

Terms and Conditions of Hire

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- (a) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open for business in Perth, Western Australia;
- (b) **Classic Hire** means Milton Pty Ltd (ACN 659 011 140) trading as Classic Hire (ABN 64 659 011 140);
- (c) **Commencement Date** means the commencement date of the Hire Period as set out in the Hire Contract;
- (d) **Equipment** means the equipment and goods, and any part thereof, described in the Hire Contract, together with any attachment, accessory and instruction/maintenance manual or record relating to the equipment;
- (e) **Guarantor** means the person or persons who sign the Hire Contract or the credit application form on behalf of the Hirer;
- (f) **Hire Contract** means the hire contract executed between the Hirer and Classic Hire and includes these terms and conditions and any applicable Classic Hire credit application form;
- (g) **Hire Fee** means the payments and charges referred to in Clause 4 for an amount as set out in the Hire Contract;
- (h) **Hire Period** means the period of hire specified in the Hire Contract;
- (i) **Hirer** means the party or parties described in the Hire Contract as the customer (and where more than one, each and all of them) and, in the case of individual, his executor and administrators and, in the case of the company, its successors;
- (j) **Loss** means any claim, action, damage, loss, liability, cost, charge or expense (including all legal costs);
- (k) **Obligation** means any obligation of the Hirer to Classic Hire, whether under the Hire Contract or any other agreement between Classic Hire and the Hirer ;
- (l) **PMSI** means a purchase money security interest within the meaning of section 14 of the PPSA;
- (m) **PPS Register** means the Personal Property Securities Register established under Chapter 5 of the PPSA;
- (n) **PPS Regulations** means the Personal Property Securities Regulations 2010 (Cth).
- (o) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (p) **Special Conditions** means any conditions agreed to by the Hirer and Classic Hire, as specified or noted on the Hire Contract; and
- (q) **LTD Waiver** means the loss, theft and damage waiver as set out in Clause 12.

1.2. Interpretation

In these terms and conditions:

- (a) the singular includes the plural and the plural includes the singular;
- (b) all terms which appear in quotation marks and which are defined in the PPSA have the same meaning in that clause as they do in the PPSA;
- (c) anything required to be done on a day that is not a Business Day, may be done on the next Business Day;
- (d) a reference to a person includes a natural person, corporation, partnership, association or other legal entity;
- (e) a reference to legislation includes that legislation as amended or modified or re-enacted;
- (f) examples and use of the word including and similar expressions do not limit what else may be included; and
- (g) a reference to a provision or clause means a provision or clause in these terms and conditions.

2. FORMATION OF AGREEMENT

Classic Hire agrees to hire the Equipment to the Hirer in accordance with the Hire Contract and these terms and conditions. Where the Hire Contract has not been signed or accepted by any other means, the Hirer will be deemed to have accepted the Hire Contract by proceeding in any way consistent with the hire of the Equipment, including by receiving or collecting any part of the Equipment or making a booking. The parties agree that any reference to the Hirer's terms in any purchase order, email or other document, shall not import those terms into the Hire Contract

unless the Company expressly agrees otherwise in writing. Where additional terms or conditions do apply, the Hire Contract shall prevail in case of any inconsistency.

3. AGREEMENT TO HIRE

- (a) The hiring of the Equipment will commence from the Commencement Date specified in the Hire Contract and continue for the Hire Period.
- (b) The Hirer is entitled to use the Equipment for the Hire Period. Classic Hire may, in its discretion, agree to an extension of the Hire Period in writing.

4. PAYMENT FOR RENTAL

- (a) The Hirer agrees to pay Classic Hire the Hire Fee specified in the Hire Contract for the Equipment for the Hire Period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to the Hire Contract.
- (b) The Hire Fee must be paid to Classic Hire prior to or on the Commencement Date, unless the credit application form is completed and Classic Hire agree to extend credit to the Hirer. Equipment not returned on time and in accordance with the Hire Contract will be subject to a continuance of the agreed Hire Fee until return is complete.
- (c) A cancellation fee may be charged by Classic Hire where Equipment has been reserved by booking and the Hirer cancels the booking without reasonable notice or fails to take delivery of the Equipment.
- (d) Classic Hire may charge the Hirer a fee for accepting payment by credit card.
- (e) Unless explicitly agreed in the Hire Contract, the Hire Fee does not include the costs of mobilisation or demobilisation of the Equipment, which the Hirer will be responsible for.
- (f) If the Hirer defaults in payment of any amount due to Classic Hire (whether under the Hire Contract or not), the Hirer shall indemnify Classic Hire from and against all costs and disbursements incurred by Classic Hire in pursuing the debt including legal costs and collection agency costs on a full indemnity basis.
- (g) The Hirer authorises Classic Hire to have the Hirer's credit card debited for any payment overdue under this Hire Contract.
- (h) Where the Hirer is required to make payment to Classic Hire (whether in connection with this Hire Contract or not), the Hirer indemnifies and will keep indemnified Classic Hire for any and all Loss to Classic Hire relating to or in connection with any payment not being received by Classic Hire, including (but not limited to) any Loss caused by cyber crime, social engineering or hacking.
- (i) Where Classic Hire has agreed to extend credit to the Hirer, any amount owed by the Hirer to Classic Hire shall be payable strictly in accordance with the following terms:
 - (i) all invoices are payable within thirty (30) days from the end of each month in which each invoice is provided to the Hirer by Classic Hire, without set off or deduction;
 - (ii) the Hirer must pay by electronic funds transfer to a bank nominated by Classic Hire, or such other method of payment as agreed between the parties; and
 - (iii) the Hirer shall pay interest at the rate of 10% per annum (capitalising on the first day of each month) on all outstanding monies owing to Classic Hire calculated on a daily basis from the due date for payment until the actual date of payment.

5. USE, OPERATION AND MAINTENANCE

- (a) The Hirer agrees that the use of the Equipment carries with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.
- (b) Subject to clause 10, the Equipment shall not be used by anyone other than the Hirer without the express permission of Classic Hire.
- (c) The Hirer must ensure that the Equipment is used in a skilful and proper manner and only for the purposes and within the capacity for which the Equipment was designed.
- (d) The Hirer must clean the Equipment on a regular basis, inspect, maintain and repair the Equipment so that it remain in good working order at all times and regularly service the Equipment at reasonable intervals suitable to the nature of the Equipment.
- (e) The Hirer will ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required hold a valid Certificate of Competency or are fully licensed to use it.

- (f) The Hirer agrees to operate, maintain, store and transport the Equipment strictly in accordance with any instruction provided by Classic Hire and with due care and diligence.
- (g) The Hirer agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations and any additional instructions supplied by Classic Hire or posted on the Equipment in regard to its operation, maintenance and storage.
- (h) The Hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.
- (i) Unless otherwise agreed by the parties in writing, the Hirer must pay for any and all repair and operating expenses in respect of the Equipment including an consumables.
- (j) The greater of the reasonable costs or the price notified to the Hirer from time to time for fuel or other consumables provided by the Classic Hire and used by the Hirer are to be paid to Classic Hire on demand.
- (k) The Hirer may not modify the Equipment without Classic Hire's prior written consent. If the Hirer modifies any of the Equipment without Classic Hire's prior written consent, then the Hirer must pay to Classic Hire all costs incurred by Classic Hire in restoring the Equipment to the condition it was in before the unauthorised modification.

6. **HIRER'S WARRANTIES AND COVENANTS**

- (a) The Hirer warrants that:
 - (i) the Equipment will be used in accordance with the conditions outlined in the Hire Contract;
 - (ii) the particulars in the Hire Contract are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (iii) the Hirer holds a valid current driver's licence, operating licence or permit valid for the type of Equipment hired;
 - (iv) the Equipment will not be used for any illegal purpose;
 - (v) the Hirer's vehicle is suitable for towing the Equipment if required;
 - (vi) the Hirer will not, without prior written consent of the Classic Hire, tamper with, repair or modify the Equipment in any way, or permit another to do so.
- (b) The Hirer agrees that the Equipment:
 - (i) complies with its description, is in merchantable condition upon delivery to the Hirer and is fit for the Hirer's purpose; and
 - (ii) has been received by the Hirer in clean and good working order and that the Hirer has inspected the Equipment at the time of receipt.

7. **INDEMNITY**

- (a) To the full extent permitted by law the Hirer releases, discharges and indemnifies Classic Hire from all claims and demands on Classic Hire arising out of or consequent on the use or misuse of the Equipment during the Hire Period.
- (b) Without limiting clause 6(a) of these terms and conditions, the Hirer agrees that to the full extent permitted by law, no warranties are given by Classic Hire in respect of the Equipment.
- (c) Any liability of Classic Hire pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the Equipment or the cost of resupplying the Equipment, at the discretion of the Classic Hire.
- (d) Without limiting any other indemnity given by the Hirer under this Hire Contract, the Hirer shall indemnify (and keep indemnified) Classic Hire (including its officers, employees and its Related Entities (as that term is defined in the *Corporations Act 2001* (Cth))) from and against any and all Loss (except any Loss caused by the negligence of Classic Hire) which may be incurred or suffered by Classic Hire, either directly or indirectly, arising from or in connection with any one or more of the following:
 - (i) the breach by the Hirer of a material term or any of the Hirer's obligations under this Contract;
 - (ii) the termination of this Contract in connection with any default or repudiation of the Hirer;
 - (iii) the recovery of any amount owing by the Hirer to Classic Hire under this Contract;
 - (iv) any claims or demands made by Classic Hire by reason of any loss, injury or damage which may be suffered by any person from the provision of the Equipment for hire;

- (v) the use of the Equipment, whether or not arising from any negligence, failure or omission of the Hirer or any other persons; and
- (vi) loss, theft or damage to the Equipment howsoever caused, and whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer, but subject to clause 12.

8. PERSONAL PROPERTY SECURITY

- (a) Classic Hire may register and maintain a “security interest” on the PPS Register in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
- (b) The Hirer must do all things (including provide Classic Hire with all details and information) that are necessary or desirable to enable Classic Hire to register a “financing statement” or “financing change statement” under the PPSA with respect to any “security interest” which the Hire Contract creates, give rise to, or provides for.
- (c) Notwithstanding any other provision of the Hire Contract, the Hirer is not entitled to possession of the Equipment until any Security Interest (including a PMSI) is (to Classic Hire’s satisfaction) “perfected” by “registration” on the PPS Register. Until such time, Classic Hire may retain possession of any or all of the Equipment.
- (d) Classic Hire may apply amounts received in connection with the Hire Contract to satisfy obligations secured by a “security interest” contemplated or constituted by the Hire Contract in any way Classic Hire determines in its absolute discretion.
- (e) The following apply with respect to each and every Security Interest:
 - (i) PPSA ss 95, 121(4), 125, 129(2) and (3), 130, 132(3)(d), 132(4) and 135 are excluded to the full extent permitted by law;
 - (ii) the Hirer waives all rights under the PPSA to receive any notice (including the right to notice of a “verification statement” provided by PPSA s 157); and
 - (iii) to the full extent permitted by law, Classic Hire need not give to the Hirer any notice required under the PPSA.
- (f) To the extent permitted by the PPSA (including, without limitation, PPSA s275), Classic Hire and the Hirer agree that neither party will disclose any information of a kind mentioned in PPSA s 275(1), or respond to any request made under PPSA s 275(1), without the prior written consent of the other party.

9. SECURITY FOR PERFORMANCE

- (a) If the Hirer defaults in making any payment, or performing any Obligation, owed under the Hire Contract or if Classic Hire’s interest in the Equipment may be at risk, then (to the full extent permitted by law) the Hirer irrevocably authorises Classic Hire to (at any time and on its own behalf or as the Hirer’s agent and attorney);
 - (i) do all things reasonably necessary to re-take possession or control of any or all of the Equipment until the default or risk is remedied. Without limiting this authority, the authority includes the authority to enter upon any property at which Classic Hire reasonably believes any or all of the Equipment to be located; and/or
 - (ii) to terminate the Hire Contract and/or sue for recovery of any damages or charges or loss suffered by Classic Hire; and/or
 - (iii) to cancel any insurances effective in respect of the Equipment.
- (b) The Hirer irrevocably indemnifies Classic Hire against all loss or liability whatsoever incurred by Classic Hire in the reasonable exercise of its rights under this clause 9 (including, without limitation, any liability to any third party for trespass or for damage to property occasioned).
- (c) For the purposes of PPSA s 109(1)(c), the parties acknowledge and agree that the payment and performance of the Hirer’s Obligations under the Hire Contract are (without limitation) secured by this clause 9.

10. SUB-HIRE

- (a) The Hirer may only lease, hire, bail or transfer possession of the Equipment to a third party (“Sub-Hire”) if it does so in the ordinary course of business or if all of the following are satisfied:
 - (i) the Hirer obtains Classic Hire’s prior written consent (which may be withheld in Classic Hire’s absolute discretion and subject to any terms and conditions Classic Hire thinks fit);
 - (ii) every “security interest” arising under or in respect of the Sub-hire is enforceable, “perfected” by “registration” and is otherwise effective under the PPSA; and

- (iii) the Hirer provides, to Classic Hire's satisfaction, evidence of the preceding paragraph 10(ii) being fully satisfied (including, without limitation, a copy of any "verification statement" confirming the registration of any security interest referred to in the preceding paragraph 10(ii)).
- (b) The Hirer irrevocably indemnifies Classic Hire for any loss whatsoever or howsoever arising that Classic Hire suffers as a result of the Hirer breaching this clause 10.
- (c) To secure the due, punctual and complete payment of all amounts, and the performance of all obligations, owed by the Hirer to Classic Hire under the Hire Contract, the Hirer grants to Classic Hire a charge over all of the Hirer's right, interest, benefit and entitlement under the following:
 - (i) any current or future "chattel paper" respecting any of the Equipment (other than the Hire Contract); and
 - (ii) any current or future agreement or dealing by which the Hirer leases, hires, bails or otherwise transfers possession of any of the Equipment, or assigns its rights in respect thereof, to any third party (whether or not in accordance with this clause 10).

11. LOSS, DAMAGE OR BREAKDOWN OF EQUIPMENT

- (a) The Hirer will be responsible for any loss or damage to the Equipment irrespective of how the loss or damage occurred during the Hire Period, except where caused by fair wear and tear resulting from the ordinary use of the Equipment in compliance with the terms of this Hire Contract or where caused by the negligent or wilful act of Classic Hire.
- (b) If any Equipment is not returned to Classic Hire, then (in addition to any other right) the Hirer must pay Classic Hire the cost of replacing the Equipment.
- (c) If there is a breakdown or failure of the Equipment the Hirer must notify the Classic Hire immediately and follow any reasonable direction from Classic Hire.

12. LOSS, THEFT, DAMAGE WAIVER (LTD WAIVER)

- (a) Subject to all conditions in this clause 12, where the LTD Waiver has been paid by the Hirer, Classic Hire will waive the right to claim against the Hirer for theft or damage of the Equipment (including attached tools and accessories) if:
 - (i) the Hirer promptly reports the incident to the Police (where relevant) and provides Classic Hire with a written police report;
 - (ii) the Equipment was used by the Hirer at all times in accordance with the manufacturers specifications;
 - (iii) adequate and prudent precautions had been taken by the Hirer to safely secure and use the Equipment to avoid theft or damage and the Hirer has contemporaneous evidence to prove that it had taken such precautions; and
 - (iv) the damage or theft was not caused or contributed to by the Hirer's breach of this Hire Contract, negligence, use of the Equipment in violation of any laws, misuse of the Equipment or exposure of the Equipment to corrosive substances such as salt water or acid.
- (b) Where theft or damage to Equipment occurs and the LTD Waiver applies, the Hirer must pay the greater of:
 - (i) \$1,000.00 or the full new replacement cost of the Equipment (if the replacement cost is less than \$1,000.00); or
 - (ii) 10% of the full new replacement value (if the Equipment is lost, stolen or damaged beyond repair) or 10% of the repair costs (if the Equipment can be repaired).
- (c) The LTD waiver does not apply to damage to tyres, tubes, glass, mirrors or windscreens, damage whilst the Equipment is located, loaded, used, unloaded, transported on or over water, wharves, bridges or vessels of any kind or damage during transport, except where transported by Classic Hire.
- (d) The Hirer can decline to pay the LTD Waiver if the Hirer produces a Certificate of Currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment for the duration of the hire for an amount as agreed to by Classic Hire and is not less than the full replacement cost of the Equipment. The Hirer will still be responsible for any and all excess and any other costs associated with the Hirer's insurance. The Hirer is also responsible for any and all shortfalls to repairs and replacement costs under the Hirer's insurance along with any loss of income as a result of not being able to hire the Equipment.

13. INSURANCE

- (a) Classic Hire will maintain current insurance policies in respect of the Equipment to its full insurable value.

- (b) If the LTD Waiver has been paid by the Hirer or the Equipment is hired for personal use, then the Hirer is not required to obtain insurance. In all other cases, the Hirer during the Hire Period will effect and maintain at its expense;
 - (i) a policy of insurance providing indemnity for physical loss, including theft and/or damage to the Equipment for the full new replacement value of each item of Equipment, including whilst in transit; and
 - (ii) a public liability policy and workers compensation policy in the usual terms which provides indemnity with respect to the operation of the Equipment and injury or death of the operator to a limit of indemnity of at least \$20,000,000 per occurrence.
- (c) The Hirer must ensure that Classic Hire is listed as an interested party (as owner of the Equipment) on any insurance policy it takes out with respect to this Hire Contract.
- (d) The Hirer must provide all certificates of currency for such insurances on demand. Failure by the Hirer to provide any certificates of currency, in accordance with this clause, will result in a damage waiver of 10% being charged to the Hirer.

14. LIABILITY

The Hirer will assume all risks and liabilities for, and in respect of, the Equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the Hirer's possession, use, maintenance, repair, storage or transport of the Equipment, except where any liability is caused by Classic Hire's negligent or wilful act.

15. DISCLAIMER

To the full extent permitted by law Classic Hire disclaims all liability for and does not give any warranties to the Hirer as to the condition of the Equipment. Where any legislation implies a term, condition or warranty in the Hire Contract that may not be contracted out of, such term, condition or warranty will be included in the Hire Contract to the minimum extent possible.

16. TITLE TO EQUIPMENT

Classic Hire shall at all times remain the owner of the Equipment. The Hirer may not acquire any right, title or interest whatsoever in the Equipment whether by virtue of the Hire Contract, payment of any amount in respect of the Equipment, or anything else whatsoever. The Hirer may use the Equipment as bailee only.

17. EXPIRY OF TERM

- (a) The Term of hire shall expire on the later of the following:
 - (i) the date the Equipment is returned to Classic Hire's premises;
 - (ii) the date on which the Hire Contract is terminated in accordance with clause 18; or
 - (iii) the date agreed for collection by Classic Hire.
- (b) The Hirer agrees to return the Equipment to the address of Classic Hire as outlined in the Hire Contract, on or before the end of the Hire Period.
- (c) The Equipment must be returned to Classic Hire in the same condition as when it was hired on the Commencement Date and shall ensure the Equipment is returned to the Classic Hire clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the Classic Hire.
- (d) Where collection is agreed, Classic Hire will arrange to collect the Equipment within a reasonable period after a request to do so and will issue the Hirer with a collection number.
- (e) The Hirer agrees to maintain and accepts responsibility for the Equipment whilst the Equipment is awaiting collection.

18. TERMINATION

- (a) The Hire Contract will terminate immediately upon;
 - (i) Classic Hire notifying the Hirer of a breach of any term of the Hire Contract and the Hirer failing to remedy that breach within 7 days;
 - (ii) Classic Hire notifying the Hirer of default in accordance with clause 9(a)(ii); or
 - (iii) the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.

- (b) Classic Hire may terminate the Hire Contract for convenience at any time by giving 7 days' notice. The Hirer will have no claim for any Loss whatsoever against Classic Hire due to termination under this clause.
- (c) The Hirer must, on demand, reimburse Classic Hire for all costs, charges, expenses, fees, disbursements (including all legal costs on an indemnity basis) paid or incurred by Classic Hire as a result of or incidental to:
 - (i) any breach, default or repudiation of this Hire Contract by the Hirer; and
 - (ii) the exercise or attempted exercise of any right, power, privilege, authority or remedy of Classic Hire under or by virtue of this Hire Contract, including all amounts incurred in preparation and service of a notice under this Hire Contract and in repossessing the Equipment from the Hirer under the terms of this Hire Contract and in enforcing this Hire Contract generally.

19. CHARGE

The Hirer charges its interest in any property in the name of the Hirer with the due payment of any monies and interest owing to Classic Hire by the Hirer, and consent to Classic Hire registering an absolute caveat against the interest in any such property or properties to further secure the repayment of those monies and interest payable to Classic Hire pursuant to this Hire Contract.

20. GUARANTEE

In consideration of the provision of the Equipment for hire to the Hirer, the Guarantor (or where there is more than one Guarantor, each of the Guarantors):

- (a) unconditionally and irrevocably guarantees and continues to guarantee to Classic Hire that the Hirer will:
 - (i) pay all amounts to be paid under this Hire Contract; and
 - (ii) comply with all the other terms of this Contract on its part to be complied with; and
- (b) as separate undertakings:
 - (i) agrees to indemnify and keep indemnified Classic Hire against any Loss suffered or incurred by Classic Hire arising from or in connection with any breach of this Hire Contract; and
 - (ii) as principal debtor, agrees to pay to Classic Hire on demand an amount equal to any Loss referred to in the preceding paragraph (b)(i).

The guarantee and indemnity specified in this continues in force until the Hirer complies with all of its obligations under this Contract. The Guarantor agrees to pay to Classic Hire on demand Classic Hire's costs and expenses, including legal costs, relating to any action taken under this guarantee and indemnity.

21. GENERAL

- (a) If any provision of the Hire Contract including these terms and conditions becomes void or unenforceable for any reason, then that part will be severed and all remaining parts will continue in full force.
- (b) The laws of the State of Western Australia govern the Hire Contract and each party submits to the exclusive jurisdiction of the Court of that State.
- (c) Classic Hire will comply with the National Privacy Principles in all dealings with the Hirer's information and Classic Hire's privacy policy is available on its website.
- (d) The failure by Classic Hire to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Classic Hire's right to subsequently enforce that provision.
- (e) Classic Hire shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by Classic Hire of these terms and conditions. Classic Hire's liability shall be limited to damages not exceeding the Hire Fees.
- (f) The Hirer shall not be entitled to set off against or deduct from the Hire Fees any sums owed or claimed to be owed to the Hirer by Classic Hire nor to withhold payment of any invoice because any part is in dispute.
- (g) This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.
- (h) Unless otherwise expressly stated, all amounts payable under this Contract are exclusive of GST.