

Equipment Hire Terms and Conditions

1. Hire of Equipment

- (a) These terms (Terms) set out the terms on which TFB Hire Pty Ltd ACN 621 305 312 (TFB, we or us) will supply certain equipment or services to you (you or the Hirer).
- (b) By:
- (i) requesting TFB deliver Equipment to you;
 - (ii) accepting receipt of our Equipment;
 - (iii) confirming or accepting a Quote;
 - (iv) making any payment in connection with our supply of Equipment; or
 - (v) acting in a manner that TFB reasonably considers constitutes acceptance of these Terms, you agree to be bound by these Terms.

2. Quotes

- (a) The parties agree that any Quote which is provided by TFB to the Hirer for the provision of Equipment or Support Services is provided by way of an estimate only.
- (b) Unless otherwise stated on a Quote, the Quote will remain valid for 30 days from the date it is provided.

3. Delivery

- (a) TFB reserves the right to substitute equivalent equipment for the Equipment where stock is not available, provided that any substitution will not materially adversely impact the Hirer.
- (b) Unless otherwise agreed, TFB will use its best endeavours to deliver the Equipment to the Site by the Delivery Date but will not be liable to the Hirer for late delivery or non-delivery to the extent that such late delivery or non-delivery is not caused by a negligent act or omission of TFB.
- (c) The Hirer acknowledges and agrees that it is liable for, and hereby releases and discharges TFB in respect of, any loss or damage suffered by the Hirer in connection with the Hirer installing, moving, relocating or adjusting the Equipment on Site, except to the extent such loss or damage is caused by a negligent act or omission of TFB or its personnel.

4. Return of Equipment

- (a) The Hirer must return the Equipment at the end of the Hire Term.
- (b) The Hirer must return the Equipment in the condition it was in at the commencement of the Hire Term, fair wear and tear excepted.
- (c) At the end of the Hire Term, the Hirer must pay TFB for any loss or damage to the Equipment, provided such loss or damage was not caused by fair wear and tear or any negligent act or omission of TFB.
- (d) Where the Equipment is returned prior to expiry of an agreed Hire Term, the Hirer is not entitled to a refund of Fees, unless otherwise agreed in writing between the parties.
- (e) Where the Equipment is not returned at the end of the Hire Term, without prejudice to any other rights TFB may have and subject always to clause 12.4, the Hire Term will automatically be extended by such further rolling period as notified to the Hirer by TFB prior to expiry of the Hire Term, or if not such notice is provided, by rolling 4 week periods.

5. Support Services

- (a) TFB agrees to provide the Support Services for the Hire Term.
- (b) The Hirer must, at its own cost, make any arrangements necessary to enable TFB to deliver the Support Services, including:
- (i) notifying TFB of any unusual Site conditions, including high foot traffic or pedestrian access; and
 - (ii) complying with any reasonable direction of TFB regarding delivery and access to the Site.
- (c) The Hirer acknowledges and agrees that an additional Service Fee will apply where:
- (i) the location to install or remove the Equipment is more than 30 metres from the Site access point;
 - (ii) delivery of the Support Services is:
 - (A) hindered by adverse Site conditions, including rough terrain, heavy vegetation, boggy ground; or
 - (B) delayed for reasons beyond TFB's reasonable control, including but not limited to the act, omission or default of the Hirer or any of its personnel;
 - (iii) Support Services are required outside of TFB's normal operating hours of 630am – 3pm Monday – Friday;
 - (iv) TFB incurs delays as a result of the Hirer's site induction and safety protocols;
 - (v) additional plant or equipment is required to deliver the Support Services; and
 - (vi) additional wind bracing is required.
- (d) Unless otherwise agreed, Service Fees are charged at \$125 per person per hour.
- (e) Where TFB is responsible for removing the Equipment from the Site, it will not be liable for any damage caused by the removal or to make good the Site, unless such damage has been caused by its negligence.

6. Title and risk

6.1 Owner retains title to Equipment

TFB retains full legal and beneficial title to the Equipment, notwithstanding:

- (a) the delivery of the Equipment to the Hirer;
- (b) the possession and use of the Equipment by the Hirer; and
- (c) any temporary attachment of the Equipment to any land or buildings to facilitate use of the Equipment.

6.2 Risk in the Equipment

The Hirer accepts all risk and liability for damage to the Equipment from the date that the Equipment is delivered to the Hirer.

7. Hirer obligations

During the Hire Term, the Hirer must:

- (a) pay TFB the Fees and any other amounts owing under this document;
- (b) assume responsibility for, and pay any and all costs associated with the storage and use of the Equipment during the Hire Term;
- (c) keep and maintain the Equipment in a safe and secure location, where it will not be subjected to any effects beyond ordinary use;
- (d) ensure the Equipment is only used or handled by properly trained or qualified people that have been authorised by the Hirer;
- (e) use the Equipment in accordance with the TFB's instructions or manuals as supplied with the Equipment (if any);
- (f) comply with all lawful and reasonable directions of TFB regarding the installation and use of the Equipment (if any);
- (g) with the exception of fair wear and tear, ensure the Equipment is in good condition at the end of the Hire Term;
- (h) assume all risks and liabilities for and in respect of the Equipment and for injuries to or death of persons, and damage to property arising from the delivery, possession, use, and storage of the Equipment;
- (i) inspect the Equipment regularly, including on delivery to Site, and cease using the Equipment if it becomes damaged or defective and immediately notify TFB if the Equipment is lost, damaged or defective and provide full details of the loss, damage or defect, and any other information reasonably requested by TFB;
- (j) not attempt to repair or alter the Equipment in any way; and
- (k) not deface, remove or conceal any TFB logo or information identifying TFB on the Equipment.

8. Payment of the Fees

- (a) The Hirer must pay the Fees and any other amounts owing under this document.
- (b) The Fees are exclusive of GST and any other applicable taxes and duties or similar charges.
- (c) The Fees must be paid in Australian dollars into the account nominated by TFB in writing from time to time.

8.2 Hire Fee

- (a) Subject to clause 8.2(b), the Hire Fee is payable in advance on delivery of the Equipment in accordance with clause 3.
- (b) Where the Hire Term is extended in accordance with clause 12.3, the Hire Fee will be payable on the date TFB approves the extension.

8.3 Delay Fee

Unless otherwise agreed between the parties and without limiting any of TFB's other rights under this document, where there is a delay to the return of the Equipment to TFB at the end of the Hire Term or as otherwise required under these terms, TFB may charge a delay fee of \$35 for every 15 minutes, up to a maximum of \$1,120, except where the delay is caused by the negligent act of TFB or its personnel. The Delay Fee is in addition to the Hire Fee which is payable for the Equipment for the duration of the delay.

9. Security

9.1 Definitions

Any terms capitalised in this clause 9 and not already defined in clause 14 have the same meaning given to those terms in the PPSA.

9.2 Security Interest

- (a) The Hirer acknowledges and agrees that:
 - (i) TFB has a Security Interest in the Equipment; and
 - (ii) TFB's Security Interest in the Equipment Attaches to the Equipment when the Hirer obtains possession of the Equipment; and
- (b) The Hirer agrees that TFB may register its Security Interest and the Hirer agrees to provide all information and execute all documents necessary to enable TFB to register and perfect its Security Interest in the Equipment under the PPSA.

10. Exclusion of liability

10.1 Limitation of liability

In no case will TFB's aggregate liability under an Equipment Order exceed the value of the Fees paid by the Hirer to TFB in respect of the relevant Equipment Order.

10.2 Exclusion of liability for loss

Neither party will be liable for any special, indirect or consequential loss or damage as a result of any breach of this document including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Equipment and the costs of any substitute Equipment which the Hirer acquires.

11. Indemnities

11.1 Equipment used at Hirer's risk

- The Hirer agrees to use and possess the Equipment at the Hirer's risk. The Hirer agrees that TFB will have no responsibility or liability for any loss or damage to any property of the Hirer. To the full extent permitted by law the Hirer releases and discharges TFB and its agents and employees from:
- (a) all claims and demands on TFB; and

- (b) any loss or damage whatsoever and whenever caused to the Hirer or its agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise,

arising directly or indirectly from or incidental to a defect in the Equipment or any accident to or involving the Equipment or its use or storage, maintenance and repair (whether occasioned by the negligence of TFB or otherwise) or which may otherwise be suffered or sustained in, upon or near the Equipment.

12. Term and Termination of Equipment Orders

12.1 Term

TFB agrees to hire the Equipment to the Hirer for the Hire Term. Subject to clause 12.4, in the event the Equipment is not returned on expiry of the Hire Term, the Hire Term will roll over in accordance with clause 4(e).

12.2 Cancellation and amendments to Support Services

The Hirer may cancel or amend the terms of an Equipment Order no later than 11am on the Business Day prior to the Delivery Date.

12.3 Extension of Hire Term

The Hirer may request to extend the Hire Term by providing written notice to TFB no later than 2 Business Days before the end of the Hire Term. It is at the discretion of TFB to extend the hire beyond the agreed Hire Term.

12.4 TFB right to terminate

TFB may terminate an Equipment Order during a Hire Term on 5 Business Days' written notice to the Hirer. Upon issue of a termination notice in accordance with this clause, clause 4(e) shall cease to apply.

12.5 Right to terminate

Either party may terminate an Equipment Order immediately during a Hire Term if the other party:

- (a) suffers an Insolvency Event; or
- (b) commits a material breach of this document which is incapable of remedy or remains unremedied 10 days after being notified in writing of the breach.

12.6 Obligations on termination

- (a) If an Equipment Order is terminated:
 - (i) the Hirer must immediately at its cost (unless otherwise specified) return the Equipment to TFB; and
 - (ii) the parties' rights and obligations which accrued prior to termination will remain unaffected.
- (b) Termination or expiry of this document shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this document which existed at or before the date of termination.

12.7 Powers of TFB

Upon termination for any reason, where the Hirer does not return the Equipment in accordance with clause 12.6(a)(i), TFB:

- (a) may do all acts and exercise or enforce all rights, powers and remedies of an absolute owner relating to the Equipment;
- (b) may enter the Hirer's premises or such other location where the Equipment is stored, to recover the Equipment without committing a trespass;
- (c) will not be liable for and the Hirer will indemnify and keep TFB indemnified from and against any costs, claims, damages or losses suffered by TFB in recovering the Equipment.

13. General

13.1 On-supply

Except with the prior consent of TFB, the Hirer must ensure that the Equipment remains in the possession and under the control of the Hirer at all times, and must not on-supply the Equipment for use by a third party for commercial gain.

13.2 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter and any agreements collateral to those agreements. This document embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this document.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

13.3 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

13.4 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

13.5 Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

14. Defined terms

In this document, unless expressed or implied to the contrary:

Business Day means a day that is not a Saturday, Sunday or Public Holiday in Queensland.

Corporations Act means the Corporations Act 2001 (Cth).

Delay Fee has the meaning set out in clause 8.3.

Delivery Date means the delivery date and time set out in an Equipment Order or otherwise agreed between the parties at the time of hire.

Equipment means the equipment as described in an Equipment Order or otherwise supplied by TFB to the Hirer, including all other accessories including operating manuals and instructions provided with the equipment.

Equipment Order means the equipment order containing information with respect to the Equipment the Hirer intends to hire from TFB, which may be in the form of a telephone order, email or written order.

Fees means the:

- (a) Hire Fee;
- (b) Delay Fee (if applicable);
- (c) Service Fee (if applicable); and
- (d) any other fees set out in these Terms.

GST means GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hire Fee means the fee set out in the Equipment Order or otherwise notified by TFB at the time of hire.

Hire Term means the period set out in the Equipment Order or otherwise, the period commencing on the Delivery Date and ending on the date the Equipment is returned to TFB in accordance with clause 4(a).

Insolvency Event means any of the following events concerning a party:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller is appointed to, or over, any of the property or undertaking of the party;
- (b) if the party is unable to pay its debts when they become due and payable;
- (c) if the party ceases to carry on business; or
- (d) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Quote means a quote issued by TFB to the Hirer containing information with respect to the Equipment the Hirer intends to hire.

Security Interest has the meaning given to it in the PPSA.

Service Fee has the meaning set out in clause 5(c).

Site means the site specified in an Equipment Order or otherwise notified by the Hirer at the time of hire.

Support Services means the support services set out in the Equipment Order or otherwise agreed between the parties from time to time.

Taxable Supply has the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).