

# Lifters & Shifters Pty Ltd – Terms & Conditions of Hire

- 1. Definitions**
- 1.1 "Owner" shall mean Lifters & Shifters Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Lifters & Shifters Pty Ltd.
- 1.2 "Hirer" shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Hirer on a principal debtor basis.
- 1.4 "Equipment" shall mean Equipment supplied on hire by the Owner to the Hirer (and where the context so permits shall include any supply of services) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Owner to the Hirer.
- 1.5 "Dry Hire" shall mean that the Equipment is hired without an operator.
- 1.6 "Price" shall mean the cost of the hire of the Equipment as agreed between the Owner and the Hirer subject to clause 3 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Owner from the Hirer for the hire of Equipment and/or the Hirer's acceptance of Equipment supplied on hire by the Owner shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Hirer has entered into this agreement, the Hirers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Hirer the terms and conditions are irrevocable and can only be amended with the written consent of the Owner.
- 2.4 The Hirer undertakes to give the Owner at least fourteen (14) days notice of any change in the Hirer's name, address and/or any other change in the Hirer's details.
- 3. Price And Payment**
- 3.1 At the Owner's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Owner to the Hirer in respect of Equipment supplied on hire; or
  - (b) the Owner's current Price, at the date of delivery of the Equipment, according to the Owner's current Price list; or
  - (c) the Owner's quoted Price (subject to clause 3.2) which shall be binding upon the Owner provided that the Hirer shall accept in writing the Owner's quotation within thirty (30) days.
- 3.2 The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation.
- 3.3 At the Owner's sole discretion a deposit may be required.
- 3.4 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 At the Owner's sole discretion:
  - (a) payment shall be due on delivery of the Equipment; or
  - (b) payment for approved Hirers shall be made by instalments in accordance with the Owner's payment schedule. The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.
- 3.6 If the Equipment is lost, payment shall be due seven (7) days following the date of the invoice for the lost Equipment.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Hirer and the Owner.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Hire Period**
- 4.1 Hire charges shall commence from the time the Equipment is collected by the Hirer from the Owner's premises or delivered to the Hirer by the Owner and will continue until either:
  - (a) the return of the Equipment to the Owner's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs; or
  - (b) compensation has been made for the loss or non-return of the Equipment.
- 4.2 If the Owner agrees with the Hirer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Owner's premises and continue until the Hirer notifies the Owner that the Equipment is available for collection.
- 4.3 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Owner confirms prior special arrangements in writing. In the event of Equipment breakdown provided the Hirer notifies the Owner immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer.
- 5. Delivery Of Equipment**
- 5.1 At the Owner's sole discretion delivery of the Equipment shall take place when:
  - (a) the Hirer takes possession of the Equipment at the Owner's address; or
  - (b) the Hirer takes possession of the Equipment at the Hirer's address (in the event that the Equipment are delivered by the Owner or the Owner's nominated carrier); or
  - (c) the Hirer's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Hirer's agent.
- 5.2 At the Owner's sole discretion the costs of delivery are:
  - (a) included in the Price; or
  - (b) in addition to the Price; or
  - (c) for the Hirer's account.
- 5.3 The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Hirer is unable to take delivery of the Equipment as arranged then the Owner shall be entitled to charge a reasonable fee for redelivery.
- 5.4 The Owner may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.5 Delivery of the Equipment to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of this agreement.
- 5.6 The Hirer shall be responsible for free access by the Owner to the site on which the Equipment is located. If there are any delays due to free access not being available then the Hirer shall be responsible and shall reimburse the Owner for all lost hire fees associated with the Equipment being unavailable. The Hirer shall also be responsible for all other expenses and costs incurred by the Owner due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Owner or returned to the Owner's premises.
- 5.7 The failure of the Owner to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Owner shall not be liable for any loss or damage whatever due to failure by the Owner to deliver the Equipment (or any of them) promptly or at all.
- 6. Risk**
- 6.1 The Owner retains property in the Equipment nonetheless; all risk for the Equipment passes to the Hirer on delivery.
- 6.2 The Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Owner for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Hirer.
- 6.3 The Hirer will insure, or self insure, the Owner's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 6.4 The Hirer accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.
- 7. Title**
- 7.1 The Equipment is and will at all time remain the absolute property of the Owner.
- 7.2 If the Hirer fails to return the Equipment to the Owner then the Owner or the Owner's agent may enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated as the invitee of the Hirer and take possession of the Equipment, without being responsible for any damage thereby caused.
- 7.3 The Hirer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 8. Defects**
- 8.1 The Hirer shall inspect the Equipment on delivery and shall immediately notify the Owner of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Hirer shall afford the Owner an opportunity to inspect the Equipment within a reasonable time following delivery if the Hirer believes the Equipment is defective in any way. If the Hirer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Owner has agreed in writing that the Hirer is entitled to reject, the Owner's liability is limited to replacing the Equipment.
- 9. Warranty**
- 9.1 No Warranty is provided by the Owner in respect of the condition of the Equipment or its fitness for any particular purpose. The Hirer shall indemnify and hold harmless the Owner in respect of all claims arising out of use of the Equipment.
- 10. Hirer's Disclaimer**
- 10.1 The Hirer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Hirer by the Owner and the Hirer acknowledges that the Equipment is hired relying solely upon the Hirer's skill and judgement.
- 11. Hirer's Responsibilities**
- 11.1 The Hirer shall:
  - (a) operate itself at Commencement that the Equipment is suitable for its purposes; and
  - (b) operate the Equipment safely, strictly in accordance with the law, only for its intended use (including, but not limited, not using the Equipment for the transporting of flammables, dangerous or hazardous goods, and chemicals), and in accordance with any manufacturer's instruction whether supplied by the Owner or posted on the Equipment; and
  - (c) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed; and
  - (d) comply with all occupational health and safety laws relating to the Equipment and its operation; and
  - (e) on termination of the hire, the Hirer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Owner; and
- (f) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment; and
- (g) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and
- (h) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work; and
- (i) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold; and
- (j) return the Equipment empty, clean, dry and free of rubbish with labels removed.
- 11.2 Immediately on request by the Owner the Hirer will pay:
  - (a) The new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Owner;
  - (b) All costs incurred in cleaning the Equipment;
  - (c) All costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
  - (d) The cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;
  - (e) The cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
  - (f) The cost of consumables provided by Owner and used by the Hirer.
- 12. Cancellation**
- 12.1 The Owner may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Owner shall repay to the Hirer any sums paid in respect of the Price. The Owner shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Hirer cancels delivery of the Equipment the Hirer shall be liable for any loss incurred by the Owner (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 13.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 14. Default & Consequences Of Default**
- 14.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 14.2 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in pursuing the debt including legal costs on a solicitor and own client basis and the Owner's collection agency costs.
- 14.3 Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), the Owner may suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the terms and conditions. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.
- 14.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.5 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies the Owner may have and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to meet its payments as they fall due; or
  - (b) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.
- 15. Security And Charge**
- 15.1 Despite anything to the contrary contained herein or any other rights which the Owner may have howsoever:
  - (a) where the Hirer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Hirer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Owner or the Owner's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Hirer and/or the Guarantor acknowledge and agree that the Owner (or the Owner's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Owner elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Hirer and/or Guarantor shall indemnify the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Hirer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Owner or the Owner's nominee as the Hirer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
- 16. Privacy Act 1988**
- 16.1 The Hirer and/or the Guarantor/s agree for the Owner to obtain from a credit reporting agency a credit report containing personal credit information about the Hirer and Guarantor/s in relation to credit provided by the Owner.
- 16.2 The Hirer and/or the Guarantor/s agree that the Owner may exchange information about the Hirer and the Guarantor/s with those credit providers either named as trade referees by the Hirer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by Hirer; and/or
  - (b) to notify other credit providers of a default by the Hirer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Hirer and/or Guarantor/s.
- 16.3 The Hirer consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- 16.4 The Hirer agrees that personal credit information provided may be used and retained by the Owner for the following purposes and for other purposes as shall be agreed between the Hirer and Owner or required by law from time to time:
  - (a) the provision of Equipment on hire; and/or
  - (b) marketing of services by the Owner, its agents or distributors in relation to the Equipment; and/or
  - (c) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to provision of Equipment on hire; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Hirer; and/or
  - (e) enabling the daily operation of Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the hire of the Equipment.
- 16.5 The Owner may give information about the Hirer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Hirer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hirer.
- 17. Unpaid Seller's Rights to Dispose of Goods**
- 17.1 The Seller shall have a lien on any Goods in the possession or control of the Seller for all sums payable by the Buyer to the Seller, and the Seller shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Buyer. The Seller shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 18.3 The Owner shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Owner the remedies of the Hirer shall be limited to damages. Under no circumstances shall the liability of the Owner exceed the Price.
- 18.5 The Hirer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Hirer by the Owner.
- 18.6 The Owner may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 18.7 The Owner reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Owner notifies the Hirer of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision.