

**HAZ-ED SERVICES PTY LTD
HIRE AGREEMENT**

1 HIRE OF EQUIPMENT

- 1.1 In consideration of the Hire Charge, Haz-Ed shall hire the Equipment to the Hirer in accordance with the specifications in the Quote and otherwise on these Terms and Conditions.
- 1.2 The Hirer is entitled to use the Equipment for the Hire Period and for any agreed extension of the Hire Period.

2 COLLECTION OF EQUIPMENT

- 2.1 The Hirer shall collect the Equipment from the Collection Address unless other arrangements are made.
- 2.2 Before collection of the Equipment, the Hirer shall provide evidence to Haz-Ed that the insurance policy required under clause 3.2(a), will cover the Equipment during travel from the Collection Address to the site where it will be used.
- 2.3 If the Equipment is not ready for collection at the agreed time, Haz-Ed shall have a period of not more than 14 days to make the Equipment available for collection by the Hirer, failing which the Hirer may terminate the Hire Contract by notice in writing to Haz-Ed.
- 2.4 If a Hire Contract is terminated by the Hirer pursuant to clause 2.3 above, the Hirer shall have no right or cause of action against Haz-Ed for any loss or damage suffered by the Hirer for Haz-Ed's failure to provide the Equipment including, but not limited to loss of profit, revenue or use; and financial costs including interest incurred on borrowings.

3 USE OF EQUIPMENT

3.1 Permitted Use

The Hirer is permitted to use the Equipment only:

- (a) for the purposes for which the Equipment is specifically designed and in the usual course of its business; and
- (b) at the location identified in the Quote or as permitted by Haz-Ed from time to time.

3.2 Maintaining Insurance Policies

- (a) The Hirer shall take out and maintain at its own expense:
- (i) insurance for the direct physical loss (theft) and/or damage to the Equipment for the value of the Equipment;
 - (ii) public liability insurance for a minimum of \$10,000,000 including the interests of Haz-Ed as an interested party;
 - (iii) fire, theft and accidental damage insurance policies; and
 - (iv) any other insurance as required by law.
- (b) If during the Hire Period the Equipment requires replacement and the Hirer's insurer does not pay for the cost of replacement, Haz-Ed reserves its right to make a claim against the Hirer for the cost of replacement and damages for loss of profit.

3.3 Maintenance and Care of Equipment

- (a) If during the Hire Period the Equipment is damaged or lost, the Hirer is required to continue to pay the Hire Charge until the Equipment is replaced, found or repaired (as the case may be).
- (b) The Hirer shall maintain the Equipment in good working order and shall, on a daily basis, assess if any damage to the Equipment has resulted from regular use of the Equipment.
- (c) The Hirer shall ensure that Equipment is appropriately transported, secured during transport, and that it is not subject to rough handling and where appropriate stored in any cover, case or protective device as appropriate and kept out of weather and shielded from contact with liquids and dust.

3.4 Damage to the Equipment

- (a) The Hirer is responsible for all repairs to the Equipment (including worn out parts):
- (i) where the cost of repair is not more than \$300.00; but
 - (ii) if the cost of the repair to the Equipment is more than \$300.00 then, subject to the Hirer providing Haz-Ed with a quote from a qualified repairer confirming the cost of repair to the Equipment is more than \$300, Haz-Ed shall be responsible for the costs of repair or replacement of the damaged component except where the damage is caused by:
 - A the Hirer's failure to operate the Equipment in accordance with the manufacturer's operation and maintenance manual; or
 - B the Hirer's failure to comply with its obligations to repair and maintain the Equipment; or
 - C damage or wear to the Equipment caused by the Hirer's usage of the Equipment, which in the reasonable opinion of Haz-Ed, is abnormal or excessive.
- (b) If Haz-Ed elects not to repair any damage to the Equipment:
- (i) Haz-Ed shall make a replacement for the Equipment available for collection as soon as practicably possible; and
 - (ii) the Hirer agrees it has no right or cause of action against Haz-Ed for any loss or damage suffered by the Hirer for Haz-Ed's failure to repair the Equipment including, but not limited to loss of profit, revenue or use; and financial costs including interest incurred on borrowings, by reason of Haz-Ed's default.
- (c) The Hirer shall be responsible for repairing all damage resulting from misuse of the Equipment that arises due to:
- (i) operation of the Equipment not in accordance with the manufacturer's operation and maintenance manual; or
 - (ii) the Hirer's failure to comply with its obligations to repair and maintain the Equipment; or
 - (iii) damage or wear to the Equipment caused by the Hirer's usage of the Equipment, which in the reasonable opinion of Haz-Ed, is abnormal or excessive.
- (d) If any Equipment parts require replacement, the Hirer shall only use genuine manufacturer's parts unless otherwise agreed by Haz-Ed.
- (e) If the Equipment breaks or ceases to function for any reason other than as set out in clause 3.5(c), the Hirer is entitled to a deduction of the Hire Charge for the number of days the Equipment is not in use. The deduction per day shall be based on the Daily Rate.

3.5 Security

- (a) The Hirer must store the Equipment in a location with security that is satisfactory to Haz-Ed. If Haz-Ed deems the security unsatisfactory, the Hirer shall install satisfactory security at the Hirer's own expense.
- (b) The Equipment is at the Hirer's risk until it is returned to Haz-Ed at the Collection Address.
- (c) The Hirer will be charged for any damage caused to the Equipment by vandals, weather, and operation and maintenance of the Equipment not in accordance with the manufacturer's operation and maintenance manual.

4 RETURN OF EQUIPMENT

4.1 Equipment to be Returned to Haz-Ed

- (a) The Hirer shall return the Equipment to the Collection Address or other place specified by Haz-Ed in a clean and serviceable condition at the end of the Hire Period at the Hirer's own expense.
- (b) If Haz-Ed must collect the Equipment, it will charge the Hirer for freight expenses, which sum will be a debt due and owing

and recoverable in a court of competent jurisdiction.

4.2 **Inspection Of Returned Equipment**

- (a) Haz-Ed shall perform an inspection of the Equipment upon its return to assess if:
 - (i) the Equipment is in good working order; and
 - (ii) there are any items, attachments or accessories missing.
- (b) If Haz-Ed detects any wear or damage to the Equipment which Haz-Ed considers abnormal or adverse, then Haz-Ed shall be entitled to charge the Hirer an amount equal to the costs of repairing or replacing the worn or damaged item.
- (c) If any items, attachments or accessories are missing, then Haz-Ed shall charge the Hirer for the costs of replacing the missing items and this charge shall be payable on demand.

5 **PAYMENT**

5.1 The Hirer shall pay Haz-Ed the Hire Charge:

- (a) within 30 days of an invoice being issued; or
- (b) otherwise in accordance with the payment requirements on the Quote, which may require payment in advance; and
- (c) in any case to the bank account nominated by Haz-Ed or in such manner as Haz-Ed may direct.

5.2 If the Hire Charge is outstanding by more than 3 business days, then Haz-Ed shall be entitled to charge interest on the outstanding amount at a rate of 12% per annum accruing daily until the Hire Charge is paid in full.

5.3 The Hirer is responsible for paying any penalties, fines, demands, charges or costs imposed by any authority on or in connection with the Hire Contract or the Hirer's hiring of the Equipment.

6 **HOLDING OVER**

6.1 **Holding Over After Expiration Of Term**

If the Hirer holds over after the expiration of the Hire Period or the earlier termination of the Hire Contract the following shall apply:

6.2 **Conditions Applicable To Holding Over Period**

The Hirer will:

- (a) pay a hire charge for the Equipment at the Daily Rate for each Day that the Hirer remains in possession of the Equipment; and
- (b) be a daily hirer on the same terms as these Terms and Conditions.

7 **HAZ-ED'S WARRANTIES**

Haz-Ed warrants that:

- (a) it is the owner of the Equipment;
- (b) subject to any disclosures made in a Genuine Condition Report, Haz-Ed has provided the Equipment to the Hirer in good working condition;
- (c) it has provided the Hirer with the manufacturer's operation and maintenance manual with respect to the Equipment;
- (d) it has full corporate power and lawful authority to execute, deliver and perform its obligations under the Hire Contract and that it has the right to enter into the Hire Contract and hire the Equipment to the Hirer in accordance with the Hire Contract.

8 **HIRER'S WARRANTIES**

8.1 The Hirer acknowledges that Haz-Ed retains title to the Equipment at all times and that the Hirer has rights to possess the Equipment as a bailee only.

8.2 The Hirer warrants the following:

- (a) the person executing or accepting the Quote is authorised to do so on behalf of the Hirer;
- (b) the Hirer has examined the Equipment and is satisfied that it is in good working order and fit for the purposes for which it requires the Equipment and has not relied on Haz-Ed's skill or judgement or any representations by or on behalf of the dealer about the Equipment, its purpose, suitability, use or performance;
- (c) the Hirer will not offer the Equipment or attempt to offer the Equipment as security to any other person.
- (d) The Hirer will not allow any person other than Hirer or its employees to use the Equipment;
- (e) the Hirer will operate or cause its employees to operate the Equipment as per the manufacturer's operational manual.
- (f) the Equipment will at all times be operated by appropriately experienced persons and in accordance with any applicable laws.
- (g) the Hirer will only use the Equipment as it would be used by a careful and prudent owner;
- (h) the Hirer will not use the Equipment for any illegal purpose;
- (i) the Hirer will not modify or carry out any structural or mechanical alteration to the Equipment without Haz-Ed's prior written consent;
- (j) the Hirer will be liable for any breach of the Hire Contract committed by its servants or agents.

9 **INDEMNITY**

9.1 The Hirer shall indemnify Haz-Ed against all claims arising out of any injury or death to persons or damage to property or to any third party caused by the Hirer's use of the Equipment.

9.2 The Hirer shall indemnify Haz-Ed for any loss (including legal costs on an indemnity basis) incurred by Haz-Ed in relation to any breach of the Hire Contract by the Hirer (including without limitation for failure to pay the Hire Charge) and for any liability arising out of any such breach.

10 **TERMINATION**

10.1 Without limiting the generality of any other clause in these Terms and Conditions may terminate a Hire Contract immediately by notice in writing if:

- (a) any payment due from the Hirer to Haz-Ed pursuant to the Hire Contract remains unpaid for a period of 7 days; or
- (b) the Hirer commits a material breach of any other clause of the Hire Contract and these Terms and Conditions and such breach is not remedied within 7 days of written notice by Haz-Ed.

10.2 Notwithstanding the preceding clause Haz-Ed may terminate a Hire Contract immediately on notice in writing to the Hirer if:

- (a) the Hirer becomes, threatens or resolves to become or, in the reasonable opinion of Haz-Ed, is in jeopardy of becoming Insolvent;
- (b) the Hirer, being a partnership, dissolves, threatens or resolves to dissolve or, in the reasonable opinion of Haz-Ed, is in jeopardy of dissolving;
- (c) the Hirer, being a natural person, dies; or
- (d) the Hirer ceases or threatens to cease conducting its business in the normal manner.

10.3 If notice is given to the Hirer pursuant to the preceding clauses, Haz-Ed may, in addition to terminating the Hire Contract:

- (a) claim liquidated damages equivalent to the Hire Charge;
- (b) retake possession of all Equipment in the possession of the Hirer; and
- (c) pursue any additional or alternative remedies provided by law.

10.4 The Hirer may terminate a Hire Contract if Haz-Ed becomes, threatens or resolves to become or is in jeopardy of becoming subject

to any form of insolvency or administration.

11 GST

- 11.1 The parties acknowledge that the amounts set out in a Quote, a Hire Contract and these Terms and Conditions are exclusive of GST unless expressed to be inclusive of GST.
- 11.2 The supply of Equipment made by Haz-Ed to the Hirer will be subject to GST which will be added to invoices rendered.
- 11.3 The Hirer must pay to Haz-Ed an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.

12 OWNERSHIP OF EQUIPMENT

- 12.1 The Hirer acknowledges that Haz-Ed owns the Equipment and that Haz-Ed retains title to the Equipment at all times, including without limitation, in the event of the Hirer's liquidation or administration and that the Hirer uses the Equipment as a bailee only.
- 12.2 The Hirer is not permitted to assign, sub-let, charge, mortgage pledge or create any form of security interest over the Equipment or offer to do so or to deal with the Equipment in any way.
- 12.3 The Equipment will not under any circumstances, and whether affixed to any land at any time ever be deemed to be a fixture.

13 PPSA

- 13.1 Haz-Ed is entitled to register any impending or actual security interest which is either created or contemplated by this document in the Equipment and also upon the proceeds which arise from any form of dealing with the Equipment.
- 13.2 The Hirer shall:
 - (a) Do anything requested by Haz-Ed to
 - (i) facilitate Haz-Ed obtaining and maintaining a perfected security interest or interests under the PPSA in respect of the Equipment;
 - (ii) register a financing statement, or a financing change statement; and
 - (iii) ensure that Haz-Ed's security position and rights are not detrimentally affected by the PPSA
 - (b) not create or purport to create a security interest in the Equipment or allow a financing statement or a financing change statement to be registered by any other person.
- 13.3 The Hirer:
 - (a) Waives their rights under s157 of the PPSA to received a verification statement about the creation of a security interest under this document;
 - (b) Agrees that to the extent permitted by the PPSA, the following sections of the PPSA will not apply and hereby contracts out of them to the extent stated:
 - (i) s95 (to the extent it requires the secured party to give notices to the grantor)
 - (ii) s118 (to the extent that it allows a secured party to give notices to the grantor); and
 - (iii) sections 95,121(4), 125, 130, 132(3)(d), 132(4), 135, 142 & 143
 - (c) Agrees that the following sections of the PPSA will not apply that the Hirer will have no rights under those sections: sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- 13.4 Unless Haz-Ed and Hirer agree, and to the extent the PPSA permits it, both the Hirer and Haz-Ed agree not to provide information of the kind referred to in s275(1) of the PPSA to an interested person or anyone requested by an interested person and the Hirer waives it rights under section 275(7)(c) of the PPSA to authorise the disclosure of that information.
- 13.5 For the purposes of s20(2) of the PPSA, the collateral is Equipment including any Equipment set out in any Quote.
- 13.6 This Agreement is a security agreement for the purposes of the PPSA.

14 NOTICES

- 14.1 Any notice or other document in writing required to be given under a Hire Contract or these Terms and Conditions shall be in writing and signed by the party giving it or their solicitors and is deemed to have been given or made if served on the party concerned by:
 - (a) posting it to that corporation at its registered office; or
 - (b) handing it to one of the directors of that corporation; or
 - (c) posting it to that party at its address as is notified from time to time; or
- 14.2 A notice is deemed to have been served:
 - (a) upon receipt in the event of personal service;
 - (b) at the expiry of two (2) Business Days after the date of posting; and
 - (c) at 12 noon on the next Business Day after the e-mail is sent.
- 14.3 For the purposes of this clause a notice sent by email which contains the Company's standard email footer is deemed to have been signed by the Company.

15 SEVERABILITY

If any provision of these Terms and Conditions:

- (a) is declared void; or
 - (b) if effective, would render either the Terms and Conditions or any provision in the Terms and Conditions void or unenforceable
- THEN that provision shall have no force or effect whatsoever and shall be ineffective and severed from the Terms and Conditions to the extent necessary to avoid that consequence without affecting the validity and enforceability of the Terms and Conditions.

16 WAIVER

A party to a Hire Contract may waive a right of their own or an obligation of the other party but the waiver must be in writing signed by the party giving the waiver (or their authorised representative).

17 ENTIRE AGREEMENT

Except for the details in the Quote, the Terms and Conditions represent the entire agreement between the Hirer and Haz-Ed with respect to the hire of Equipment. Any other arrangement purported to be made by the Hirer to vary the terms of these Terms and Conditions do not form part of a Hire Contract unless those variations are agreed to in writing by Haz-Ed.

18 APPLICABLE LAW

A Hire Contract shall be governed by and construed in accordance with the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of its courts.

19 INTERPRETATION AND DEFINITIONS

- 19.1 In a Hire Contract unless inconsistent with the context or subject matter the following terms shall have the following meanings:
 - (a) Where two or more persons are parties to these Terms and Conditions the covenants and agreements on their part will bind and be observed and performed by them jointly and each of them severally.
 - (b) References to a statute include all amendments for the time being in force and any other statute enacted in substitution for and the regulations, by-laws or other orders for the time being made under that statute.
 - (c) Words importing the singular or plural numbers shall include the plural number and singular number respectively and a reference to any gender will include all genders.

- (d) A reference to a definition which encompasses a number of things is also a reference to each individual thing which the definition encompasses;
- (e) Headings will not affect the interpretation of these Terms and Conditions.
- 19.2 Unless clearly repugnant to the context the words or phrases set out below have the meanings ascribed to them.
- “Business Day”** means any day on which trading banks in Western Australia are open for business;
- “Collection Address”** means the collection address specified in the Quote;
- “Daily Rate”** Means:
Where a Hire Charge is expressed on a Quote to be an amount payable per week, a daily rate to be calculated using the following formula:
$$DR = \frac{WR \times 12}{252}$$

Where:
“*DR*” is the Daily Rate;
“*WR*” is the Hire Charge payable by the Hirer per week as identified in the Quote;
- “Day”** means the period of time commencing at midnight and ending 24 hours later;
- “Equipment”** means any equipment owned by Haz-Ed which is hired by the Hirer and includes any equipment specified in a Quote;
- “Genuine Condition Report”** means a Genuine Condition Report prepared by Haz-Ed identifying:
- (i) a report on the state and condition of the Equipment;
 - (ii) any known faults in the Equipment; and
 - (iii) a list of attachments, accessories, spares, tools and supporting documentation accompanying the Equipment; and
 - (iv) the level of wear of the items in (iii) above,
as at the beginning of the Hire Period;
- “Hire Charge”** means the daily payment or weekly payment for the hire of the Equipment specified in the Quote;
- “Hire Contract”** means any contract made between the Hirer and Haz-Ed for the hire of Equipment, whether evidenced by a Quote or not;
- “Hire Period”** means the hire period specified in the Quote or where there is no Quote the period during which the Equipment is in the possession of the Hirer;
- “Quote”** means a document recording the Hirer’s hire of Haz-Ed’s Equipment and setting out a description thereof and a Hire Charge.
- A person is **“Insolvent”** if:
- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
 - (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
 - (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Landlord); or
 - (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of a), b) or c) above; or
 - (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
 - (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Landlord reasonably deduces it is so subject); or
 - (g) it is otherwise unable to pay its debts when they fall due; or something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.
- “Person”** includes a firm, a body corporate, an unincorporated association and an authority;
- “PPSA”** Means the Personal Property Securities Act 2009 as amended from time to time and any rules or regulations made under it and the terms used in clauses 14 and 15 of these Terms and Conditions where also used in the PPSA have the same means which they have in that Act;
- “Terms and Conditions”** means these terms and conditions of hire and any variation or alteration agreed in writing from time to time.