

# KERR'S NORTHSIDE HIRE T/A KERR'S HIRE

## TERMS & CONDITIONS

### 1. DEFINITIONS

1.1 The Owner is Kerr's Northside Hire Pty. Ltd. T/A Kerr's Hire.

1.2 The equipment means all the Equipment, accessories and parts supplied to the Customer.

1.3 The Customer is the person, firm or corporation hiring the Equipment from the Owner as specified on the Hire Order. The person signing on behalf of the Customer warrants that such person is the Customer or is duly and properly authorised to act as agent for the Customer. The Owner may request proof of identity of the Customer.

### 2. HIRING PERIOD AND RATES

2.1 The Hiring Period shall be as specified Hire Order or as otherwise varied by sub-paragraph

2.2 Herein, which ever shall be the greater.

2.3 The Hiring Period commences from the time the Equipment leaves the Owner's premises and ends upon its return.

2.4 Extensions of the Hiring Period shall otherwise be by consent of the Owner.

2.5 Hire rates shall be based on an 8 hour period of use (1 day) additional hours e.g. 16 hours will be charged 1 1/2 times 8 hour rate, 24 hours twice 8 hour rate.

### 3. INSURANCE

3.1 All Equipment & accessories supplied are not insured against theft, loss and damage under any circumstances. It is the customer's total responsibility for the security of and any damage to all equipment whilst on hire and the customer acknowledges that the customer is not relying on any representation made by the Owner in this regard.

3.2 Equipment hired under this hire agreement not returned by the date and time due in over may be regarded as stolen unless we are notified otherwise.

### 4. ADDITIONAL CHARGES

The Owner may require the Customer to pay Additional Charges in respect of and calculated as follows:

4.1 return of Equipment outside the Hiring Period is at the discretion of the Owner;

4.2 freight and other charges for the delivery, installation, collection or pick up of the Equipment by the Owner if;

4.2.1 Equipment is deemed damaged by the customer from misuse or abuse.

4.2.2 Equipment has to be recovered after theft.

4.3 any cost by the Owner in the cleaning of the Equipment after hire;

4.4 the cost of rectifying any damage to the Equipment caused by the Customers use thereof or which occurs during the hire period;

4.5 all road tolls, fines and penalties paid or payable by the Owner caused by the Customers use of the Equipment or which occurs during the hire period;

4.6 repossession costs incurred by the Owner pursuant to clause 14 or otherwise;

4.7 the cost of consumable items supplied by the Owner and used by the Customer;

4.8 all operating costs of the Equipment during the period of hire incurred by the Owner;

4.9 the cost of replacement of any Equipment lost or stolen during the Hiring period;

4.10 any set up, folding, stacking, bagging and/or service calls carried out at the Customer's request.

### 5. SECURITY DEPOSIT

The Owner may require a Security Deposit from the Customer prior to and as a condition of the commencement of the Hiring Period and the Owner shall be permitted to deduct from the Security Deposit any Additional Charges or other moneys due but unpaid in respect of use and hire of the Equipment.

## **6. USE OF EQUIPMENT**

6.1 The Customer acknowledges that it has examined the Equipment and the accessories prior to taking possession hereunder and that it is in clean and good working order and condition and agrees to inspect the Equipment periodically (at least every day of hire) and to maintain the Equipment in a safe, secure and proper working condition.

6.2 The Customer acknowledges that it has received full and adequate instructions from the Owner as to the operation and safe use of the Equipment accessories and consumables used in relation thereto.

6.3 The Customer shall use the Equipment only:

6.3.1 in a skillful, safe & proper manner and only for the proper purpose for which it was manufactured and intended and for the purpose for which it was hired from the owner;

6.3.2 in accordance with all relevant provisions of law and statute.

6.4 The Customer shall:

6.4.1 be responsible for the safe keeping and protection from loss or theft of the Equipment;

6.4.2 pay all operating expenses in connection with the use of the Equipment;

6.4.3 forthwith notify and return the Equipment to the Owner if the Equipment breaks down or fails during the Hire Period. The Customer shall not repair or attempt to repair the Equipment;

6.4.4 return the Equipment properly cleaned and in good repair at the expiration of the Hiring Period to the address designated on the front hereof;

6.4.5 not operate the Equipment in a careless or negligent manner, at excessive speed or whilst intoxicated or under the influence of any banned substances, alcohol or under medication which may in any way affect the customer's capacity to operate the equipment, accessories or consumables used in relation thereto;

6.4.6 not permit the use of the Equipment by anyone other than the Customer or the Customer's employee and shall ensure that any operator possesses any license as may be required by statute or otherwise;

6.4.7 not operate the Equipment on any water craft or over water without the consent of the Owner;

6.5 the Customer agrees that the Owner's identifying marks, including logos, trademarks, service marks and trade name may appear on the Equipment while in use by the Customer.

## **7. DELIVERY/PICK-UP**

The Customer grants the Owner or its agent or sub-contractor the right to enter any premises for the sole purpose of delivery, pick up and or removal of the Equipment.

## **8. DAMAGE**

Any damage suffered by the Owner arising from this agreement or any breach thereof shall include but not be limited to any damage (whether direct or consequential):

8.1 resulting from the misuse of the Equipment by the Customer or anyone authorized pursuant to these terms and conditions of hire to utilise same;

8.2 arising from claims against the Owner in respect of the use of the Equipment by the Customer;

8.3 resulting from any delay or inconvenience caused by the break-down, failure or defects in the Equipment caused by the Customer's use;

8.4 necessary repair and replacement of tyres;

8.5 such damage shall not include reasonable wear and tear of the Equipment.

## **9. LIABILITY**

9.1 The Owner shall not be liable to the Customer in respect of;

9.1.1 any expenditure, damages and/or loss to the Customer due to break-down or failure of Equipment resulting from fair wear and tear, negligence or default on part of the Owner or any other reason whatsoever;

9.1.2 delay in delivery of the Equipment caused by or in any way incidental to any strike, lock out, trade dispute, fire, tempest, break-down, riot, theft, crime disturbances, war, force, majeure, legislation, the inability of the Owner to procure necessary parts or labour due to any of the foregoing causes, or any other occurrences preventing or retarding the performance of the hire of the Equipment and no responsibility or liability shall be attached to the Owner for any delay, default, loss or damage due to any of the above causes or any other cause beyond the control of the Owner;

9.1.3 any personal injury or property damage caused by ordinary wear and tear of the Equipment, unavoidable accident or improper or careless use of the Equipment by the Customer;

9.1.4 any damage resulting from the hire and subsequent use of Equipment by the Customer that is not covered by the Owner's insurance policy.

9.2 The Customer shall maintain liability, property and casualty insurance in amounts necessary to fully protect the Owner and its Equipment against claims or damage of whatever nature or type.

9.3 The customer waives any and all claims against the owner for loss or damage to property transported in the equipment or loss or damage to property on which equipment is transported.

9.4 The Customer responsible for loading and unloading any goods, the Customer agree to assume the risk of and indemnify the Owner from any property damage or personal injury, including damage or personal injury, including damage or injuries attributable to the negligence of the Owner, including its employees.

## **10. INDEMNITY**

The Customer assumes all risk inherent in the operation and use of the Equipment by it or its agent. The Customer agrees to assume the entire responsibility for the defence of, and to pay, indemnify, and indemnify and release the Owner from any and all claims for damage to property or bodily injury (including death) or for loss of time or inconvenience resulting from the use, operation, or possession of the Equipment, whether or not it be claimed or found that such damage or injury resulted in whole or in part from the Owner's negligence, from the defective condition of the Equipment, or from any cause.

## **11. NEGATION OF WARRANTY**

11.1 The Owner does not warrant that the Equipment hired by the Customer is of merchantable quality or fitness for the purpose required by the Customer, either express or implied, other than as provided by statute.

11.2 The Owner does not warrant that the Equipment is free from defect.

11.3 The Owner does not warrant anything which extends beyond the description on the face hereof.

## **12. PPSA**

12.1 This Agreement constitutes a Security Agreement and the Customer gives to the Owner a Security Interest in all Equipment, all other equipment previously supplied by the Owner to the Customer and all equipment that will be supplied to the Customer in the future by, or after-acquired by the Customer from, the Owner to secure its obligations under this Agreement to the Owner.

12.2 The Customer agrees to pay all reasonable expenses including any costs, commissions and legal expenses on an indemnity basis whatsoever arising from the collection of overdue monies or registration, maintenance, enforcement or discharge of a Security Interest and such other costs and expenses the Owner may incur. Amounts due under this clause may be collected as a liquidated debt due and owing to the Owner.

12.3 The Customer acknowledges that a PMSI is granted in priority to all other creditors by the Customer in favour of the Owner in respect of the equipment subject of the Security Interest as security for the Customer's obligations to the Owner under this Agreement.

12.4 The Customer agrees that funds received by the Owner in respect to Equipment supplied to the Customer shall be applied first to any unsecured portion of the debt owed by the Customer to the Owner under this Agreement, second to any secured portion of that debt, third to any secured non-PMSI liability and then against any PMSI secured liability.

12.5 The Customer hereby gives such permission as is necessary under the PPSA for the Owner to take a Security Interest over any Equipment supplied by the Owner pursuant to this Agreement or Equipment identified in the Schedule.

12.6 The Customer authorizes the Owner to make any and all checks to satisfy themselves that the information provided by all persons named in the Agreement is accurate. The customer further authorizes the Owner to periodically check the Customer's credit position. The Customer further authorizes the disclosure of information by a secured party to the Owner under section 275(7)(c) of the PPSA in response to any request for information pursuant to section 275(1) of the PPSA.

12.7 The Customer agrees to do all such things as are necessary, including to sign all such documents and or provide any further information that is reasonably necessary to enable the Owner to acquire a perfected security interest and, if applicable, a PMSI, in all Equipment supplied by the Owner to the Customer, including:

12.7.1 register a Financing Statement or Financing Charge Statement in relation to a security interest on the PPSR;

12.7.2 register any other document required to be registered by the PPSA;

12.7.3 correct a defect in a statement registered under the PPSA.

12.8 The Customer agrees to contract out of, waive or exclude such sections of the PPSA as the Owner may require, to the extent and subject to those extensions being capable of exclusion by law. The Customer expressly agrees to:

12.8.1 contract out of the enforcement provisions of the PPSA referred to at s115(1)(a) to (r);

12.8.2 waive its right to receive a copy of any Financing Statement or any Financing Charge Statement registered by the Owner and/or any verification statement under s157 and/or notice in relation to a registration event under s 175 of the PPSA in respect of the Security Interest created by these terms and conditions;

12.8.3 not, without the prior written consent of the Owner, change its name or initiate any change to any documentation registered under the PPSA under this agreement;

12.8.4 until all monies owing to the Owner are paid in full, not sell or grant any other Security Interest in the Collateral without the prior written consent of the Owner;

12.9 The Owner undertakes to maintain the accuracy of the registered Security Interest and to remove the registration when the account with the Customer closes, provided that all monies owing to the Owner under the Hire Agreement are paid,

12.10 The Owner is irrevocably authorised to enter any premises where the Equipment is kept, and to use the name of the Customer and act on its behalf, if necessary, to recover possession of the Equipment in accordance with the PPSA without liability for trespass or any resulting damage.

12.11 If any of the provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of the inconsistency

## **13. THEFT/CONVERSION**

13.1 The Customer shall be liable for the replacement value of the Equipment if stolen during the Hiring Period.

13.2 The Customer shall not sell or offer for sale, assign mortgage, pledge, underlet, lend or otherwise deal with the Equipment or with any interest therein;

13.3 Failure, refusal or neglect to return the Equipment after the Hiring Period has expired, or the presenting of false, factious or misleading identification to the Owner may be construed as evidence of an intention to fraudulently convert the Equipment.

#### **14. EQUIPMENT SALE & REPAIR**

##### **14.1 Equipment Sale (Title goods);**

14.1.1 Title goods will remain the property of the Owner until all moneys are paid in full by the customer.

14.1.2 The Owner shall be permitted to repossess the title goods if the Customer becomes or may become insolvent, bankrupt, the subject of creditor agreements or otherwise insolvent or upon any other breach by the Customer of this agreement.

14.1.3 The Customer shall not sell or offer for sale, assign mortgage, pledge, underlet, lend or otherwise deal with the Equipment until all moneys are paid in full by the customer.

14.1.4 All warranties are set by the manufacture of the Title goods and not by the owner.

##### **14.2 Equipment Repair by the Owner for the Customer;**

14.2.1 All Title goods, spare parts & inventory will remain the property of the Owner until all moneys are paid in full by the customer.

14.2.2 The Owner does not warrant any parts or inventory fitted to the customer's equipment that has been damaged or is unusable from misuse &/or abuse.

#### **15. TERMINATION AND REPOSSESSION**

15.1 The Owner may terminate this agreement and repossess the Equipment if any hiring or Additional Charges are not met by the due date, where the Owner's rights in the

Equipment may be prejudiced, if the Customer becomes or may become insolvent, bankrupt, the subject of creditor agreements or otherwise insolvent or upon any other breach by the Customer of this agreement.

15.2 The Owner shall be permitted to enter into in or upon any premises where the

Equipment may be held to repossess the Equipment as herein provided for and the

Customer indemnifies the Owner in relation to any costs, claims, or damages arising out of such entry.

#### **16. PRIVACY ACT AUTHORITY**

For the purpose of assessing the credit worthiness of the Customer from time to time and the collection of payments, the Customer hereby irrevocably authorises the Owner, its servants and agents to make such enquiries as they deem necessary including, but not limited to, making enquiries with and obtaining reports (as may be allowed by law) from any persons nominated by the Customer as trade referees, the Customer's creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies and the Customer agrees and consents to those nominated persons providing to the Owner such information as is requested by them and permitted to be given by law for the aforesaid purposes. The Customer also consents to the Owner disclosing the contents of any credit report or personal information to a credit information file in relation to the Customer.

#### **17. VARIATION AND TERMS AND CONDITIONS**

The terms and conditions herein can and shall only be varied by the Owner's consent and shall in no way release the Customer from any other obligation or requirement set out herein.

Variation shall include assignment of this contract.

#### **18. ACCEPTANCE OF TERMS AND CONDITIONS**

The Customer acknowledges that it has read and accepted these terms and conditions notwithstanding any inconsistencies, which may be introduced by terms and conditions contained in the Customer's order unless the terms and conditions herein are so varied