

# CONDITIONS OF HIRE

1. **"ACL"** means the *Australian Consumer Law* which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)  
**"The Owner"** means Allcott Hire Pty Ltd (ABN 38 003 418 988) and Aluminium Scaffolds Pty Ltd (ABN 64 002 639 885), their successors and assigns and all of their associated and subsidiary companies.  
**"The Hirer"** means any person, firm, corporation or entity that hires or purchases Equipment from The Owner and includes its employees, agents, servants, contractors or any other person to whom the Equipment is entrusted.  
**"The Terms"** means these Standard Terms and Conditions or such other Terms and Conditions as may be notified in writing by The Owner, including those on any invoice, hire contract, delivery docket or other document  
**"Equipment"** means the Equipment supplied, or to be supplied under Order, by The Owner and may extend to services where the context permits, as described in any invoice, quotation or other document issued by The Owner.  
**"The Hire Period"** shall commence at the later of the commencement date and time on the hire schedule or the date and time the Equipment is delivered to the Hirer, and shall cease at the later of when the Equipment is returned to The Owner, or at the time a "pickup number" is given, or on The Owner repossessing the Equipment pursuant to The Terms.  
**"Off Hire Number"** means the number given to The Hirer by The Owner when the Hirer notifies The Owner either orally or in writing that the Equipment is available for return and the location at which it is available.  
**"Pickup Number"** means the Off Hire Number given to the Hirer where the Equipment is Off Hired via telephone.  
**"Order"** means the agreement resulting from the acceptance by The Hirer of The Owner's offer for the supply of equipment and is deemed to include The Terms, The Owner's current price list, the information on the face of any invoice and any variations thereto as agreed to in writing by The Owner and The Hirer.  
**"Hire Schedule"** means a document that The Owner provides to The Hirer, which includes, amongst other things, the Equipment that has been hired, the relevant rates and other applicable charges and the anticipated hire period.  
**"Remote Location"** means a location that falls outside of a 75 kilometre radius from the closest branch of the Owner.
2. **Contract**  
An Order, a Hire Schedule and The Terms contain the whole understanding between The Owner & The Hirer and cannot be varied unless by written agreement between The Owner & The Hirer. The Terms & the current price list supersede all previous Terms and price lists of The Owner.
3. **Acceptance**
  - 3.1 The Hirer is deemed to have agreed to and accepted these Terms for the purpose of any contract entered into with The Owner upon a copy of The Terms being provided to and brought to the attention of The Hirer and The Hirer subsequently placing an Order.
  - 3.2 The Owner reserves the right to review and amend The Terms from time to time, where The Terms are amended The Hirer will be notified when the amended Terms are provided to and brought to the attention of The Hirer, by continuing to Order goods from the Owner the Hirer agrees to any such amendments.
4. **Hire Charges**
  - 4.1 Hire charges shall apply from the commencement of the Hire Period and continue until the Hire Period ceases.
  - 4.2 The Hirer will pay to the Owner for the hire of the Equipment at the charge rate as set out in the Hire Schedule;
  - 4.3 Additional Hire charges will apply if the Equipment is used for more than ten (10) hours per day.
  - 4.4 The Owner is entitled to charge, and The Hirer agrees to pay to The Owner, an amount for a minimum Period of Hire for certain items of Equipment and in certain circumstances where applicable at The Owner's absolute discretion, such minimum Period of Hire to be advised to The Hirer at the time of the Contract.
- 4.5 The Owner is entitled to charge, and the Hirer agrees to pay to the Owner;
  - (a) the costs of any consumables, fuel (or re-fuelling where necessary) or trade materials as supplied by The Owner in respect of the hire of the Equipment;
  - (b) Any fines, levies, penalties, tolls, environmental charges or any other charges whatsoever arising out of the Hirer's use, or the delivery of, the Equipment;
  - (c) If the Hirer requires the Owner to deliver, collect, install or dismantle the Equipment, the costs of same as detailed in the Hire Schedule or otherwise as may be applicable;
  - (d) If the Equipment is not returned to the Owner clean and in good working condition, a charge for cleaning and costs of repairing the Equipment; and
  - (e) Any charges for use of the Equipment in excess of the limits set out in the Contract, where applicable;
- 4.6 For the avoidance of any doubt, the anticipated Off Hire date set out in the Contract is not considered to be The Hirer's notice to the Owner that the Equipment is available for collection.
5. **Price and Terms of Payment**
  - 5.1 The Hirer shall pay the price stated in any invoice supplied by The Owner without deduction or set-off.
  - 5.2 The Owner will invoice The Hirer at various times depending on the nature of the Contract, such time to be at the absolute discretion of The Owner. Unless notified on the face of the invoice or otherwise in writing by The Owner, payment of the amount stated on the invoice shall be made by The Hirer within thirty (30) days of the date of the invoice and time will be of the essence in relation to all obligations of The Hirer to make payment to The Owner for the Equipment.
  - 5.3 If the invoice is not paid by the due date;
    - (a) The Owner is entitled to suspend all further hire of Equipment to The Hirer until payment is made in full on all outstanding invoices;
    - (b) The Owner is entitled to recover any Equipment that is on hire and may enter into or upon any premises where the Equipment may be to so recover the Equipment.
    - (c) Where the Equipment cannot be removed for public safety or any other reasons;
      - (i) The Hirer agrees to assign or novate the Contract to another party, and do all things necessary to effect such assignment or novation to another party that The Owner authorises and agrees to, and The Hirer agrees to keep The Owner advised of all steps taken in this regard.
      - (ii) Where The Hirer fails to assign or novate the Contract in accordance with this clause, The Owner is entitled to terminate the Contract and the Hirer agrees to pay to the Owner the price for the full replacement of the Equipment.
      - (iii) The replacement cost in accordance with clause 3.2(ii) is to be calculated on a new-for-old basis.
    - (d) The Owner is entitled to charge interest at the rate of 12.00% per annum, calculated daily, on all overdue amounts, such interest to be calculated from the date of the invoice. The Hirer acknowledges that such interest is not a penalty, but is a true reflection of damages incurred by The Owner in the circumstances. Any payment received from The Hirer shall first be allocated against any interest accrued under this clause.
    - (e) The Hirer shall indemnify The Owner for any cost or expense incurred by it for legal representation (on a Solicitor/Client basis), mercantile agents or other parties acting on The Owner's behalf in respect of any action instituted or being considered

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against The Hirer whether for payment of the debt, possession of any Equipment, taking of security or otherwise.

- 5.4 The Owner will only consider any claims by The Hirer for credits if such claims for credits are made in writing and within thirty (30) days of the date of the invoice.
- 5.5 The Owner, acting reasonably and where necessary to protect its commercial interests, reserves the right at any time and in its discretion to suspend credit or to vary the credit terms provided to The Hirer when in The Owner's sole opinion it is so warranted. In any such case, in addition to other remedies herein or at law, cash payments or satisfactory security from The Hirer may be required before dispatch of any Equipment.
- 5.6 If The Hirer elects to pay its account by credit card, it agrees that The Owner is entitled to charge an additional amount to recover costs as a percentage of the value of the invoice; such amount being 1.5% for MasterCard and Visa.
- 5.7 G.S.T. and other applicable taxes and duties shall be added to the price except where otherwise expressly agreed to.
- 5.8 The Owner reserves the right from time to time and at any time to vary the price on the Equipment subject of an Order without notice to the Hirer.

### 6. Security for Payment

Where credit terms are provided by The Owner to the Hirer, to secure monies owing to The Owner, The Hirer;

- 6.1 Hereby charges all of its beneficial interest in real and personal property in favour of The Owner;
- 6.2 Agrees to deliver to The Owner within seven (7) days of written demand a memorandum of mortgage in registrable form and that the debt is payable on demand incorporating the covenants contained in memorandum Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdictions where The Hirer has any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration;
- 6.3 Authorises and consents to The Owner taking all actions necessary to give effect to this security including the lodgement of any caveat upon title of The Hirer's property. The Hirer hereby irrevocably appoints The Owner and any person nominated by The Owner severally the Attorney of The Hirer with the power to execute, sign, seal and deliver such mortgage or other document to give effect to this security;

### 7. Delivery and Storage

- 7.1 Delivery of Equipment to a nominated third party or agent on behalf of The Hirer shall be deemed delivery to The Hirer.
- 7.2 Equipment delivered to The Hirer are subject to freight and/or courier charges as determined by The Owner from time to time which shall be payable by The Hirer and will be included in the invoice where applicable.
- 7.3 The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever they are tendered for delivery. In the event that The Hirer is unable to take delivery of the Equipment, The Owner shall be entitled to charge a fee for any futile delivery and/or a reasonable fee for redelivery.
- 7.4 A certificate signed by an officer of The Owner confirming dispatch of Equipment in the ordinary course of business shall be conclusive evidence of delivery, as shall any signed delivery docket.

### 8. Storage

The Hirer agrees that during the Hire Period and thereafter until the goods are either returned to or collected by the owner, it is responsible to ensure the Equipment is stored in a manner that is safe, secure and protected from theft, seizure, loss or damage.

### 9. Off-Hire of Equipment

- 9.1 The Hirer must obtain an Off Hire Number from The Owner at either the time of return of equipment to The Owner or when the Equipment is available for return or collection.
- 9.2 The Equipment will remain the responsibility of the Hirer until such time as the Equipment is returned to or collected by the Owner.
- 9.3 For the avoidance of any doubt, The Hirer warrants that after an Off-Hire Number is obtained from the Owner, it will continue to store the Equipment in accordance with its obligations under The Terms.

### 10. Title

Notwithstanding that The Hirer may have possession of Equipment supplied by The Owner, ownership of the Equipment remains with The Owner and no legal or equitable interest or property in same shall pass to or vest in The Hirer.

### 11. Assignment

The Hirer shall not transfer, assign, part with possession, mortgage, charge or encumber any right or obligation of the hire of any Equipment under these conditions without the prior written consent of the Owner.

### 12. Personal Property Securities Act, 2009 ("PPSA").

- 12.1 The Hirer consents to The Owner affecting and maintaining a registration on the register in relation to any security interest contemplated or constituted by the Terms and agrees to sign any documents and provide any assistance and information to The Owner required to facilitate the registration and maintenance of any security interest. The Hirer waives any right to receive notice of a verification statement in relation to any registration in respect of the Equipment
- 12.2 The Hirer undertakes to;
  - (a) do anything that is required by The Owner so that The Owner acquires and maintains one or more perfected security interest under the PPSA in respect of the Equipment and its proceeds; to register a financing statement or financing change statement; and to ensure that The Owner's security position, rights and obligations are not adversely affected by the PPSA;
  - (b) not register a financing change statement in respect of a security interest contemplated or constituted by the Terms without prior written consent from The Owner; and
  - (c) not register or permit to be registered a financing statement or financing change statement in relation to the Equipment in favour of a third party without prior written consent from The Owner.
- 12.3 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or connected with these Terms and;
  - (a) Section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and The Hirer will have no rights under them; Sections 95 (to the extent that it requires the secured party to give notices to the grantor); 96; 118 (to the extent that it allows a secured party to give notices to the grantor); 121(4); 125; 130; 132(3)(d); 132 (4); 135; 142; and 143; and
  - (b) Section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and The Hirer will have no rights under them; Sections 127; 129(2) and (3); 130(1); 132; 134(2); 135; 136(3), (4) and (5); and 137;
- 12.4 Unless otherwise agreed and to the extent permitted by the PPS, both The Hirer and The Owner agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person. The Hirer waives any right it may have had but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- 12.5 For the purposes of section 20(2) of the PPSA, the collateral is Equipment sold by The Owner to The Hirer from time to time. These terms are a security agreement for the purposes of the PPSA.
- 12.6 The Owner may apply amounts received in connection with these Terms to satisfy obligation secured by a security interest contemplated

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or constituted by these Terms in any way The Owner determines in its absolute and sole discretion;

- 12.7 The Hirer agrees to notify The Owner in writing of any change to the details as set out in the credit application within seven (7) days of such change.

### 13. Use of Equipment

- 13.1 The Hirer shall at all time use the Equipment in a skilful and proper manner and only in the manner in which the Equipment was designed to be used in accordance with the manufacturer's instructions or specifications.
- 13.2 The Hirer shall at his own expense service, clean and maintain the Equipment in good and substantial repair and condition, save for reasonable wear and tear and The Owner is entitled to charge The Hirer for any costs incurred by The Owner arising out of The Hirer's failure to properly clean, care for or maintain the Equipment.
- 13.3 Before using the Equipment, The Hirer shall examine the Equipment and satisfy himself as to the quality and fitness for purpose of the Equipment. If the Equipment is in any way unsuitable for the purpose, the Hirer must return the Equipment immediately and notify The Owner of the reasons for same and The Owner, at its sole and discretion and acting reasonably, may exchange the Equipment for another comparable item of Equipment.
- 13.4 The Hirer acknowledges that he is not relying on any representations made by or on behalf of The Owner in respect of the Equipment or its performance.
- 13.5 The hirer indemnifies The Owner in respect of all claims, suits, actions, causes of action, demands for compensation, damages or other relief (including any declaratory relief as to the existence or exercise of a right to monetary relief) on any basis whatsoever whether at law, in equity or under statute and whether in the past present or future accruing to or brought by the Hirer or any other person and in relation to or arising from the use or possession of the Equipment by the Hirer during the Hire Period.
- 13.6 The indemnity at clause 13.5 does not apply to the extent that any such loss or damage arises from the gross negligence or wilful misconduct of The Owner, or any of its officers, employees or agents.

### 14. Termination by The Owner

- 14.1 Notwithstanding the specified Hire Period, The Owner may terminate this agreement and repossess the Equipment;
- (a) If The Hirer fails to pay any hire charges by the due date;
- (b) If The Hirer does or permits any act to be done to the Equipment by way of which the Owner's right in the Equipment may be prejudiced;
- (c) If The Hirer becomes or is made insolvent or bankrupt or makes any arrangement or composition with its creditors or should any order be made or resolution passed for is winding up; or
- (d) If the Hirer breaches any conditions of this agreement;
- 14.2 For the purposes of repossessing the Equipment, the Owner may enter into or upon the premises where the equipment may be to recover the Equipment without prejudice to the rights of the Owner and recover from the Hirer in respect of any claims, damages or expenses relating to or arising out of any action taken under this clause.
- 14.3 On the Owner repossessing the Equipment, the determination of the Hire Period shall be without prejudice to any claim that the Owner may have against the Hirer whatsoever.

### 15. Defects

The Hirer shall inspect the Equipment on delivery and shall within 24 hours of delivery notify The Owner of any alleged defects or damage to the Equipment. The Hirer shall afford The Owner the opportunity to inspect the Equipment within a reasonable time. In the absence of such notice and opportunity to inspect, the Equipment will, where the Owner has acted reasonably and in good faith, be presumed to be free of any defect or damage when hired.

### 16. Damage and Loss of Equipment

- 16.1 During the Hire Period, The Hirer is responsible for any loss, including where the Equipment is allegedly stolen, or damage to the Equipment whether such loss or damage is caused by the negligence of The Hirer or for any other reason whatsoever.
- 16.2 Where a Pickup Number or Off Hire Number has been given, The Hirer's responsibility in this regard shall continue until the Equipment has either been picked up by or delivered to The Owner.
- 16.3 Where the Equipment is lost or damaged during the Hire Period, The Hirer agrees to indemnify the Owner for any part of the cost of repairs to or replacement of the Equipment.
- 16.4 The Hirer acknowledges that,
- (a) Where the Equipment is damaged, the decision to either repair or replace the Equipment is at the absolute discretion of The Owner and will be made on reasonable commercial and safety grounds; and
- (b) Where a replacement of the Equipment is necessary (due to either loss or damage), The Hirer agrees to indemnify the Owner for the costs of the replacement. The Hirer acknowledges that;
- (i) The Owner will, in the first instance, use its best endeavours to replace the Equipment with another item of Equipment of similar age and wear. However, for reasonable practical and commercial reasons, The Owner may replace the Equipment on a new-for-old basis.
- (ii) Where the Owner exercises its discretion in this regard, the replacement on a new-for-old basis is an accurate measure of what is required to return The Owner to the position it was in prior to the Equipment being lost or damaged, and is not a penalty; and
- (iii) The Owner will not accept the Hirer sourcing replacement Equipment, save for The Hirer providing brand new Equipment of equivalent quality, make and specification.
- (c) Where there is a delay in the lost or damaged Equipment being repaired or replaced, the Hirer agrees to indemnify the Owner for the lost hire opportunity during the period that the Owner is unable to hire its Equipment to other parties.
- 16.5 Where the Equipment is not returned to The Owner, or a Pickup Number is not obtained from The Owner within 2 days of the expiration of The Hire Period, The Owner may appropriate any deposit paid by The Hirer to mitigate any damages claim that The Owner may incur and The Owner shall be at liberty to immediately notify the Police of the circumstances and may pursue criminal or civil action as it deems necessary in the circumstances. The Owner is not liable for any loss, damage, injury, fines or costs sustained by The Hirer arising from such action.

### 17. Damage Waiver

- 17.1 Unless waived by the Hirer, a basic damage waiver fee will be calculated based on a percentage of the hire charge. This may limit the hirer's liability for damage to the Equipment and will be subject to a damage waiver excess. In the event of damage to the Equipment, a damage waiver excess will be payable by the Hirer in the amount of the greater of \$500.00 per item or 15% of the cost of repair. Damage hire waiver does not apply to motor vehicles;
- 17.2 Damage Waiver does not apply and will not limit the Hirer's liability in the following circumstances;
- (a) Where the Equipment is lost or stolen;
- (b) Where damage is caused by overloading, misuse, abuse, exceeding rated capacity or improper servicing of the Equipment;
- (c) Where damage is caused by misappropriation or wrongful conversion by the Hirer;
- (d) Where the Hirer has breached a condition of The Terms;
- (e) Where damage is caused to tyres, tubes, batteries, glass or perspex;

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- (f) Where damage is caused to tools or accessories;
- (g) Where damage is caused by the use or operation of Equipment in violation of any statute, regulation or by-law.
- (h) Where damage or loss is caused by the negligence of the Hirer;
- (i) Where damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;
- (j) Where damage to Equipment occurs whilst located, being used, loaded or transported on or over or adjoining water including but not limited to wharfs, bridges, barges and vessels of all kinds;
- (k) Where the Equipment is being used for a purpose for or a manner in which it was not designed
- (l) Any form of vandalism to the Equipment;
- (m) Where damage is caused to tyres or tubes; or
- (n) Where damage is caused to protective screens, shields, windscreens, glass or mirrors of Equipment.

17.3 The Hirer expressly acknowledges that this Damage Waiver is not, and does not operate as, an insurance policy against loss or damage of Equipment.

### 18. Breakdown and Damage to Property of and Injury to Third Parties

- 18.1 In respect of all Equipment, the Hirer shall, during the Hire Period, be responsible for any loss or damage to property of, or personal injury to, third parties resulting from or which is incidental to the use or possession of the Equipment or for any other reason whatsoever, including the use of the Equipment on any public road or highway, or if the Hirer or any driver or operator of the Equipment drives or operates that Equipment without a licence required by any statute or regulation or fails to use any prescribed safety apparatus installed in the equipment and the Hirer shall indemnify and keep indemnified the Owner in respect of all actions, claims, demands, or expenses of the Owner or any other person in relation to or arising out of the use of the Equipment under this contract;
- 18.2 In the event of a breakdown or failure of Equipment or defect in the Equipment becoming apparent during the Hire Period;
- (a) The Hirer shall immediately return the Equipment or, where appropriate, notify the Owner who will collect the Equipment;
  - (b) The Hirer shall not repair or attempt to repair or cause any repair or attempt to repair to be carried out to the Equipment without the prior express consent of the Owner; and
  - (c) If the breakdown or failure is caused by reasonable wear and tear or a defect in the Equipment at the commencement of the Hire Period, and was not caused by or contributed to by misuse or negligence of the hirer or any person under his control or the nominated driver, the hire period shall cease on return or notification to the Owner.
- 18.3 The Hirer warrants and agrees that the Owner will not be liable to the Hirer for any business interruption, loss of revenue, loss of income, loss of opportunity, loss of contracts or any other indirect or consequential loss arising in connection with, or as a result of, the provision of the Equipment.
- 18.4 Notwithstanding anything contained in The Terms, the maximum liability of the Owner to the Hirer whether under contract, at law, in equity or otherwise, is limited to an amount equal to the fees actually paid by the Hirer to the Owner in accordance with an Order.
- 18.5 No conditions or warranty shall be implied in these conditions except the extent that any condition or warranty may be included or be implied by statute and may not be excluded by agreement. Any condition or provision inconsistent with such implied condition or warranty shall be of no force and effect to the extent of such inconsistency.

### 19. Remote Location Maintenance

- 19.1 For the purposes of preventative maintenance or if the Equipment breaks down whilst located at a Remote Location, The Hirer will be required to pay to the Owner a charge for travel to and from the

Remote Location, based on the amount of kilometres required to be travelled;

- 19.2 For the avoidance of doubt, the Hirer will remain responsible for the daily maintenance and care of the equipment including, but not limited to, daily checking of all fluids (fuel, oil, water, battery levels, etc.) general tightening of any loose nuts, bolts, belts, or fittings and lubrication of all grease points.

### 20. Exclusions - Small Business Contracts and Consumer Contracts

20.1 In this clause 20, if a term has a particular meaning in the ACL, it has the same meaning in this clause.

20.2 If the Hirer's Order with the Owner constitutes a *consumer contract* or a *small business contract* then the following provisions of The Terms will not apply to the Order:

- (a) 5.1 - Price and Terms of Payment; and
- (b) 6.2 & 6.3 - Security for Payment.

### 21. Notices

Any notices under The Terms must be in writing which may be given by personal delivery, pre-paid postage or facsimile to a party's business address or registered office or by email to a party's representative.

### 22. Severability

In the event that any provisions herein is invalid, void, illegal or unenforceable, it shall be considered to be severed from the Terms and the validity, existence, legality or unenforceability of the remaining provisions shall not be effected, prejudiced or impaired by such severance

### 23. Force Majeure

23.1 For the purposes of The Terms and this clause 23, **Force Majeure Event** shall mean inclement weather, flood, fire or other natural disaster, general industrial dispute, riot, commotion, disorder, political unrest and any other analogous event beyond the control of the parties.

23.2 Neither party shall be considered to be in default of its obligations under the Order of The Terms to the extent that it can establish that the performance of such obligations is prevented by a Force Majeure Event which arises after the date of the Order and which was not foreseeable at the date of the Order.

### 24. Waiver

The failure of either party to enforce any right or part thereof under The Terms shall not be considered a waiver of that right and shall not prevent the party from later enforcing that or any other right.

### 25. Governing Law and Jurisdiction

The terms and any contract to which they apply shall be governed by the laws of New South Wales and The Hirer expressly agrees to submit itself to the Jurisdiction of the Courts of any State or Territory within Australia that The Owner, in its sole and absolute discretion, may select to commence proceedings in respect of any matter arising hereunder, and The Hirer expressly waives any right to any claim of *forum non-conveniens*, inconvenient forum, or transfer or change of venue. The Hirer expressly acknowledges that such discretion as to jurisdiction is agreed to and is an essential term of the contract and material and fundamental to The Owner's decision to provide credit to The Hirer.