

# High Access Hire

## Hire Terms and Conditions

These Terms and Conditions are applicable to all hire of Equipment between High Access Hire Pty Ltd and the Hirer.

### 1. Definitions

**'Account Application'** means an application by the Hirer for a credit account with HAH whether completed prior to or contemporaneously with the acceptance of these T&C.

**'Approved Credit Hirer'** means a Hirer approved by HAH for a Credit Account for use with a Hire Agreement.

**'Charges'** are any charges incurred pursuant to the terms of these T&C or the Account Application including default charges and Charges set out in clause 6 of the T&C.

**'Disbursements'** means all reasonable out of pocket cost or expenses incurred by HAH in relation to or arising from the Hire Agreement or the T&C including, but not limited to, stamp duty, authority or third party fees, any consumables, fuel, parts, registration or lodging fees, all photography, printing, duplicating and electronic transmission cost.

**'Equipment'** means any equipment, including but not limited to, vehicles, lifts, booms, hand tools and any associated or attached tools, accessories and parts available for hire as specified in the Hire Schedule.

**'Fee'** is the agreed Hire Fee for the hire of the Equipment pursuant to the Hire Agreement.

**'Guarantor'** means the person named in these T&C, any associated Account Application or a Hire Agreement as a Guarantor for the Hirer.

**'HAH'** refers to High Access Hire Pty Ltd (ACN 108 738 094) trading as High Access Hire.

**'Hirer'** means the person or entity entering into the Hire Agreement with HAH for the hire of the Equipment and the Hirer specified in the Hire Agreement.

**'Hire Agreement'** means any Hire Agreement formed pursuant to the T&C between HAH and the Hirer.

**'Hire Commencement Date'** means the date stipulated in the Hire Agreement or if no commencement date is stipulated, the date the Hirer takes possession of the Equipment.

**'Hire End Date'** means the last date of the hire term and is the date the Hirer must return possession of the Equipment.

**'Hire Schedule'** means any document headed 'Hire Schedule' or document relating to the Hire Agreement specifying the Equipment, Fee and/or Hire Commencement Date and the like.

**'Parties'** refers to HAH, the Hirer and the Guarantor.

**'Payment Date'** means the date for payment of Fees, Disbursements or Charges.

**'PPSA'** means Personal Property Securities Act 2009 (Cth) and its associated rules and regulations as applicable from time to time.

**'T&C'** means the current Hire Terms and Conditions applicable to a Hire Agreement.

### 2. Hire Agreement and Account Application

All Hire Agreements consists of:

- The T&C;
- Any Guarantee completed on behalf of the Hirer;
- Each Hire Schedule; and

- Any Special Terms Document specified by HAH as being part of the Hire Agreement.

For Approved Credit Hirers the Hire Agreement also includes any Credit Account Rules and Conditions set out in an approval notice or as notified from time to time in writing.

The approval of an Account Application is at the complete discretion of HAH.

### 3. Warranties

HAH, subject to the T&C, hire the Equipment specified in the Hire Agreement to the Hirer in clean condition and good working order.

The Hirer warrant and agree that:

- All Hire Agreements are made pursuant to the T&C;
- The hire is for the use of the Hirer only and the Hirer must not allow or authorise anyone else to use or have possession of the Equipment;
- The Hirer will pay all Fees, Disbursements and Charges pursuant to the T&C by the Payment Date;
- The Hirer has not relied on any representation from HAH or its agents unless specified in the Hire Schedule;
- The Hirer has satisfied itself as to the Equipments suitability, condition and fitness for its intended purpose;
- The Hirer must use all reasonable care to look after the Equipment in accordance with any notice or instruction provided by HAH;
- The Hirer will not tamper with, alter, modify or repair the Equipment without written permission from HAH;
- The Hirer will immediately notify HAH of any defect, damage or need of repair to the Equipment;
- The Hirer will at all times store and keep safe the Equipment and where a place of use or storage is stipulated by HAH the Hirer will only use or store the Equipment at such place.

The Hirer further warrant:

- To provide full details and information of the Hirers requirements, experience and knowledge of any issue relevant to the Hire Agreement;
- To only use the Equipment for its intended purpose;
- To use and operate the Equipment in accordance with manufacturer's guidelines and any instruction provided by HAH;
- That any person specified on the Account Application or any other document as the 'nominee contact person' shall have the authority and power to make decisions or agreements on behalf of the Hirer;
- To only use the Equipment during the Hire Term.
- To return the Equipment by the Hire End Date and acknowledge that failure to return the Equipment by the Hire End Date may constitute criminal theft;
- To return the Equipment clean and in working order;
- To use the Equipment in accordance with all legal requirements;

- To co-operate and comply with any request or demand from HAH or a statutory authority.

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#### 4. Term of Agreement

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The Hire Agreement shall commence on the Hire Commencement Date and end on the Hire End Date (“the Hire Term”).

Despite any other provision stated in the Hire Agreement, if the Hire Schedule describes the Hire Agreement as a ‘**Short Term Hire**’ then the Hire Agreement is limited in time and the Hire End Date is the date specified in the Hire Schedule, except that it can not exceed or be extended beyond the day before the date that is:

- in the case of Equipment defined as *Serial Numbered Goods* in the PPSA – ninety (90) days after the Hire Commencement Date; or
- for all Other Equipment – one (1) year after the Hire Commencement Date.

For all Other Hire Agreements the Hire Terms shall commence on the Hire Commencement Date and be:

- for the term specified in the Hire Schedule or any other hire related documents only; or
- if no term is specified, an indefinite Hire Agreement.

An indefinite Hire Agreement ends on the earlier of:

- the date the Hirer returns the Equipment; or
- the Hire End Date specified by HAH in any notice or correspondence.

HAH may issue a notice or correspondence to the Hirer at any time, despite any other term in the Hire Agreement, ending the Hire Agreement by stipulating a Hire End Date.

On the Hire End Date the Hirer must return the Equipment to HAH by the time set out in the Hire Schedule or if no time is specified by 4.00 pm.

The Hire term shall, unless varied in writing by HAH, include:

- any weekend and public holiday where the Equipment is in possession of the Hirer; and
- All days the Equipment is in possession of the Hirer whether it is use or not.

The Hire Agreement shall be a commercial hire agreement unless the schedule specifies it as domestic hire agreement.

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#### 5. Hire Fees and Payment

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The Fee shall be calculated from the Hire Commencement Date and shall continue to accrue until the Hire End Date.

The Fee and calculation method shall be as set out in the Hire Schedule for the term of the Hire Agreement.

In addition to the Fee, the Hirer must reimburse any Disbursements incurred by HAH at the rate paid by HAH plus GST where applicable for any expenses related to the Hire Agreement or the T&C.

All Fees, Charges and Disbursements must be paid in accordance with any payment schedule or Payment Date specified in the Hire Agreement. If no Payment Date is specified, then payment shall be due on the date stipulated by HAH in any Tax Invoice or other document or Notice.

All payments of Fees, Disbursements and Charges shall be due by 4.00pm on the Payment Date.

Payment time shall be of the essence in all Hire Agreements.

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#### 6. Charges

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In addition to any Fee and Disbursements and other Charges payable by the Hirer pursuant to the T&C the Hirer must pay the full reimbursement charges of:

- Any consumables, fuel or materials supplied by HAH, in connection with the Hire Agreement;
- All cleaning and repairs if the equipment is not returned clean and in working order;
- All fines, penalties, charges or levies incurred by the Hirer or its agent relating to the use, operation or possession of the Equipment;
- All government duties, fees, GST, taxes and charges imposed or relating to any Hire or Services provided pursuant to the Hire Agreement;
- All cost of delivering and/or collecting the Equipment;
- All bank fees and credit card charges incurred by HAH.

If the Hirer has booked or reserved Equipment for hire and fails to collect the Equipment or cancel such booking or reservation with less than forty-eight (48) hours notice, then HAH may charge a cancellation Charge of 50% of the Fee and if a deposit has been charged the deposit may be applied to the payment of this Charge.

Any Charges, including default charges, incurred pursuant to the T&C shall be payable by the Payment Date on any Tax Invoice or demand on which they appear.

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#### 7. Hirer Obligations and Liabilities

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The Hirer warrant and agree that it is a condition of the Hire Agreement that the Hirer, its agents or employee's:

- Return the Equipment clean and in good working order;
- Have appropriate knowledge and understanding of the operation of the Equipment;
- Have all necessary or required licenses and permits to operate the Equipment;
- Will operate the Equipment:
  - for its intended purpose only;
  - safely and in accordance with all legal requirements (including OH&S requirements);
  - in accordance with HAH's and the manufacturer's instructions;
- Will complete any log, record and form relating to the Equipment requested by HAH;
- Will take care and protect the Equipment from damage;
- Will undertake such maintenance and servicing, including replacement of any consumables, as required by HAH;
- Must use and operate the Equipment in a lawful manner;
- Must return any Equipment to HAH for any routine maintenance, in accordance with any schedule or Notice issued or received by the Hirer from HAH.

The Hirer shall pay for the full cost of repair or replacement of all or parts of the Equipment that is damaged as a result of a breach of any warranties in the T&C.

The Hirer releases, discharges and indemnifies HAH from all claim, damage, action, demands and cost incurred, claimed or payable by HAH relating to or arising out of any breach of warranty, agreement or obligation, by the Hirer its agent,

representative or employee, associated with the Hire Agreement.

The Hirer shall assume all risk and liabilities for and in respect of the Equipment and for all injuries to or death of persons and any damage to property howsoever arising from the Hirers possession, use, storage or transport of the Equipment.

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## 8. Default and Breach

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The Hirer shall be in default of the Hire Agreement if the Hirer fails to:

- pay any Fee, Charges or Disbursements by the Payment Date;
- comply with any warranty, obligation or agreement specified in the T&C or the Hire Agreement;
- comply with any lawful request or demand from HAH or a statutory authority at any time during the Hire Term;
- return the Equipment by the Hire End Date.

In the event of a default by the Hirer HAH shall be entitled to immediately terminate the Hire Agreement and to charge the Hirer any or all of the following agreed reasonable Charges as compensation for the default:

- interest at the agreed rate of 2% per calendar month on any amount outstanding, such interest shall compound monthly from the Payment Date, after as well as before any judgment;
- an Administration Charge of \$15.00 for each letter, Reminder or Re-Render Notice issued after a default;
- a monthly administration account keeping Charge in the amount of \$25.00 per month or part thereof, for any accounts that remain outstanding after the Payment Date;
- the full cost of lodging any caveat or registering or recording a *Security Interest* arising from the Hire Agreement;
- early termination charge equal to 75% of the Fee for the remaining term of a fixed term Hire Agreement or for seven (7) days for an indefinite Hire Agreement or until the Equipment is hired out on a new Hire Agreement.

HAH shall further be entitled to claim as a Charge the full reimbursement value of all legal costs incurred by HAH on a solicitor/client basis for any work associated with a default by the Hirer and any collection of overdue funds.

In the event that the Hirer fails to return the Equipment by the Hire End Date, HAH shall be entitled to a Loss of Use Charge for each day or part of a day until the Equipment is returned at the rate equal to, the higher of, the day Hire Fee:

- charged to the Hirer pursuant to the Hire Agreement; or
- pursuant to a Hire Agreement with a third party, lost as a result of the Equipment not being returned; or
- usually charged by HAH for the Equipment for a one day hire.

The charging of the Loss of Use Charge is the agreed compensation for the loss to HAH for the breach of the Hire Agreement and does not constitute a Hire Agreement.

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## 9. Ownership and PPSA

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Nothing in this Hire Agreement shall pass ownership of the Equipment to the Hirer and shall only provide the Hirer a

right or use of the Equipment and possession as a Bailee in accordance with the terms of the Hire Agreement.

Where the Hire Schedule specifies a number in the ownership column, the Equipment is owned by the owner with the relevant number in the footnote and is not property of HAH.

If the Equipment is owned by someone other than HAH then it is a term of the Hire Agreement that:

- The legal owner may exercise any of the owner's rights in the Equipment pursuant to any agreement between HAH and the owner and such action shall not constitute a breach of the Hire Agreement;
- Any of HAH and the Hirer's rights in the Equipment are expressly subject to and *subordinated* to the owner's rights and interest in the Equipment;
- any repudiation or termination of the Agreement between the owner and HAH will result in the owner being able to retake possession of the Equipment and the Hirer's rights to possess and use the Equipment pursuant to the Hire Agreement will cease on receipt of a notice from the owner to that effect;
- the Hirer irrevocably authorises the owner at any time to enter and access any land or premises owned, in possession of or controlled by the Hirer where the Equipment is stored for the purpose of inspecting, repairing or removing the Equipment.

The Hirer shall at not time be entitled to sell, assign, sublet, charge, mortgage or create any form of *Security Interest* over or in the Equipment.

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## 10. Security and PPSA

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The Hirer charges all its interest in any Real Property, Water Rights, Intellectual Property, Goods or Chattels with the payment of the Fees, Charges and Disbursements incurred pursuant to the Hire Agreement.

The Hirer acknowledges and agrees that the Hire Agreement, other than a Short Term Hire, constitute a *PPS Lease* and creates a *Security Interest* in the Equipment in favour of HAH pursuant to the *PPSA*.

The Hirer consent to HAH registering and maintaining a *Security Interest* registration on the *PPSR*, for HAH's *Interest* in the Equipment, the *Proceeds* of the Hire Agreement, the T&C or any other dealing with the Equipment.

The Hirer warrant and agree to sign and provide all assistance, information and documents necessary for HAH to maintain a *perfected PMSI* in the Equipment.

The Hirer waives its right to receive a copy of any *financing statement*, *financing change statement* or *verification statement* that is or may be registered, issued or received at any time.

The Hirer hereby waives its rights under the following sections of the *PPSA*; section 95 (removal of Accession), section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 130 (notice of disposal) to the extent that it requires the secured party to give notice to the grantor; section 132(3)(d) (contents of statement of account after

disposal); section 132(4) (statement of account if no disposal); section 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

For Equipment owned by someone other than HAH, the Hirer to the extent necessary to protect the owner's interest in the Equipment consent and authorise the owner to make any PPSR registration necessary to protect the owner's interest in the Equipment

The Guarantor in consideration of HAH agreeing to contract with the Hirer, agree, guarantee and undertake to perform all the Hirer's obligations and to pay any and all Fees, Charges or disbursements now or hereafter owed by the Hirer to HAH pursuant to the Hire Agreement, in the event the Hirer defaults. The Guarantor agrees to indemnify HAH against any loss suffered by reason of the Hirer's default.

Words set out in *Italic* in the T&C has have the meaning specified in the PPSA or it associated regulations.

### **11. Exclusions and Limitation of Liability**

In entering into a Hire Agreement with HAH the Hirer warrant and agree that:

- They have not relied on any warranty, representation or calculation made by HAH or any of its employees or agents which has not been expressly included in the T&C or the Hire Agreement documents.
- all Hire Agreements shall be deemed to exclude any Exclusions set out in any Hire Schedule or Special Terms Document;
- They authorise HAH and its representatives to access any land, by any means, on which the Equipment is held or stored at all times to install, inspect, repair or remove the Equipment.

The Parties agree that, except where expressly agreed in writing to the contrary, all terms, conditions, warranties, undertakings, inducements or representations, whether expressed, implied, statutory or otherwise, relating in any way to the Hire Agreement are excluded and without limiting the generality of the foregoing, HAH shall not be under any liability to the Hirer in respect of any loss or damage including consequential loss or damage however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the provision of hire services or omission on the part of HAH to comply with its obligations under the Hire Agreement.

Where any act, statute, code or legislative enactment ("Act") implies any term, condition or warranty and the Act avoids or prohibits provisions in a contract excluding or modifying the application of, or liability under such term, condition or Act, the liability of HAH for any breach of any term, condition or warranty shall be limited, at the option of HAH to any one or more of the following:

- (i) if the breach relates to supply of goods:
  - (a) the provision of a refund; or
  - (b) replacement of the goods; or
  - (c) repair of the goods;
  - (d) the payment to the Hirer of the reasonable cost of having the goods repaired or replaced.

- (ii) if the breach relates to services:
  - (a) the provision of a refund; or
  - (b) re-supply of the service; or
  - (c) the payment to the Hirer of the reasonable cost of having the service re-supplied.

HAH shall not be liable to the Hirer for any loss, damage, delay or failure to perform as a result or arising from any act of God, disease, strike, lockouts, war, fire, IT malfunctions or any accident or incident of any nature whatsoever beyond the reasonable control of HAH.

The provision in this clause in no way limits or reduces the statutory guarantee pursuant to the Competition and Consumer Act or the Australian Consumer Law.

### **12. General provisions**

The Hire Agreement and the T&C shall continue to have full force and effect until the Equipment is returned, all Hirer obligations have been complied with and payments made.

Any indulgence or failure by HAH to enforce any terms or rights pursuant to these T&C or the Hire Agreement will not constitute a waiver of such terms and HAH shall be entitled to require strict compliance with these T&C at all times.

Any notice provided under these T&C may be provided by hand delivery, ordinary mail, facsimile or email and shall be deemed to be given:

- where delivered by hand, on the day of delivery;
- where sent by post, two (2) business days after the day of posting; and
- where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained, but if in any case it is received on a day which is not a business day, or after 5.00pm, then it will be deemed to have been received on the next such business day.

The Hire Agreement constitutes the entire agreement between the Parties and supersedes all prior communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of the Hire Agreement.

The Hirer shall not be entitled to set off against or deduct from the Fee, Disbursement or Charges any sums owed or claimed to be owed to the Hirer against HAH.

No agreement or understanding varying or extending the Hire Agreement, shall be legally binding on either party unless varied in writing and signed by both Parties or permitted by the T&C.

Any agreement pursuant to the T&C shall be deemed to have been entered into at HAH's office in Bulleen.

If any provision of the Hire Agreement or the T&C is or becomes void or unenforceable, that part that is not, or does not become, void or unenforceable remains in full force and effect and is unaffected by that severance.

The Hire Agreement and anything arising out of it is governed by the laws in force in the State of Victoria, Australia and the Parties submit to the exclusive jurisdiction of courts of Victoria and for any matter in the Magistrates' Court to the Magistrates' court closest to HAH's head office.

**The Hirer and Guarantor acknowledge having read and understood these Terms and Conditions prior to executing this acknowledgement. By executing this acknowledgement the Hirer and Guarantor grants the Security Interest and warrant the accuracy of the acknowledgement, promises and warranties set out herein.**

Hirer's Name: \_\_\_\_\_ Signed: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position/Title (eg Director/Secretary)

Guarantor's Name: \_\_\_\_\_ Signed: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Signed: \_\_\_\_\_ Date: \_\_\_\_\_