

1. Definitions

1.1 In these Terms and Conditions unless the context otherwise requires:

- (a) Business Day is a normal working day excluding Saturdays, Sundays and gazetted Public Holidays in the state in which the Equipment is delivered or collected from Microhire.
- (b) Clause means a clause of these Terms and Conditions.
- (c) Equipment means the Equipment and any Software supplied to Customer by Microhire from time to time.
- (d) Force Majeure means an act, omission or circumstance over which Microhire could not have reasonably exercised control.
- (e) Delivery Docket means the attached Delivery Docket.
- (f) Party means a Party to these Terms and Conditions and its successors, trustees and permitted assigns.
- (g) Penalty Interest Rate means the rate prescribed by Section 2 of the Penalty Interest Rates Act 1993 (Cth).
- (h) Rental Period means the period commencing on the date of delivery of Equipment or Commencement Date, whichever is the later; and concluding on the later of:
 - (i) 3:00 pm on Conclusion Date; or
 - (ii) if Conclusion Date is not a Business Day, 3.00 pm of the next Business Day after the Conclusion Date; or
 - (iii) if Equipment is returned damaged, 3.00 pm on the date that Equipment is repaired by Microhire or the replacement cost of Equipment is paid by Customer.
- (i) Sub-clause means a Sub-clause of these Terms and Conditions.
- (j) Terms and Conditions means these Terms and Conditions.
- (k) Microhire is defined as Microhire Pty Ltd and its associated companies and subsidiaries.

1.2 Items appearing in bold type in these Terms and Conditions shall be interpreted as defined terms.

2. Interpretation

2.1 In the Interpretation of these Terms and Conditions unless the context otherwise requires:

- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
- (b) Words denoting the singular number shall include the plural number and vice versa.
- (c) Words denoting any gender shall include all other genders.
- (d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.
- (e) Money references are references to Australian currency.
- (f) Headings used in this Terms and Conditions are for convenience and ease of reference only, and are not part of these Terms and Conditions and shall not be relevant or affect the meaning or Interpretation of these Terms and Conditions.
- (g) Every obligation, covenant, agreement, condition express or implied in these Terms and Conditions and entered into by more than one Party shall bind them jointly and each of them severally.
- (h) If any provision or part provision of these Terms and Conditions is held invalid, unenforceable or illegal for any reason, these Terms and Conditions shall remain otherwise in full force apart from such provision or part provision, which shall be deemed deleted.
- (i) These Terms and Conditions take precedence over any Delivery Docket, quotation or any other agreement, verbal or written.

3. Scope

3.1 Microhire shall provide Equipment and Software for duration of the Rental Period.

3.2 Provided that Customer has not breached any provision of these Terms and Conditions, Rental Period may be extended at the request of Customer at the sole discretion of Microhire.

3.3 In the event that the Equipment is not returned by the expiration of the Rental Period then at the sole option of Microhire a further fee shall become due and payable and such shall continue to accrue on the expiration of the renewed Rental Period until the Equipment is returned. In the event that Equipment is returned prior to the expiration of the Rental Period or any extended Rental Period then Microhire may give a rebate on the Hire Fees but is not obliged to do so. No claim shall be made or maintainable if Microhire determines not to give a rebate. Nothing in this Sub-clause shall oblige Microhire to so extend a Rental Period.

3.4 The Customer acknowledges that all delivery and collection times are approximate and late delivery or collection shall not entitle the Customer to terminate this agreement or claim any other form of release against Microhire.

4. Customer's Obligations

4.1 Customer shall:

- (a) pay Microhire all fees and charges payable including without limitation, Hire Fees, Service Fees, Delivery Costs, Collection Costs and Consumables.
- (b) collect and return Equipment from and to the Delivery Address in a method approved by Microhire. In particular, but without limitation, Customer shall not post Equipment.
- (c) make all appropriate enquiries about Equipment's fitness for the purposes for which it is hired or used by Customer and shall determine whether Equipment is fit for that purpose and is in a condition suitable for use.
- (d) use Equipment only for the purpose for which it is manufactured or designed and in accordance with the manufacturer's instructions.
- (e) keep Equipment insured and be responsible for any loss or damage to the Equipment, either by fire, theft, vandalism, weather conditions, flood, water or any eventuality whatsoever and shall indemnify Microhire and hold Microhire harmless for any loss or damage in fact suffered other than through fair wear and tear in the normal course of use.
- (f) clean the Equipment and return it to Microhire in a clean condition, properly maintained in accordance with the manufacturer's recommendations.

(g) not sell, charge, pledge or part with possession of Equipment;

(h) keep Equipment at the address specified unless written permission has been obtained from Microhire to relocate Equipment elsewhere;

(i) keep Equipment in a careful and proper manner and not interfere or tamper with or let anyone else do so;

(j) return Equipment in the same packaging as delivery was made in. Microhire reserves the right to charge for packaging materials that are not returned.

(k) permit Microhire its agents or servants to enter the premises where Equipment is located at all reasonable times in order to inspect Equipment or carry out repairs to Equipment.

5. Risk

5.1 Risk for the Equipment passes to the Customer when the Equipment leaves the premises of Microhire and ceases when the Equipment is delivered into the safe possession of Microhire at the premises.

5.2 Customer is responsible for the safekeeping of the Equipment and shall bear the risk of any loss, theft, damage or destruction of Equipment.

5.3 In the event that the Equipment requires repair as a result of Customer's negligence, misuse or abuse, Customer shall bear cost of any such repair including any freight charges.

5.4 Customer shall pay Microhire the new replacement cost as assessed by Microhire of the Equipment which is lost, stolen, destroyed or damaged beyond repair.

5.5 Customer shall pay Microhire a reasonable refurbishing fee in the event that ownership labels, event that ownership labels, or other notices affixed to Equipment are removed or defaced.

5.6 Any item of non-expendable material (including operations manuals) not returned to Microhire upon cessation of the Rental Period shall be charged to the account of the Customer at full replacement cost or \$50 which ever shall be the greater amount.

6. Maintenance

6.1 Microhire shall at its expense provide routine maintenance and recalibration for Equipment and shall use its best endeavours to expeditiously repair or replace Equipment which becomes defective during the Rental Period through no fault of the Customer.

6.2 In the event that the Equipment does not operate properly Customer shall immediately notify Microhire and request instructions before taking remedial action.

6.3 Microhire may at its option and for such length of time as it deems expedient replace Equipment with another of such type or model as shall for the time being be available and Equipment so substituted shall be subject to these Terms and Conditions.

(a) Microhire shall not be liable if the defect is a result of:

- (i) Improper use;
- (ii) operation of Equipment other than in accordance with the operating manual;
- (iii) modification of Equipment;
- (iv) use of Equipment in an environment other than that for which it was designed;
- (v) use of Equipment by a person other than Customer;
- (vi) Customer's failure to allow maintenance of Equipment;
- (vii) The serial number or labels being removed or replaced.

7. Limited Warranty and Exclusion of Liability

7.1 Microhire warrants that each item of Equipment hired is of merchantable quality and reasonably fit for the purpose for which it was designed. All other warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of these Terms and Conditions are excluded.

7.2 Where legislation implies in these Terms and Conditions any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in these Terms and Conditions. However, the liability of Microhire for any breach of such term shall be limited, at the option of Microhire, to any one or more of the following:

(a) if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(b) if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

7.3 Subject only to Clause 7.2, Microhire shall not be under any liability to Customer in respect of any loss or damage (including, without limitation, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to these Terms and Conditions or the failure or omission on the part of Microhire to comply with its obligations under these Terms and Conditions including, without limitation, negligence.

8. Title

8.1 Microhire retains all rights, including without limitation any intellectual property rights, and title in Equipment.

8.2 Customer acknowledges that its use of the Microsoft Software accompanying the Equipment rented is governed by the attached Microsoft End User Licence Agreement.

8.3 The use of any Software supplied by Microhire is subject to the Terms and Conditions of the relevant End User Licence Agreement which is incorporated into these Terms and Conditions.

9. Purchase of Equipment

9.1 In the event that the Customer seeks to purchase the Equipment and Microhire agrees to sell the Equipment the property therein shall not pass until and unless all Hire Fees and the purchase price have been received by Microhire and the payments shall be applied first in reduction of Hire Fees and second on account of the purchase price. Hire Fees shall continue to accrue until the full purchase price has been paid.

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10. Force Majeure

10.1 Microhire shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to Force Majeure.

11. Waiver

11.1 No right of Microhire shall be deemed to be waived except by notice in writing from Microhire.

11.2 Any failure by Microhire to enforce any clause of these Terms and Conditions, or any forbearance, delay or indulgence granted by a Party will not be construed as a waiver of Microhire's rights.

12. Notices

12.1 Notices under these Terms and Conditions may be delivered by hand, by mail, facsimile or e-mail to the address set out in the Delivery Docket.

12.2 Notices shall be deemed given, in the case of:

- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- (b) posting, three days after dispatch;
- (c) facsimile, upon completion of transmission; and
- (d) e-mail, immediately after dispatch.

13. Fees

13.1 Customer shall pay Microhire the Hire Fees on delivery, in advance or within 7 days

of invoice (unless specified otherwise in Delivery Docket) without withholding, deduction or offset of any amounts for any purpose.

13.2 Microhire may increase its Hire Fees at any time upon thirty (30) days' notice to Customer.

13.3 Except to the extent stated to the contrary in a Delivery Docket, Hire Fees are exclusive of taxes, duties, fees or other government levies or charges which may be imposed on or in respect of the Equipment. Such taxes, duties, fees or other government charges shall to the extent permissible by law be paid by Customer to Microhire.

13.4 Customer shall pay Microhire interest at the Penalty Interest Rate on all overdue amounts from the due date until payment is made.

13.5 If any payment owing to Microhire is not made within seven (7) days of the due date, Microhire may, without further notice to Customer, suspend further services or its remaining obligations to Customer under these Terms and Conditions.

14. Termination

14.1 Without limiting the generality of any other clause in these Terms and Conditions, Microhire may terminate these Terms and Conditions or any Delivery Docket immediately by notice in writing if:

- (a) any payment due from Customer to Microhire pursuant to these Terms and Conditions remains unpaid for a period of seven (7) days;
- (b) Customer breaches any provision of these Terms and Conditions and such breach is not remedied immediately upon receipt of notice by Microhire as defined by clause 12 herein;
- (c) Customer is otherwise no longer capable of complying with its obligations under these Terms and Conditions; or

(d) Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; Customer being a natural person, dies; or Customer ceases or threatens to cease conducting its business in the normal manner.

14.2 If these Terms and Conditions or any Delivery Docket is terminated then Microhire may in its sole discretion:

- (a) retain all moneys paid, which is agreed to be a genuine estimate of part of Microhire's loss and damage suffered;
- (b) charge a reasonable sum for Equipment supplied in respect of which no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under these Terms and Conditions; and
- (d) enter upon the premises of Customer, the consent to which is hereby granted by Customer, and repossess the Equipment. All such reasonable costs of repossession are the responsibility of Customer and shall be added to Hire Fees.
- (e) pursue any additional or alternative remedies provided by law.

14.3 The covenants, conditions and provisions of these Terms and Conditions which are capable of having effect after the expiration of these Terms and Conditions shall remain in full force and effect following the expiration of the Terms and Conditions.

15. Entire Agreement

15.1 These Terms and Conditions constitute the entire agreement between the parties for the subject matter referred to in these Terms and Conditions. Any prior arrangements, including without limitation, verbal arrangements, agreements, representations or undertakings are superseded.

15.2 No modification, variation or alteration of any provision of these Terms and Conditions shall be valid except in writing signed by each Party.

16. Governing Law

16.1 These Terms and Conditions will be governed by and construed according to the law of the State of Victoria.

16.2 The parties irrevocably submit to the exclusive jurisdiction of the Courts of Victoria and Australia and any Courts hearing appeals from such Courts.