

1. DEFINITIONS

- OWNER** Onecall Equipment Hire Pty Ltd (ONECALL), its employees, subcontractors or agents and any associated companies.
- HIRER** the person or persons, partnership, trust, firm or corporation referred to in the HAC, its servants or agents and any associated companies.
- HAC** the Hire Agreement Contract, which specifies the Rate of Hire, Duration of Hire, Site location details, etc.
- Hire Charge** the consideration for the hire of the Equipment as detailed in the HAC.
- Hire Period** the period specified in the HAC and any extension thereto.
- Site Location** the place referred to in the HAC or such other place the parties may agree upon.
- Premises** the OWNER'S yard and/or any other location specified by the OWNER.
- Dry Hire** the OWNER supplies equipment only.
- Replacement Cost** the supplier's or the manufacturer's recommended retail price for an article to replace any lost, damaged, destroyed or stolen equipment.
- Equipment** items, which the HIRER hires from the OWNER and which are listed on the HAC as well as any tools, accessories, attachments, parts, manuals, instructions, and any substitute and replacement equipment.
- Rental Ready** the equipment is in safe working condition, is clean and undamaged consistent with the condition with which it was dispatched at the commencement of the hire period.
- Goods** all wares, merchandise, articles of every kind and description, and includes packages, crates and contents thereof, of whatsoever kind.
- Operator** a worker, one employed or skilled in operating the Equipment
- PPSR** the Personal Properties Security Register
- PPSA** the Personal Properties Security Act

- 1) ACCEPTANCE**
 - a) Usage of the Equipment constitutes acceptance of these TERMS AND CONDITIONS OF HIRE, or
 - b) Acceptance of the HAC by the HIRER is deemed to occur on receipt by the OWNER from the HIRER of either verbal or written confirmation.
- 2) HIRE PERIOD**
 - a) COMMENCEMENT**
The hire period commences from:
 - i) The time and date specified in the HAC, or
 - ii) The time the Equipment is delivered to the HIRER (if delivery has been arranged by the OWNER) whichever is the later.
 - b) RETURN**
The hire period concludes at:
 - i) The time and date specified in the HAC,
 - ii) The time the Equipment is picked up by the HIRER (if pickup has been arranged by the OWNER), or
 - iii) The time the Equipment is returned to the OWNER's Premises, whichever is the later.
 - c) TERMINATION**
 - i) The HIRER may terminate the HAC by notice in writing to the OWNER together with payment to the OWNER of 80% of the Hire Charge
 - ii) The OWNER will not provide any refund for any fees or charges in the HAC if the Equipment is not used during the Hire Period or if the HAC is terminated
 - iii) Upon termination of the HAC, the HIRER at the HIRER's expense must:
 - (1) Return the Equipment to the OWNER's premises or agreed location
 - (2) Return the Equipment in Rental Ready condition
 - iv) The OWNER reserves the right to cancel any HAC at any time without the necessity to give reasons to the HIRER. The HIRER will be responsible for the hire, at the agreed rate, up to such time as the OWNER advises the HIRER of the exercise of this clause
 - v) If the HIRER owes monies to the OWNER beyond the Due Date, the OWNER may, at their sole discretion, immediately suspend work and/or remove the Hired Equipment from the site location
 - vi) If the HIRER refuses to provide possession of the Equipment to the OWNER, the OWNER is entitled to the normal hire rate as specified in the HAC until such time as the OWNER takes possession of the Equipment
 - vii) The OWNER will not be liable for any loss whatsoever incurred by the HIRER arising from the exercise by the OWNER of its rights under clause 13 and of these Terms and Conditions of Hire

- viii) Termination of the Hire Period shall not affect any of the conditions that are expressed or implied to operate or have effect in these Terms and Conditions of Hire.

3) TERMS OF PAYMENT

- a) Payment terms are C.O.D unless the HIRER has an approved Customer Account with the OWNER.
- b) Payments using a Customer Account must comply with the Customer Account Terms and Conditions
- c) The HIRER must pay the OWNER the Hire Charges, GST, Stamp Duty, Damage Waiver, Delivery, Collection costs, fines, insurance excesses, and any other fee, charge, cost, or expense whether specified or not in the HAC or the Terms and Conditions of Hire.

4) EQUIPMENT CONDITION

- a) **Before the Hire**
 - i) Prior to the Equipment leaving the OWNER's premises the OWNER shall conduct a pre-delivery inspection of the Equipment and provide the HIRER with a copy of the report.
- b) **After the Hire**
 - i) At the conclusion of the Hire Period, the OWNER shall conduct an off-hire inspection to identify the condition of the Equipment
 - ii) The HIRER is liable to the OWNER for all costs, loss, expenses, and damages incurred by the OWNER for the repair to, reinstatement, or replacement of the Equipment or any part, thereof to a Rental Ready condition (normal wear and tear excepted)
 - iii) The HIRER shall remain liable for the full Replacement Cost in respect of any Equipment lost, damaged beyond repair, or destroyed.

5) HIRER'S OBLIGATIONS/RESPONSIBILITY

- a) **BEFORE USE**
 - i) The OWNER agrees to supply the HIRER with all necessary manual and instruction (both written and oral) for use of the Equipment, upon request of the HIRER
 - ii) The HIRER acknowledges that they have not relied on any representations made by or on behalf of the OWNER in respect of the hired Equipment, its performance or its suitability for its intended application
 - iii) The HIRER agrees that the Equipment must NOT BE used or operated by any unlicensed operators
 - iv) The HIRER must only supply an Operator who is competent and familiar with the Equipment
 - v) The OWNER agrees to supply Equipment fully fuelled. Any fuel used by the HIRER will be charged a per litre fuel fee.
- b) **DURING HIRE PERIOD**
 - i) The HIRER is responsible for any Equipment left unattended at any time during the hire period
 - ii) The HIRER agrees to maintain the Equipment during the Hire Period in accordance with the information provided by the OWNER, written, verbal, or displayed on the Equipment
 - iii) The HIRER will keep the Equipment in good and sustainable repair and condition and not damaging the paintwork on the Equipment (normal wear and tear excepted)
 - iv) The HIRER must always store the Equipment in a safe secure location
 - v) The HIRER ensures the Equipment is used by the Operators in a proper, safe, and skilful manner within the capacity of which it is designed

- vi) The HIRER is responsible for any licenses or permits needed to use the Equipment
- vii) It is the HIRER's responsibility to ensure Operators of the Equipment wear appropriate safety clothing, use safety equipment, and follow appropriate safety measures.

c) BREAKDOWNS

- i) If the Equipment breaks down, becomes damaged, or is not running correctly, the HIRER must:
 - (1) STOP using the Equipment
 - (2) Place an Out of Service tag to the operational controls and take necessary safety precautions to prevent injuries or damage to any property as a result of the condition of the Equipment
 - (3) Inform the OWNER as soon as possible
- ii) The HIRER must not use the Equipment nor remove the Out of Service tag until the OWNER or authorized third-party (by the OWNER) grants permission to remove the tag
- iii) While the Equipment is tagged as unfit for operation, any damage or loss caused by unauthorised removal of the tag shall be the HIRER's responsibility
- iv) If any Equipment breaks down or is damaged due to the HIRER's negligence or misuse, the HIRER will be liable for all associated costs [see clause 8]
- v) The HIRER must not interfere with any parts, fittings, and/or appliances (other than for general maintenance) attached to the Equipment without written consent from the OWNER
- vi) The HIRER will grant the OWNER or authorised third-party (as determined by the OWNER) access to the premises where the Equipment is located, the right to inspect the Equipment during normal business hours, and to submit the Equipment to any mechanical tests required to enable the Equipment to be properly serviced, maintained, and/or repaired
- vii) The HIRER is responsible for any extra costs incurred by the OWNER for on-site delays to service and repair, out of the control of the OWNER e.g. access problems, site inductions, and industrial problems.

d) AT THE COMPLETION OF HIRE PERIOD

- i) The HIRER must ensure the Equipment is returned to the OWNER in a Rental Ready condition. The OWNER determines if the HIRER has fulfilled their obligations under this agreement and the OWNER may, at the HIRER's expense, clean, repair, and/or repaint the Equipment
- ii) The HIRER must ensure the Equipment is returned to the Premises on or before the agreed Hire Period end date and time, or ready for collection by the OWNER at the agreed Site Location at the agreed date and time, otherwise, Hire Charges will continue until 4pm the day the Equipment is returned
- iii) The HIRER agrees to thoroughly clean the Equipment before the end of the Hire Period. The OWNER determines if the HIRER has fulfilled their obligations under this agreement and the OWNER may, at the HIRER's expense, clean, repair, and/or repaint the Equipment.

6) INSURANCE

- a) The HIRER must at their own expense maintain all appropriate policies and insurances in respect of the Equipment including, but not limited to, Third Party and Public Liability insurances.

7) INDEMNITY

- a) To the extent permitted by law, the HIRER agrees to release, discharge and indemnify the OWNER from all claims and demands by third parties in respect to all actions, claims, suits, demands, or expenses including claims for consequential loss or profits howsoever arising directly or indirectly from the use or misuse of the Equipment during the hire period including:
- i) Any loss or damage to property or personal injury including loss, damage, or injury to third parties
 - ii) Any other act, omission, default, or act of negligence by the HIRER under this agreement and resulting from, or incidental to the use, or possession of the Equipment, whether arising from any instruction issued or training provided by the OWNER, or arising any other reason whatsoever from the use, or possession by the HIRER of the Equipment under the HAC.

8) DAMAGE WAIVER

- a) The OWNER will charge a Damage Waiver at a percentage of the hire rate
- b) The Damage Waiver is for the purpose of covering aesthetic and incidental wear and tear, servicing, breakdowns, and other costs associated with maintenance of the Equipment.
- c) The Damage Waiver is not insurance and does not apply to the following:
- i) loss or damage caused by the negligent act or omission of the HIRER, including but not limited to:
 - (1) Scrubbing out tyres
 - (2) Breaking beacons
 - (3) Bending of handrails
 - (4) Damage to wheel-drive structure
 - (5) Excess scratching of paintwork and decals
 - (6) Damage from dried concrete, plumbers glue, or similar
 - (7) Control box damage
 - (8) Vermin
 - (9) Damage to cables
 - (10) Water damage
 - ii) loss or damage caused by the misuse, abuse or overloading of the Equipment of any components thereof
 - iii) damage caused to tyres and tubes by blow out, bruises, cuts or other causes inherent in the use of the Equipment
 - iv) glass breakage
 - v) loss or damage relating to the lack of lubrication or other required servicing of the Equipment
 - vi) loss or damage to the Equipment whilst being loaded by the HIRER,
 - vii) unloaded, transported on or over land, water, wharves, bridges or vessels of any kind by the HIRER
 - viii) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines
 - ix) damage caused by exposure to any corrosive or caustic substances, such as cyanide, salt water, acid etc
 - x) theft of the Equipment unless reasonably locked and secured
 - xi) loss or damage to Equipment during transport, except where transported by the OWNER.
 - xii) loss or damage from use in violation of any statutory laws and regulations
 - xiii) loss or damage of tools, accessories, safety equipment, keys, grease guns, hoses and similar,

- electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels, shoring equipment, testing plugs, confined space equipment and other similar accessories
- xiv) damage caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance.

- d) Where the Damage Waiver does not cover [clause 8c], a Damage Excess of \$2,000 will be charged to the HIRER for each item of Equipment.
- e) Where the Damage Excess has been charged to the HIRER and paid in full within the payment terms, the OWNER agrees to waive its rights to claim for loss and damage to the Equipment caused by fire, storm, collision, accident, or vandalism.
- f) The HIRER still remains liable at all times for the theft or mysterious disappearance of Equipment.
- g) In the event that the HIRER is in breach of the Terms and Conditions of Hire, the HIRER will not be able to claim under the Damage Waiver or Damage Excess clause and will be responsible for the full replacement value of the repairs, limited by the replacement value of the Equipment.

9) OTHER CHARGES

- a) **Fuel**
- i) Equipment will be supplied to the HIRER fully fuelled and charged at per litre rate to replace any fuel used during the Hire Period
 - ii) If any additional fuel is required during the Hire Period, a call out fee will be charged to the HIRER to deliver fuel to the Equipment location and fuel charged at a per litre rate
- b) **Delivery**
- i) If the HIRER requires delivery and/or pickup of the Equipment the OWNER will charge a delivery fee
 - ii) The OWNER may charge an additional delivery fee for any deliveries deemed remote or outside a 40km radius of the OWNER's Premises
- c) **Cancellation**
- i) A cancellation fee may be charged by the OWNER where the Equipment has been reserved by booking and the HIRER cancels the booking without reasonable notice, or fail to take delivery of the Equipment [clause 2c]
- d) **Merchant Fees**
- i) The OWNER may charge the HIRER a fee if paying by credit card
- e) **Penalties**
- i) The HIRER is responsible for the payment of parking fines or any traffic violations incurred during the Hire Period
- f) **Late or null payment**
- i) If the HIRER does not pay the hire fees in full by the due date, the OWNER may:
 - (1) Charge the HIRER, in addition to any other costs recoverable under these conditions, interest of 1.5% compounding monthly on the total outstanding balance
 - (2) Charge the HIRER 100% of all costs and expenses incurred by the OWNER in recovering any unpaid amounts under the HAC, along with 1.5% interest compounding monthly

10) FORCE MAJEURE

- a) Neither the OWNER nor HIRER will be responsible for any delays in delivery or collection of the Equipment due to causes beyond their control including but not limited to natural disasters, war, terrorism, riots, orders or regulations of governments of any jurisdiction, lockdowns, strikes, or inability to obtain transportation.

11) MISCELLANEOUS

- a) Where a party consists of more than one person, their liabilities and the liabilities of their respective legal personal representatives shall be joint and several
- b) Time is to be of the essence of all obligations of the HIRER is these conditions
- c) The OWNER reserves the right to change the HAC number and Equipment if required
- d) Any notice or invoice that may be given under the HAC may be given by email
- e) The OWNER may assign or sub-contract its rights and obligations under this agreement without notice to the HIRER
- f) The OWNER agrees to provide the Equipment to the HIRER in good working order.

12) CROSS-HIRE

- a) The HIRER must not on-hire the Equipment to any third party under any circumstances.

13) CUSTOMER LIABILITY

- a) The HIRER will assume all risks and liabilities for all injuries or deaths, loss or damage to property howsoever arising from the HIRER's possession, use, maintenance, repair, storage, or transport of the Equipment
- b) To the extent permitted by the Law, the OWNER disclaims all liability for, and does not give any warranties to the HIRER, as to the condition of the Equipment.

14) PRIVACY

- a) The OWNER will comply with the Australian Privacy Principles in all dealings with the HIRER
- b) The HIRER will provide any requested personal information including, but not limited to, full name and address, drivers licence details, credit card details, date of birth, and credit or business history
- c) The HIRER consents to the OWNER disclosing the HIRER's personal information to our service providers
- d) The HIRER has the right to access personal information the OWNER holds.

15) CUSTOMER DEFAULT

- a) The OWNER may retake possession of the Equipment including entering the HIRER's premises without consent if:
 - i) The HIRER is in breach of any provision of the HAC,
 - ii) The HIRER does not pay the account for the Hire Fee in the time agreed,
 - iii) The Hire Period ends and the customer has not returned the Equipment to the OWNER's premises or organised a time and date for the OWNER to collect the Equipment

16) CLAIM FOR PAYMENT

- a) The HAC is a claim for payment under the *Building and Construction Industry (Security of Payment) Act 2009*.

17) OWNERSHIP OF THE EQUIPMENT

- a) The HIRER acknowledges that ONECALL is the OWNER of the Equipment in all circumstances
- b) The HIRER is not entitled to offer, sell, assign, sub-hire, charge, or create any form of security interest over, or otherwise deal with the Equipment in any way.

18) SECURITY

- a) As security for the HIRER's obligations and liabilities under the HAC, the HIRER agrees to charge all of the HIRER's legal and equitable interests (both present and

future) of any nature, however held, in any and all real property

- b) Without limiting the generality of the charge in this clause, the HIRER agrees, on the OWNER's request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property ("Charged Property") and against the event that the HIRER fails to do so within a reasonable time of being so requested, the HIRER irrevocably and by way of security, appoint any credit manager or solicitor engaged by the OWNER to be the HIRER's true and lawful attorney to execute and register such instruments. The HIRER consents to the lodgement by the OWNER of a Caveat noting the OWNER's interest on the Charged Property; and
- c) The HIRER will indemnify the OWNER on an indemnity basis against all costs and expenses incurred by the OWNER in connection with the preparation and registration of any such charge and mortgage document.

19) PPSA

- a) The HIRER acknowledges that the OWNER may register any actual or impending security interest under the PPSA in respect of all Equipment
- b) The HIRER consents the OWNER to register a security interest under the PPSA
- c) The OWNER is responsible for payment of any fees associated with the registration and preparing the financing statement or financing change statement
- d) The HIRER waives the right to receive verification from the OWNER of the registration pursuant to section 157(3)(b) of the PPSA.

20) GOVERNING LAW

- a) The Laws of Australian Capital Territory will govern any proceeding in respect of any cause of action arising under this agreement.
- b) Any provisions contained in this agreement prohibited by or void under any law will be ineffective to the extent of such prohibition, without invalidating the remaining provisions.
- c) This agreement will be construed as intended to operate to the maximum extent to which it can validly apply.
- d) The HIRER agrees that any proceeding in respect of any cause of action arising under this agreement shall be instituted heard and determined in a court of competent jurisdiction closest to the OWNER'S address shown in the HAC.