

TERMS AND CONDITIONS OF HIRE

Before hiring equipment from us, please read these Terms and Conditions of Hire carefully.
They contain important information about your legal rights, responsibilities and remedies.

1 DEFINITIONS

ACL means the Australian Consumer Law (as contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).

Agreement means all documents relevant to the provision of the Equipment by Caterhire to the Hirer, including any quotation, invoice, order confirmation, these Hire Conditions, the Hire Schedule, the Sub-hire Schedule (if applicable) and any special conditions specific to the type of Equipment being hired.

Caterhire means Caterhire Pty Ltd (ACN 144 578 674) as trustee for the Caterhire Unit Trust (ABN 23 507 639 726).

Commencement Date means the date the Hirer takes possession of the Equipment, as specified in the Hire Schedule.

Damage Waiver has the meaning given in clause 6.

Damage Waiver Fee means the fee for a Damage Waiver calculated as a percentage of the current replacement cost of the Equipment as reasonably determined by Caterhire, as specified in the quotation and/or invoice provided to the Hirer by Caterhire.

End Date means the date the due date and time for return of the Equipment to Caterhire, as specified in the Hire Schedule.

Equipment means the plant and equipment owned by Caterhire, including any tools, parts, accessories and supporting documentation for such plant and equipment, as specified in the quotation and/or invoice provided to the Hirer by Caterhire.

GST means the goods and services tax as provided for by the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated legislation including without limitation delegated legislation.

Hire Conditions means these Terms and Conditions of Hire.

Hire Fee means the fees and charges payable by the Hirer to Caterhire for the hire of the Equipment, as specified in the quotation and/or invoice provided to the Hirer by Caterhire.

Hire Period means the period commencing on the earlier of the Commencement Date and the date the Equipment is delivered to the Hirer, and ending on the later of the End Date and the date the Equipment is back in the possession of Caterhire.

Hire Schedule means the schedule issued by Caterhire recording the particulars of a hire including the Hirer, Equipment, Hire Period, Fees and any other applicable information relating to the hire.

Hirer means the person, organisation, partnership, trustee, company or other entity hiring the Equipment from Caterhire as identified in the Hire Schedule.

Loss includes, but is not limited to, costs (including party to party legal costs and the Hirer's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Minor Damage means minor damage in the reasonable opinion of Caterhire which occurs from use of the Equipment by the Hirer in accordance with the Hire Conditions including minor dents, paint chips and surface scratches.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

PPSR means the Personal Property Securities Register established under the PPSA.

Site means any location at which the Equipment is delivered, stored, installed, operated or located during the Hire Period.

2 HIRER'S ACKNOWLEDGEMENTS

2.1 The Hirer acknowledges the following key terms and conditions in relation to the hire of the Equipment:

- 2.1.1 Clause 3.2 (Hirer's obligations);
- 2.1.2 Clause 5 (Fees and payment);
- 2.1.3 Clause 7 (Use, operation and maintenance);
- 2.1.4 Clause 8 (Hirer's warranties);
- 2.1.5 Clause 10 (Termination); and
- 2.1.6 Clause 12 (Liability and indemnity).

2.2 The Hirer acknowledges and agrees that they have read and understood this Agreement and has had the opportunity to obtain legal advice before entering into it.

2.3 The Hirer accepts and is bound by this Agreement by any one or more of the following:

- 2.3.1 accepting or otherwise proceeding with a quotation, Hire Schedule, invoice or order confirmation issued by Caterhire;
- 2.3.2 accepting the Agreement electronically, including by way of click-through acceptance;
- 2.3.3 requesting Caterhire to provide, mobilise or deliver the Equipment after receiving the Agreement;
- 2.3.4 taking delivery of, taking possession of or using the Equipment; or
- 2.3.5 otherwise instructing Caterhire to proceed with the hire of the Equipment after receiving the Agreement.

3 HIRE OF EQUIPMENT

3.1 Caterhire obligations

Caterhire agrees to:

- 3.1.1 allow the Hirer to use and possess the Equipment for the Hire Period; and
- 3.1.2 provide the Equipment to the Hirer in clean condition and in good working order.

3.2 Hirer obligations

The Hirer agrees:

- 3.2.1 to use and possess the Equipment for the Hire Period in accordance with and solely for the use outlined in the Agreement;
- 3.2.2 to, on or before the Commencement Date, inspect the Equipment and satisfy itself that the Equipment:
 - (a) is in clean condition and good working order; and
 - (b) meets the Hirer's requirements;
- 3.2.3 operate the Equipment in accordance with directions provided by Caterhire or the manufacturer (where given);
- 3.2.4 not to use the Equipment for any use that is prohibited by Caterhire or by any law;
- 3.2.5 not to permit or allow any person other than its employees to use the Equipment for any purpose without the prior written consent of Caterhire;
- 3.2.6 not to, in any way, alter, affix or attach anything to, modify, tamper with, damage or repair the Equipment without Caterhire's prior written consent;
- 3.2.7 to keep the Equipment secure for the duration of the Hire Period and ensure that it is protected from theft, vandalism, adverse weather conditions, unauthorised access and damage by third parties;
- 3.2.8 that the Hirer is responsible for the acts and omissions of its employees, contractors, subcontractors, freight providers, electricians, site managers and any other

person who uses, handles, transports, installs, stores or otherwise has access to the Equipment during the Hire Period;

3.2.9 that the Hire Period may only be extended with the written consent of Caterhire; and

3.2.10 to return the Equipment to Caterhire in clean condition and in good working order at its own cost (or arrange for collection by Caterhire) on or before the End Date in accordance with clause 15 of these Hire Conditions.

3.3 Caterhire may in its absolute discretion and at any time refuse to hire Equipment to the Hirer if it has reasonable cause to do so.

4 DELIVERY

4.1 Delivery of Equipment to the delivery address nominated by the Hirer, or to any person reasonably appearing to be authorised by the Hirer at that address, constitutes delivery to the Hirer.

4.2 Caterhire may deliver Equipment to the Site prior to the Commencement Date for operational, logistical or event related reasons. Where Equipment is delivered prior to the Commencement Date, the Equipment will be at the Hirer's risk and responsibility from the time of delivery and will remain at the Hirer's risk and responsibility until returned to Caterhire or collected by Caterhire.

4.3 Where requested by the Hirer, Caterhire may make Equipment delivery and collection arrangements to and from the location and for the delivery and collection fee specified in the quotation and/or invoice.

4.4 Where requested by the Hirer, Caterhire may make Equipment installation and removal arrangements for the installation and removal fee specified in the quotation and/or invoice.

4.5 Caterhire will use best endeavours to deliver the Equipment by the agreed time but will not be liable to the Hirer for any Loss associated with a late delivery.

4.6 The Hirer must ensure that Caterhire and its personnel have safe, adequate and unobstructed access to the Site for the purposes of delivery, installation, removal and collection of the Equipment.

4.7 Caterhire may charge the Hirer for any additional costs, labour, waiting time, re-delivery, re-collection, futile attendance or other expenses incurred by Caterhire arising from:

4.7.1 inadequate, unsafe or restricted access to the Site;

4.7.2 the Hirer's failure to ensure that the Site is ready to receive the Equipment;

4.7.3 the Hirer's failure to make the Equipment available for collection at the agreed time; or

4.7.4 any delay caused by the Hirer or any third party at the Site.

5 FEES AND PAYMENT

5.1 The Hirer agrees to pay to Caterhire the Hire Fee, and, if applicable, the usage instruction fee, the Damage Waiver Fee, the delivery and collection fee and the installation and removal fee (together, the **Fees**) as specified in the quotation and/or invoice provided to the Hirer by Caterhire.

5.2 The Hirer agrees to pay any applicable GST, stamp duties, fines, penalties, levies or other charges arising out of this Agreement.

5.3 The Fees must be paid by the Hirer to Caterhire in the manner and in accordance with the invoice issued by Caterhire or as otherwise notified to the Hirer.

5.4 Equipment not returned to Caterhire on time by the Hirer will be subject to an overholding fee payable to Caterhire within 48 hours of the day of return of the Equipment to Caterhire.

5.5 Caterhire may charge the Hirer a cancellation fee where Equipment has been reserved by booking and the Hirer cancels the booking without reasonable notice to Caterhire or fails to take delivery of the Equipment.

5.6 Caterhire may charge the Hirer a surcharge if the Hirer elects to make payment by credit card.

5.7 Caterhire may revise the Fees with reasonable notice to the Hirer.

DAMAGE WAIVER

6.1 Where the Hirer pays to Caterhire the Damage Waiver Fee, Caterhire will provide a Damage Waiver under which Caterhire will waive the cost of repair or replacement of the Equipment only in respect of Minor Damage of the Equipment incurred during the Hire Period.

6.2 The Hirer acknowledges that the Damage Waiver is not insurance and is not available on all Equipment.

6.3 The Damage Waiver will not continue to operate after the expiration of the Agreement unless an extension by Caterhire is granted in writing and any additional fees or costs as notified to the Hirer are paid.

6.4 The Damage Waiver does not apply and will not limit the Hirer's liability in the case of loss or damage which relates to or arises from:

6.4.1 extreme weather events, including wind, rain, flooding or storm conditions affecting the Equipment;

6.4.2 the failure to adequately secure, anchor, store, protect or shelter the Equipment;

6.4.3 power surges, incorrect electrical connection, incorrect voltage supply, faulty site power or electrical works performed by any person other than Caterhire;

6.4.4 damage caused by cranes, forklifts, vehicles or other plant operated by the Hirer or any third party;

6.4.5 the Hirer's breach of any statutory laws or regulations in connection with the use of the Equipment by the Hirer;

6.4.6 the Hirer's misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Equipment;

6.4.7 theft or loss of Equipment or tools and/or accessories supplied with the Equipment;

6.4.8 the Hirer's non-adherence to normal maintenance requirements that could reasonably be expected of the Hirer;

6.4.9 the Hirer's disregard for instructions given to the Hirer by Caterhire in respect of the proper use of the Equipment or in contradiction of the manufacturer's instructions if supplied with the Equipment;

6.4.10 loading or off-loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of Equipment on any wharf or bridge or over any body of water;

6.4.11 a third party's use, loading/unloading or movement of the Equipment or its parts and accessories;

6.4.12 the actions of electricians or other service contractors engaged by the Hirer; and

6.4.13 glass breakage or impact dents in respect of the Equipment or its parts/accessories.

7 USE, OPERATION AND MAINTENANCE

7.1 The Hirer acknowledges that the use of the Equipment carries with it dangers and risks of injury.

7.2 The Hirer agrees that the Equipment will not be used by anyone other than the Hirer without the prior written consent of Caterhire.

7.3 The Hirer is responsible for ensuring that the Site is suitable for the Equipment and that adequate measures are in place to protect the Equipment from foreseeable site conditions, weather events, vehicle movements and interference by third parties.

7.4 The Hirer must ensure that all electrical connections to the Equipment are carried out by suitably qualified persons and in accordance with all applicable standards and manufacturer requirements.

7.5 If the Hirer wishes to sub-hire the Equipment to a third party, then it must comply with the obligations set out in clause 23 of these Hire Conditions.

7.6 Notwithstanding clauses 7.3 and 23, where Caterhire authorises the Hirer to sub-hire the Equipment to a third party, the Hirer remains directly liable for all obligations under this Agreement as if it were in possession of the Equipment at all times and will be responsible for ensuring that the third party complies with all the obligations set out herein.

- 7.7 The Hirer will ensure that all persons operating or installing the Equipment are instructed in its safe and proper use and where required hold valid proof of training or that they are fully licenced to use it.
- 7.8 The Hirer agrees to operate, maintain, store and transport the Equipment in a proper manner and where required strictly in accordance with any reasonable instructions provided by Caterhire and with due care and diligence.
- 7.9 The Hirer agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations in regard to its operation, maintenance and storage.
- 7.10 The Hirer agrees to conduct a thorough hazard and risk assessment before using the Equipment and comply with all occupational health and safety laws relating to the use of the Equipment and associated operations.
- 7.11 The Hirer must at its own expense clean and maintain the Equipment to the same clean condition as it receives the Equipment from Caterhire. In the event that the Equipment is returned to the Hirer in an unclean state, the Hirer must pay to Caterhire the Cleaning Charge set out in the quotation and/or invoice provided to the Hirer by Caterhire within 48 hours of notification of it being payable.
- 7.12 The Hirer agrees that the reasonable costs of fuel or other consumables provided by Caterhire and used by the Hirer are to be paid to Caterhire on or before the End Date or as otherwise specified in an invoice.

8 HIRER'S WARRANTIES

8.1 The Hirer warrants that:

- 8.1.1 the Equipment will be used in accordance with the conditions of use specific to the Equipment as advised to the Hirer;
- 8.1.2 the particulars provided by the Hirer to Caterhire in connection with the hire, including those set out in the Hire Schedule, are correct in every respect and are not misleading in any way including, without limitation, by omission;
- 8.1.3 where applicable, the Hirer (and/or the applicable staff) holds a valid current driver's licence, operating licence or permit valid for the type of Equipment hired;
- 8.1.4 where required, the Hirer's vehicle is suitable for towing the Equipment;
- 8.1.5 the Hirer will satisfy itself at the Commencement Date that the Equipment complies with its description, is in good working order and is suitable for the Hirer's intended purpose;
- 8.1.6 the Hirer will notify Caterhire immediately if the Equipment is not received by the Hirer in clean condition and in good working order;
- 8.1.7 the Hirer will not in any way part with possession of the Equipment, nor assign this Agreement, nor remove the Equipment from the location without the prior written consent of Caterhire; and
- 8.1.8 the Hirer has authority to grant Caterhire access to any Site at which the Equipment is located and will procure any permissions required for Caterhire to recover the Equipment.

9 LOSS, DAMAGE OR BREAKDOWN OF EQUIPMENT

- 9.1 The Hirer is responsible for checking the Equipment upon receiving it and ensuring that it is not damaged or malfunctioning.
- 9.2 Subject only to the Damage Waiver, the Hirer will be responsible for any loss or damage to the Equipment during the Hire Period, irrespective of how the loss or damage occurred.
- 9.3 If there is a breakdown or failure of the Equipment the Hirer must stop using the Equipment and notify Caterhire immediately for the appropriate action.
- 9.4 The Hirer agrees that it will not attempt to repair the Equipment unless it first has the consent of Caterhire to do so and engages suitably qualified technicians to carry out the repairs. The costs of such repairs will be at the expense of the Hirer unless otherwise agreed in writing by Caterhire.

10 TERMINATION

- 10.1 The Agreement may be terminated by Caterhire:
- 10.1.1 if the Hirer (or a third party in possession of the Equipment pursuant to clause 7.3):
- (a) has a winding-up petition presented against it, is being wound up;
 - (b) becomes insolvent or bankrupt; or
 - (c) ceases to carry on business, or
- 10.1.2 if the Hirer breaches a significant provision of this Agreement and fails to remedy the breach (if remediable) within a reasonable period of time, having regard to the breach.
- 10.2 On termination of this Agreement:
- 10.2.1 the Hirer must immediately stop all use of the Equipment;
- 10.2.2 the Hirer must, at its own cost, promptly return the Equipment to Caterhire, or Caterhire is otherwise authorised to enter any premises where the Equipment is located in order to repossess the Equipment;
- 10.2.3 Caterhire is entitled to recover from the Hirer:
- (a) all monies owing by the Hirer under the Agreement; and
 - (b) the cost of any repair performed by Caterhire to return the Equipment in clean and good working order (fair wear and tear excepted); and
- 10.2.4 the Damage Waiver is immediately invalidated.
- 10.3 Where repossession occurs, all reasonable costs incurred by Caterhire in repossessing the Equipment will be paid by the Hirer.
- 10.4 Where the Equipment has been sub-hired in accordance with clause 7.6, the Hirer will secure permission from the third party for Caterhire to enter the premises where the Equipment is located in order for Caterhire to repossess the Equipment in accordance with this clause 10, and indemnifies Caterhire in relation to all claims arising from the repossession of the Equipment from the third party.

11 INSURANCE

During the Hire Period, the Hirer must maintain insurance sufficient to cover the full replacement value of the Equipment and provide evidence of such insurance upon Caterhire's request.

12 LIABILITY AND INDEMNITY

- 12.1 The Hirer will be liable for all Loss howsoever arising from or incurred in connection with the Hirer's hire and use of the Equipment or its breach of the Agreement, except to the extent such Loss is caused by Caterhire.
- 12.2 Without limitation, the indemnity in this clause extends to Loss arising from the acts or omissions of the Hirer's employees, contractors, subcontractors, freight providers, electricians, site personnel and any person permitted access to the Equipment by the Hirer.
- 12.3 The Hirer indemnifies and keeps indemnified Caterhire, its servants and agents in respect of any claim by any person (including, but not limited to, the Hirer) against Caterhire or, for which the Hirer is liable, in connection with any Loss arising from or in connection with the Equipment.
- 12.4 This clause 12 survives termination, completion and expiration of the Agreement.
- 13 EXCLUSION OF WARRANTIES AND LIABILITIES**
- 13.1 Where the ACL applies, the Hirer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 13.2 Where the ACL applies, and the Equipment is not of a kind ordinarily acquired for personal domestic or household use or consumption, Caterhire's liability in respect of any guarantee is limited to the replacement or repair of the Equipment, or the cost of having the Equipment repaired or replaced at the discretion of Caterhire.
- 13.3 To the extent that the ACL (or any other law which cannot be excluded) does not apply, Caterhire makes no representations and gives no warranties other than those set out in this Agreement and will not be liable to the Hirer for any damages,

	costs or liabilities whatsoever (including consequential loss) in relation to the hiring of the Equipment by the Hirer.	22.2	Caterhire may register its security interest as a purchase money security interest (PMSI) on the PPSR and the Hirer agrees to execute all documents and take such reasonable steps as may be required by Caterhire for the purposes of:
14	TITLE AND RISK		
14.1	The Hirer acknowledges that at all times Caterhire retains title to the Equipment and that the Hirer has rights to use the Equipment as a mere bailee only.	22.2.1	ensuring that Caterhire's security interest is enforceable, perfected and otherwise effective under the PPSA;
14.2	The Hirer agrees that during the Hire Period the Hirer uses the Equipment at its own risk and the risk of any loss or damage to or deterioration of the Equipment, however caused, will be the responsibility of the Hirer.	22.2.2	enabling Caterhire to gain first priority (or any other priority agreed to by Caterhire in writing) for its security interest; and
14.3	Except as expressly authorised pursuant to clauses 7.3 and 7.6, the Hirer is not entitled to offer, sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise deal with the Equipment in any manner other than as described by these Hire Conditions.	22.2.3	enabling Caterhire to exercise rights in connection with the security interest.
15	COMPLETION OF THE HIRE PERIOD	22.3	The rights of Caterhire under this document are in addition to and not in substitution for Caterhire's rights under other law (including PPSA) and Caterhire may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
15.1	The Hire Period is completed when the Equipment has been returned to Caterhire in the same condition as when it was hired and in good working order on or by the End Date, or on the date as otherwise agreed between Caterhire and the Hirer.	22.4	For the purposes of section 115 of the PPSA, the following sections of the PPSA do not apply to these Hire Conditions: sections 95, 96, 121(4), 125, 130, 129(2), 129(3), 132(3)(d), 132(4), 135, 142, 143.
15.2	Where pick-up is agreed, Caterhire will arrange to pick-up the Equipment within a reasonable period after a request to do so and will issue the Hirer with a pick-up number on request.	22.5	The following provisions of the PPSA confer rights on Caterhire: s123 (seizing collateral); s126 (apparent possession); s128 (secured party may dispose of collateral); s129 (disposal by purchase); and 134(1) (retention of collateral). The Hirer agrees that in addition to those rights, Caterhire shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that Caterhire may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
15.3	The Equipment remains at the Hirer's risk until physically collected by Caterhire or returned into Caterhire's possession, notwithstanding that a collection date has been arranged.	22.6	The Hirer waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest granted under this Agreement.
16	SEVERANCE	22.7	Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person or any other person.
	If any provision of these Hire Conditions is or becomes unenforceable, void or voidable, the remaining provisions will continue to have full force and effect.	22.8	To assure performance of its obligations under this Agreement, the Hirer hereby gives Caterhire an irrevocable power of attorney to do anything that Caterhire considers the Hirer should do under this Agreement.
17	FORCE MAJEURE	23	SECURITY INTERESTS AND SUB-HIRE
17.1	If circumstances beyond Caterhire's control prevent or hinder its provision of the Equipment, Caterhire is free from any obligation to provide the Equipment while those circumstances continue. Caterhire may elect to terminate the Agreement or keep the Agreement on foot until such circumstances have ceased.	23.1	The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPSA) in the Equipment other than with the express written consent of Caterhire.
17.2	Circumstances beyond Caterhire's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, pandemics, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.	23.2	The Hirer must not lease, hire, bail or give possession (sub-hire) of the Equipment to anyone else unless Caterhire (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Caterhire and must be expressed to be subject to the rights of Caterhire under this Agreement.
18	ASSIGNMENT	23.3	The Hirer may not vary a sub-hire without the prior written consent of Caterhire (in its absolute discretion).
	Neither party shall assign its rights or obligations under these Hire Conditions, without the prior written consent of the other party.	23.4	The Hirer must complete the Sub-hire Schedule in relation to each sub-hire and ensure that Caterhire is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
19	AMENDMENT	23.5	The Hirer must take all steps including registration under PPSA as may be required to:
19.1	These Hire Conditions may be amended by Caterhire from time to time by notice of the amendment to the Hirer.	23.5.1	ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;
19.2	Notice of the amendment is deemed given when Caterhire sends the amendment to the Hirer at any postal or email address given by the Hirer, or when Caterhire publishes the amended terms on its website.	23.5.2	enabling the Hirer to gain (subject always to the rights of Caterhire) first priority (or any other priority agreed to by Caterhire in writing) for the security interest; and
20	GOVERNING LAW	23.5.3	enabling Caterhire and Hirer to exercise their respective rights in connection with the security interest.
	These Hire Conditions are governed by and construed in accordance with the laws of Victoria, Australia.	23.6	Caterhire may recover from the Hirer the cost of doing anything under this clause and clause 22, including registration fees.
21	DISPUTES		
	Where a dispute arising from these Hire Conditions, the hire of the Equipment (except in regard to payments due to Caterhire) occurs, the parties agree, within a period of 10 days, to use best endeavours to negotiate with a view to settling the dispute with the assistance of the Hire and Rental Industry Association (HRIA) before litigation is pursued.		
22	SECURITY INTEREST		
22.1	This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the PPSA.		