

RJS Construction Services – Terms & Conditions

EQUIPMENT

These Standard Terms and Conditions together with the Offer to Hire Form, Payment Terms and Special Conditions, the Offer by The Owner to you (the “**Hirer**”) to hire the Equipment and if the Hirer accepts this Offer constitute the whole of the Contract with the Hirer.

1. DEFINITIONS AND EXPLANATIONS

In these Terms and Conditions these words and phrases have the following meanings:

“**Acceptance**” and “**Accepted**” means acceptance of the Offer to Hire Form by the Hirer.

“**Additional Equipment**” means further goods or equipment required by the Hirer for delivery to the Site.

“**Cancellation**” means the cancellation by the Hirer of this Contract, which Cancellation must be communicated to The Owner by email or facsimile and be to that effect.

“**Cancellation Fee**” means 0 percent (0%) of the Hire Fee of the Equipment not required where the Cancellation is received by the Owner more than three (3) working Days prior to the anticipated Delivery Date to the Site or 5 percent (5%) of the Hire Fee of the Equipment not required if within three (3) working Days of the anticipated Delivery Date of the Equipment to the Site.

“**COD**” means cash on delivery to Site.

“**Contract**” means the Contract between the Owner and the Hirer for the hiring of the Equipment the Terms of which are fully set out in these Standard Terms and Conditions and in the Offer to Hire Form and any special conditions.

“**Day**” means a calendar day commencing immediately on midnight and finishing immediately before the next midnight.

“**Delivery Address**” means, except where otherwise stated in the Special Conditions or in the Offer to Hire Form, the Site.

“**Deposit**” means any sum which is stated in the Offer to Hire Form as a deposit.

“**Dry Hire**” means the hiring of the Equipment to the Hirer without the provision of persons to operate the Equipment.

“**Duty**” means any duty payable under any State or Territory legislation in respect of the hiring of the Equipment to the Hirer under this Contract.

“**Equipment**” means collectively all the goods and equipment described in the Offer to Hire Form and separately each item of the goods and equipment designated in the Offer to Hire Form and includes all additional Equipment.

“**Essential Term**” means any term in these Standard Terms and Conditions which is expressly stated to be an Essential Term and also means any term which the parties expressly state in any Special Conditions to be an Essential Term. “Essential Term” also includes any term which, by its nature and importance, one or other of the parties would not enter into this Contract without that term being included.

“**Facilities**” means all electrical services, scaffolding, lighting, awnings and other requirements necessary in order to facilitate the proper and safe installation and use of the Equipment on the Site.

“**GST**” means Goods and Services Tax as defined in *A New Tax Act (Goods and Services) 1999* (Cth).

Hirer “Effective Control” means actual physical control and use of the Equipment at relevant times. Where the Equipment is provided to the Hirer on a Dry Hire basis, it will be deemed to be under the Effective Control of the Hirer. Where the Equipment is provided to the Hirer on a Wet Hire basis, it will be deemed to be under the Effective Control of The Owner.

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“**Hire Fee**” means the fee exclusive of GST which the Hirer has by this Contract agreed to pay to The Owner for the hire of the Equipment for the Period of Hire. Additional Equipment will be separately invoiced to the Hirer and will be in addition to the Hire Fee and will be added to the Invoice of the Hire Fee to the Hirer. The Hire Fee is set out in the Offer to Hire Form.

“**Hirer**” means the company or person described in the Offer to Hire Form as “the Hirer” and includes where applicable its lawful successors and assignees.

“**Manufacturer**” means in respect of each item of Equipment the identified Manufacturer of that item of Equipment.

“**Offer**” means this offer to hire the Equipment to the Hirer.

“**Owner**” means the company referred to as the owner in the Offer to Hire Form completed by the Hirer. If applicable, any reference to the owner is also a reference to its lawful successors and assignors.

“**Owner’s Premises**” means the premises where the Owner stores the Equipment.

“**Period of Hire**” means the period for which the Equipment is hired by the Hirer as specified in the Offer to Hire Form, being the period commencing on the delivery of the Equipment to the Site, being the Delivery Address as stated in the Offer to Hire Form and expiring on the Collection Date as stated in the Offer to Hire Form.

“**Services**” means the provision of labour by the Owner (its servants, agents or lawful contractors) including but not limited to labour for production planning, event management, Equipment delivery, set-up, operation, pack-down and collection.

“**Site**” means the designated place, venue, or location at which the Equipment is to be delivered to and at which place the Hirer is to take possession of the Equipment.

“**Special Conditions**” means the special conditions (if any as set out in the Offer to Hire Form).

“**Terms**” means these Standard Terms and Conditions which will always be sent with the Offer to Hire Form together with any Special Conditions set out and the Offer to Hire Form itself.

“**Venue**” means the place where the Equipment is to be used by the Hirer.

“**Wet Hire**” means the hiring of the Equipment and the provision of persons to operate the Equipment and provide the Services in respect thereto.

A reference to a Statute, Rule or Regulation is a reference to that Statute, Rule or Regulation as amended, re-enacted or modified from time to time.

The headings in these Standard Terms and Conditions are for convenience only and do not affect their construction.

A reference to any party includes their lawful successors and assigns.

2. BINDING CONTRACT

2.1. This Contract is entered into and will be binding on the Owner and the Hirer upon the Hirer’s Acceptance of the Offer to Hire Form. All Equipment is available as listed at the time the Offer to Hire Form as sent to the Hirer. The Owner will ensure that the Equipment specified in the Offer to Hire Form is available for the Hirer if the Offer to Hire Form is Accepted within 72 hours of the Offer to Hire Form being sent to the Hirer or in such shorter time as may be specified in the Offer to Hire Form.

2.2. Until the Hirer has Accepted this Offer, the Owner may at any time withdraw the Offer by email, facsimile or letter to the Hirer to that effect.

2.3. The Hirer will for all the purposes of this Contract be deemed to have Accepted the Offer to Hire Form on these Standard Terms and Conditions together with any Special Conditions and this Contract will thereby be created if the Hirer communicates its Acceptance in the manner provided in the Offer to Hire Form.

2.4. The Owner has no obligation to the Hirer to supply the Equipment named in the Offer to Hire Form if the Acceptance by the Hirer is received by the Owner outside the period of time set out in clause 2.1.

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- 2.5. If there is any Duty payable in respect of this Contract, it must be paid by the Hirer in addition to the Hire Fee.
- 2.6. The Offer to Hire Form can only be Accepted by the Hirer.
- 2.7. If an Acceptance is sent by any other person or company other than the Hirer, that person or company will be deemed to be the Agent of the Hirer and the Owner may rely upon this Acceptance by that person or agent as being an Acceptance by the Hirer.
- 2.8. The Owner may, at its absolute discretion, where the Acceptance is received from a person or company other than the Hirer, require written confirmation by the Hirer that such Acceptance is given for and on its behalf and with its full authority. If the Owner requires such confirmation, then the Acceptance will not be deemed to have been communicated and received by the Owner until such confirmation is received.

3. TERMS OF PAYMENT

- 3.1. The Hirer will pay the Hire Fee to the Owner on the Payment Date as stated in the Offer to Hire Form. The Owner must provide a Tax Invoice to the Hirer for the Hire Fee. If payment in advance or COD is required, it must be noted in the Offer to Hire Form. The Hirer must also pay the GST as stated in the Tax Invoice when paying the Hire Fee to the Owner. If payment is not made by the Payment Date as set out in the Offer to Hire Form, the Owner is not obliged to Deliver the Equipment and may withhold Delivery of the Equipment to the Site until such payment is received.
- 3.2. Without limiting the circumstances in which the Owner may require the Hire Fee payment to be paid in advance, the Owner may require advance payment of the Hire Fee where before any hiring takes place any of the Equipment to be hired has to be manufactured, adapted or any process has to be applied to existing items of the Equipment to match with the Hirer's specific requirements.
- 3.3. Where either in the Special Conditions or in the Offer to Hire Form the Owner has agreed to give a discount on the Hire Fee to the Hirer, then if the Hirer does not pay the total amount of the Tax Invoice (as discounted) with GST and Duty within the payment period in the Offer to Hire Form, then the discount is forfeited by the Hirer and the Owner has the right to issue a replacing Tax Invoice to the Hirer for the full Hire Fee plus GST and any Duty without any discount. This will apply not only to the Equipment but also to all Additional Equipment which the Hirer may require after the initial Offer to Hire Form has been Accepted with the intent that if such Additional Equipment is not paid for within the time stated in the Offer to Hire Form (for the Equipment), such non-payment in respect of the Additional Equipment will cause the Hirer to lose the right to the discount, not only in respect of the Additional Equipment, but also in respect of the Equipment the subject of the Hire Fee.

4. THE EQUIPMENT

- 4.1. The Equipment will at all times remain the property of the Owner. The Hirer has no legal or equitable interest in the Equipment or any part thereof. The Hirer's possession of the Equipment (upon delivery) will be as a bailee for the Period of Hire and thereafter at will.
- 4.2. Upon delivery, the Equipment must be inspected by the Hirer to determine whether the Equipment delivered is complete in accordance with the Contract and is in good order and working condition. Unless otherwise stated in the Special Conditions, the Hirer will on completion of the inspection be deemed to have satisfied itself that the Equipment as a whole is suitable, fit and merchantable and capable of meeting all the requirements of the Hirer.
- 4.3. Unless the Owner has been expressly retained, in writing, to advise on the suitability, fitness and merchantability of the Equipment for the Hirer's purpose, any warranting as to suitability, fitness or merchantability is hereby expressly excluded.
- 4.4. Any shortages or malfunctioning of the Equipment must be notified by the Hirer to the Owner, in writing, within 24 hours of delivery.

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- 4.5. Where the Hirer is in Effective Control of the Equipment, then the Hirer is a bailee of the Equipment. In addition to all duties imposed at law upon bailees, it is an essential term of the Contract that the Hirer will:
- (a) At all times exercise all reasonable care and diligence in the use of the Equipment in accordance with Manufacturer's specifications;
 - (b) Where the Hirer has responsibility to return the Equipment, it must return it in good order and working condition to the Owner at the Delivery Address on or prior to the expiration of the Period of Hire;
 - (c) Where the Owner is to collect the Equipment at the expiration of the Period of Hire, the Hirer must make it available for collection in good order and working condition at the Delivery Address;
 - (d) Not tamper or in any way interfere with, or repair or attempt to repair the Equipment;
 - (e) Be responsible for all accidental damage to the Equipment, save and except where such damage is caused by the Owner;
 - (f) Be responsible for all loss or damage to the Equipment occasioned by theft, malicious damage, or other unlawful act, save and except where such loss or damage occurs when the Equipment is under the effective control of the Owner;
 - (g) At no time during the Period of Hire part with possession of the Equipment or in any way deal with it in a manner inconsistent with the rights of the Owner as owner;
 - (h) Ensure that the Equipment is secure at all time and where being stored in unlocked premises, supply such security measure to ensure that the Equipment is secure at all times;
 - (i) Keep the Equipment safe at all times during the Period of Hire;
 - (j) Not remove or deface any label, Manufacturer's serial numbers or other marks identifying the Equipment and/or The Owner's ownership of the Equipment;
 - (k) Not permit any person to improperly use the equipment.
- 4.6. In the event that the Equipment or any part of it is lost, stolen or damaged during the Period of Hire in circumstances where the Hirer bears responsibility under these Terms, the Hirer will be liable to the Owner and will indemnify it for the cost and expenses of the replacement of such lost or stolen Equipment and/or for the replacement of Equipment which, in the sole determination of the Owner, is damaged beyond repair and/or for the costs and expenses of repairing or re-instating damaged equipment.
- 4.7. In the event that the Hirer fails or refuses for any reason whatsoever to return or make available for collection all the Equipment to the Owner at the expiration of the Period of Hire, then the Hirer will be in breach of an essential Term of this Contract and without prejudice to any other rights which the Owner may have, either pursuant to these Terms or at law, the Hirer will be liable to pay the Owner on a Day-Rate basis for the hiring for Equipment for such further period of time.
- 4.8. For the purposes of clause 4.7 above, such further period of time will commence at the expiration of the Period of Hire and conclude at the earliest to occur of, the date when the Equipment is returned to The Owner in good working order and condition or the date when the Owner receives from the Hirer full monetary compensation for the loss or damage to the Equipment. The loss or damage to the Equipment will be the replacement cost of the Equipment at that time or, where the Equipment cannot be replaced, the cost of new substitute Equipment that can substantially be used for the same purpose as the lost damaged or destroyed Equipment. In addition, the Hirer fully indemnifies the Owner for any other liability, loss or cost that the Owner might sustain as a consequence of the Owner being unable to meet any other contractual obligation to supply that Equipment (or any other item thereof) to any other person.

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5. SERVICES

5.1. Where the Owner provides Services for a Hirer at a Site, each of the following are Essential Terms of this Contract, which the Hirer must comply with. The Hirer must:

- (a) Ensure that the Owner is able to access the Site at all times specified by the Owner and at all other reasonable times so as to enable the Owner to provide the Services;
- (b) Ensure that the Equipment when installed remains in place at the Site for the Period of Hire and that the Site is not required for any other purpose which would require the Equipment to be dismantled and re-installed or which may put the whole or any part of the Equipment at risk of being lost damaged or destroyed;
- (c) Ensure that all access to the Site is given to the Owner and that such time as is required by the Owner is available at the conclusion of the Period of Hire to enable the Owner to dismantle and remove the Equipment from the Site;
- (d) Do all such things as are necessary to discharge the Hirer's obligations under all applicable Occupation Health and Safety legislation, regulations and codes of practice so as to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions;
- (e) Ensure that where the Equipment is being Installed on any structure or held in place by any structure that the structure is capable of holding the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the Equipment;
- (f) Ensure that the Site is safe for all of the Owner's employees and contractors to carry out the services required of the Owner under this Contract.

5.2. Where in the Details of Goods and Equipment to be Hired it states that the Owner will deliver the Equipment to the Site, then the Owner is responsible for the Equipment until it is delivered to the Hirer at the Site. Where in the Details of Goods and Equipment to be Hired it states that the Hirer will collect the Equipment from the Owner and the Hirer will deliver it to the Site, then the Hirer is responsible for the Equipment as and from the time the Hirer collects the Equipment from the Owner's Premises.

5.3. The Hirer acknowledges that the Owner may in providing the Services be dependent upon other contractors preparing the Site for the Equipment or its installation. The Owner will not be liable for any delay in installing the Equipment or for providing the Services where such delay is a consequence of any act or omission on the part of such external contractors.

5.4. Except where the Owner has expressly agreed to provide any Facilities, it is the exclusive responsibility of the Hirer to ensure that:

- (a) The Site is safe for the Installation and use of the Equipment;
- (b) All required Facilities are available and are in place, are safe and in good working order;
- (c) The Site is safe for the provision of the Services.

6. DEFAULT EVENTS

6.1. The Hirer will be in default if:

- (a) It breaches any of its obligations under this Contract and fails to remedy such breach within seven (7) days of being requested by the Owner to do so;
- (b) It breaches any essential Term of this Contract;
- (c) Where the Hirer being a corporation is insolvent, is wound-up or goes into Liquidation or has an Administrator appointed to it or has a Receiver appointed over any of its assets;
- (d) Where the Hirer is a natural person, he or she is or becomes insolvent or makes an assignment for the benefit of his or her creditors or commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth) or is declared bankrupt.

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6.2. On the happening of a Default Event the Owner may, without prejudice to any of its other rights either under these Terms or at law and without previous notice to the Hirer, enter any Site where the Owner believes the Equipment to be located, re-possess it and the Hirer hereby agrees not to make any claim or bring any action against the Owner as a result of the re-possession of the Equipment.

6.3. The Hirer agrees to indemnify the Owner and keep the Owner indemnified against any loss or liability expense or cost which might be incurred by the Owner in entering upon the Site and taking possession of the Equipment or any item thereof. Such indemnity covers any liability to any third party for trespass or for damage to the Site occasioned through the entry upon the Site, the re-possession of the Equipment or its removal from the Site.

7. WARRANTIES

7.1. Except where specifically agreed in the Special Conditions, the Owner gives no warranty express or implied in respect of the Equipment, its fitness for purpose or the condition thereof.

7.2. All warranties implied by the *Competition and Consumer Act 2010 (Cth)* and any other Statutes (if any) that can be expressly excluded are hereby expressly excluded.

7.3. Where permitted by statute, the Owner's liability for breach of any warranty is limited to:

- (a) The supply to the Hirer of substituted equivalent equipment; or
- (b) The payment of the costs of supplying to the Hirer substituted equivalent equipment; or
- (c) The repayment to the Hirer of the Hire Fee.

8. LIMITATION OF LIABILITY

8.1. The liability of the Owner is limited as follows:

- (a) The Owner is not liable to the Hirer for any loss or damage which the Hirer might sustain as a consequence of the Hirer ordering the wrong Equipment or insufficient quantities of the Equipment or where the Equipment is hired for a purpose which is outside of the Equipment's specifications.
- (b) The Owner is not liable for any damage or loss suffered by the Hirer as a consequence of any late Delivery of the Equipment to the Site if the Hirer has Accepted the Offer to Hire Form less than 72 hours prior to the required Delivery Time and the Site is in within 50 kilometres of the Owner's Premises. If the Site is a greater distance from the Owner's Premises, then the Owner will have no liability arising out of late Delivery if the Acceptance by the Hirer is received within 5 days of the anticipated Date of Delivery to the Site.
- (c) The Owner will have no liability to the Hirer if it is the responsibility of the Hirer to prepare the Site for the Delivery and Installation of the Equipment or where it is the responsibility of the Hirer to provide the Facilities and at the time of Delivery of the Equipment to the Site, the Site is not so prepared or the Facilities or any of them are not available or unsuitable.
- (d) The Owner has no liability to the Hirer for any damage or loss which the Hirer might sustain where the cause of that damage or loss is the negligence of the Hirer or any of its servants, agents or contractors.

8.2. Where it is the responsibility of the Hirer to ensure that the Site is safe and that the Facilities are safe, then the Hirer indemnifies the Owner against any liability to any third party who suffers injury, loss or damage where such injury, loss or damage is caused wholly or partly as a consequence of any negligent act or omission or other failure on the part of the Hirer to ensure that the Site is safe.

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9. CANCELLATION AND CANCELLATION FEE

- 9.1. The Hirer has the right to Cancel this Contract provided that it sends a Cancellation notification by email or facsimile to The Owner. Upon receipt of such Cancellation, the Owner has no further obligation to deliver the Equipment, the subject of the Cancellation, to the Site.
- 9.2. The Cancellation sent by the Hirer must clearly identify each and every item of the Equipment which the Hirer no longer requires.
- 9.3. The Owner will be entitled to invoice the Hirer for the Equipment the subject of the Cancellation. The Cancellation Fee payable will depend on the notice period as set out in the definition of Cancellation Fee in Clause 1. The Hirer agrees and acknowledges that it must pay the Cancellation Fee in full as invoiced by the Owner.

10. DEPOSIT

- 10.1. The Owner may, as part of its Offer to Hire Form, require the Hirer as a pre-condition of Acceptance, to pay to the Owner a Deposit in respect of the Equipment to be Hired. The amount of the Deposit shall be as stated in the Offer to Hire Form. Unless The Owner expressly by email or facsimile waives the receipt of the Deposit as a pre-condition of Acceptance, no Acceptance by the Hirer will be effective unless and until the Deposit is received.
- 10.2. Any such Deposit shall when paid be applied against the Hire Fee, or if the Hirer cancels the Contract or any Equipment, The Owner may, at its discretion, apply such Deposit as a credit against any such Cancellation Fee.

11. NO SALE AND ACKNOWLEDGEMENT OF OWNERSHIP

- 11.1. This is a hiring agreement only and does not constitute or give rise to any sale of the Equipment to the Hirer, any hire purchase agreement or arrangement with the Hirer or any leasing agreement that contains an option to purchase the Equipment. The relationship between the Owner and the Hirer is limited to a relationship of owner and bailee in respect of the equipment.
- 11.2. The Hirer acknowledges that the Owner is the sole exclusive owner of the Equipment and the Additional Equipment.
- 11.3. Nothing in this Contract confers any option on the Hirer to purchase the Equipment or any part thereof.

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