in WESS' reasonable opinion the Customer is, or is at risk of becoming, subject to an Insolvency Event (as defined in clause 7.8 below).

7.3 The Customer must do anything required by WESS to preserve WESS title and rights to the goods.

7.4 The Customer must notify any person attempting to seize the Equipment of the ownership of WESS and must give immediate written notice to WESS of such seizure.

7.5 The Customer agrees not to offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with possession of, or otherwise deal with, the Equipment.

7.6 The Customer must protect WESS' interest in the Equipment, including by making clear to others that WESS is the owner of the Equipment. The Customer must not place, or allow to be placed, on the Equipment any plates or marks that are inconsistent with WESS' ownership. If requested by WESS, the Customer must put plates or marks supplied by WESS on the Equipment that state that WESS owns them.

7.7 The Customer must on demand reimburse WESS for all costs, charges, expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by WESS of or incidental to:

- a) any breach, default or repudiation of this agreement by the Customer; and
- b) the exercise of attempted exercise of any right, power, privilege, authority or remedy of WESS under this agreement, including all amounts incurred in repossessing the Equipment from the Customer under this agreement.

7.8 The following constitutes an "Insolvency Event":

- c) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or another similar official, is appointed in respect of the Customer or any of its property, or any security is enforced over any substantial part of its assets; or
- d) the Customer ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, its creditors or threatens to do so, or stops payments to its creditors generally.

8. Condition of Equipment

- a) The Customer must, at its cost, maintain the Equipment and ensure it is properly serviced, in proper working order and condition and in good and substantial repair.
- b) The Customer is responsible to WESS for any loss of or damage to the Equipment that occurs other than as a result of normal wear and tear. The Customer must give reasonable notice to WESS in writing of any such loss or damage of a substantial or material nature in excess of normal wear and tear.
- c) The Customer is responsible for the cost of all consumables to be used with the Equipment, and the cost of repair or replacement for any damages caused to the Equipment by the Customer.
- d) WESS is responsible for all repairs and replacement of the Equipment which arise from **fair wear and tear**.

9. Return of Equipment

- e) At the end of the Hire Period or upon early termination of this agreement, the Customer must deliver the Equipment in the condition required by clause a) to the Return Address at the Customer's expense.
- f) If the Equipment is not returned to WESS at the time required in clause e), WESS may retake possession of the Equipment. For that purpose, WESS and its employees and agents may, without notice, liability or legal process, enter any premises, including the Location, where it suspects the Equipment may be located in order to search for and remove the Equipment without committing a trespass (even though the Equipment may be attached or annexed to other goods or land not the property of the Customer) and for this purpose the Customer irrevocably licenses

WESS to enter such premises and undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies WESS from and against all loss suffered or incurred by WESS as a result of exercising such rights.

10. Representations and Warranties

10.1 Nothing in this agreement limits any rights that the Customer has under the Competition and Consumer Act 2010 (Cth) or any other law, however all other warranties and conditions that the law implies are excluded except those that cannot be excluded.

10.2 The Equipment provided to the Customer under this agreement is not ordinarily acquired for personal domestic or household use or consumption and WESS' liability to the Customer for a breach of this agreement or any statutory guarantees is limited to replacement or repair of the Equipment.

11. Personal Property Securities Act

11.1 The Customer acknowledges that these Hire Terms may create a PPS lease as defined in section 13 of the Personal Property Securities Act 2009 (Cth) (PPSA).

11.2 To the extent permitted by law, the parties agree to contract out of sections 95, 120, 121(4), 123, 125, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

11.3 Without limiting clause 11.2, WESS does not need to give the Customer any notice required under the PPSA, including a notice of a verification statement, unless the requirement for the notice cannot be excluded.

11.4 The Customer will do everything reasonably required of it by WESS to enable WESS to correctly register and maintain its security interest(s) in the Equipment. This includes notifying WESS immediately in writing if the Customer changes any of its details that are required to register a financing statement under the PPSA.

11.5 The Customer indemnifies WESS against all reasonable direct costs associated with enforcing its security interest(s) in the Equipment (including reasonable legal fees on a full indemnity basis).

12. Governing law and jurisdiction

12.1 The validity, interpretation, enforceability, and performance of these Hire Terms is governed by and must be construed in accordance with the laws applicable in South Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.