

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

Definitions

Equipment means any item of plant and equipment listed in the Schedule to this agreement including accessories.

Hire agreement

The Owner shall let and the Hirer shall take on hire equipment. The Owner and the Hirer are entering into this master agreement to provide for the hiring of all equipment requested by the Hirer from time to time. The Owner may decline to hire equipment at it's sole discretion.

If the Hirer wishes to hire equipment, the Owner will require the Hirer to sign a hire schedule, order, delivery docket or similar document (the "Schedule") or any other form required by the Owner from time to time.

The Schedule may list the particular equipment taken for hire, applicable charges, hire commencement and termination date and such other information and provisions as the Owner requires.

This master agreement provides for the terms of each such hire. Each Schedule shall not constitute a separate hire agreement but shall be read together with and form part of this master agreement incorporating all of the provisions of this master agreement. The agreement shall include the terms and conditions attached.

Terms & Conditions

1. Hire of equipment

- 1.1. The hiring of the equipment will commence from the commencement date specified in the Schedule and continue for the time specified in the Schedule.
- 1.2. The hirer is entitled to use the equipment for the hire period. Any extension of the hire period must be agreed to by the owner.
- 1.3. The hirer agrees to return the equipment to the address of the owner on or before the end of the hire period as outlined in the Schedule and that failure to do so can be criminal theft and may be immediately reported to the police.

2. Payment for rental

- 2.1. The hirer agrees to pay the owner the hire fee and the damage waiver fee specified in the Schedule for the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.
- 2.2. The required fees must be paid to the owner prior to or on the commencement date of the hire period. Account customers who do not pay their account on the terms agreed will be deemed to be in default. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed rental until return is complete.
- 2.3. The owner may agree to make equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to the owner any charges and expenses incurred in such delivery, installation and/or collection. The owner will use its best endeavours to deliver the equipment by the agreed time but will not be liable to the hirer for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 2.4. A cancellation fee may be charged by the owner where equipment has been reserved by booking and the hirer cancels the booking without reasonable notice or fails to take delivery of the equipment.
- 2.5. The owner may charge the hirer a fee for accepting payment by credit card.
- 2.6. The owner reserves the right at any time without notice to revise the hire charges.

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

3. Use, operation, and maintenance

- 3.1. The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 3.2. The equipment shall not be used by anyone other than the hirer without the express permission of the owner.
- 3.3. The hirer will ensure that all persons operating or erecting the equipment are instructed in its safe and proper use and where required hold valid proof of training or are fully licenced to use it.
- 3.4. The hirer agrees to operate, maintain, store and transport the equipment in a proper manner and where required strictly in accordance with any instruction provided by the owner and with due care and diligence.
- 3.5. The hirer agrees that the equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment in regard to its operation, maintenance and storage
- 3.6. The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.
- 3.7. The hirer shall ensure the equipment is returned to the owner clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the owner.
- 3.8. The reasonable costs of fuel or other consumables provided by the owner and used by the hirer are to be paid to the owner at the completion date.

4. Hirer's warranties

- 4.1. The hirer warrants that:
 - 4.1.1. the equipment will be used in accordance with the conditions outlined in the Schedule;
 - 4.1.2. the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - 4.1.3. the hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
 - 4.1.4. the equipment will not be used for any illegal purpose;
 - 4.1.5. the hirer's vehicle is suitable for towing the equipment if required;
 - 4.1.6. the hirer will not, without prior written consent of the owner, tamper with, repair or modify the equipment in any way, or permit another to do so;
 - 4.1.7. the hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.
 - 4.1.8. the hirer agrees that the equipment has been received by the hirer clean and in good working order.
 - 4.1.9. the hirer will not in any way part with possession of the equipment, nor assign this hire contract, nor remove the equipment from the State without the prior approval of the owner.

5. Indemnity

- 5.1. To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.
- 5.2. Without limiting clause 6.1 of this agreement, the hirer agrees that to the full extent permitted by law, no warranties are given by the owner in respect of the equipment. Any liability of the owner pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the equipment or the cost of resupplying the equipment, at the discretion of the owner.

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

6. Loss, damage or breakdown of plant and equipment

- 6.1. Subject only to the obligations of the owner following payment of the damage waiver fee in Clause 20 by the hirer, in accordance with Clause 3 the hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.
- 6.2. The hirer is liable for the payment of the new list price of any equipment not returned to the owner.
- 6.3. If there is a breakdown or failure of the equipment the hirer shall notify the owner immediately for the appropriate action to be taken.
- 6.4. Assessment of damage and the determination of the choice and cost to repair or replace will be at the discretion of the owner.

7. Termination

- 7.1. Without prejudice to any other remedies the owner may have against the hirer and notwithstanding the period of hire specified in the contract, the hire agreement may be terminated by the owner as follows;
 - 7.1.1. Upon giving the hirer two days written notice of termination at any time during the period of hire
 - 7.1.2. Without notice if the hirer has a winding-up petition presented against it, or be wound up, or go into voluntary liquidation, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
 - 7.1.3. Without notice if the hirer commits a breach of any part of this hire contract in accordance with Clause 13.5.

8. Liability

- 8.1. The hirer will assume all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair, storage or transport of the equipment.

9. Disclaimer

- 9.1. To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

10. Title to equipment

- 10.1. The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the equipment.
- 10.2. The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, the equipment.

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

11. Repossession and remedies on default

- 11.1. The owner may retake possession of the equipment if the hirer breaches any provision of this agreement or does not pay their account in the time agreed, notwithstanding anything else herein contained.
- 11.2. If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.
- 11.3. All costs incurred by the owner in repossessing due to a breach are to be paid by the hirer.
- 11.4. In the case of repossession due to a breach of this agreement the hirer agrees to grant the owner permission to enter any premises where the equipment listed in the Schedule is situated to disconnect, decommission and/or remove that equipment.
- 11.5. In addition to the owner's right to retake possession the owner is entitled in its discretion, following any breach of any provision of this agreement by the hirer, to terminate this agreement and/or sue for recovery of any damages or charges or loss suffered by the owner, and/or to cancel any insurances effective in respect of the equipment hired.

12. Completion of the hire period

- 12.1. The hire period is completed when the equipment has been returned to the owner in the same condition as when it was hired:
 - 12.1.1. on or by the date and time outlined in the Schedule, or
 - 12.1.2. will be deemed completed on the date agreed for pick-up by the owner.
- 12.2. Where pick-up is agreed the owner will arrange to pick-up the equipment within a reasonable period after a request to do so and will issue the hirer with a pick-up number on request.
- 12.3. The hirer agrees to maintain the responsibility for the equipment whilst it is awaiting pick-up.

13. Non-merger

- 13.1. The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

14. Severance

- 14.1. If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

15. Governing law

- 15.1. This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

16. Privacy policy

- 16.1. The owner will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

17. Disputes

- 17.1. Both the owner and the hirer agree that any disputes arising from the hire and use of the equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9998 2255) before litigation is pursued.

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

18. Personal Property Securities (PPS) law

- 18.1. This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law").
- 18.2. References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 18.3. The Owner may register its security interest as a PMSI. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:
 - 18.3.1. ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - 18.3.2. enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and
 - 18.3.3. enabling the Owner to exercise rights in connection with the security interest.
- 18.4. The Owner may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 18.5. The rights of the Owner under this document are in addition to and not in substitution for the Owner's rights under other law (including PPS Law) and the Owner may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 18.6. To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Owner to give notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 18.7. The following provisions of the PPS Law confer rights on the Owner: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The Hirer agrees that in addition to those rights, the Owner shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 18.8. The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 18.9. The Owner and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing the Owner the benefit of section 275(6)(a) and the Owner shall not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

19. Security interests and sub-hire

- 19.1. The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the equipment other than with the express written consent of the Owner.
- 19.2. The Hirer must not lease, hire, bail or give possession ('sub-hire') of the equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this Agreement.
- 19.3. The Hirer may not vary a sub-hire without the prior written consent of the Owner (in its absolute discretion).
- 19.4. The Hirer must ensure that the Owner is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the equipment.
- 19.5. The Hirer must take all steps including registration under PPS Law as may be required to:
 - 19.5.1. ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - 19.5.2. enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner in writing) for the security interest; and
 - 19.5.3. enabling the Owner and Hirer to exercise their respective rights in connection with the security interest.
- 19.6. The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.

Stirling Equipment Hire Pty Ltd - Terms & Conditions of Hire

20. Optional damage waiver

- 20.1. Damage Waiver is not insurance, but is an agreement by the Owner that the Hirer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.
- 20.2. Upon payment by the hirer up to date of the damage waiver fee, the owner waives any claim it may have against the hirer for the cost of repairs or replacement of the equipment due to damage occurring during its use under this agreement. The limitation is subject to payment of any Damage Waiver Excess payable by the hirer and the other terms of this document. This clause in no way entitles the hirer to, or implies the availability of, compensation from the owner for any liability incurred by the hirer to any third party in relation to the use of the hired equipment.
- 20.3. The damage waiver is not available to be purchased retroactively.
- 20.4. The damage waiver is subject to the hirer paying the costs as stated by the owner for repair, replacement, theft, or loss. Failure to pay will result in the damage waiver being voided and the full cost of repair, replacement, theft, or loss being borne by the hirer, as per Clause 6.
- 20.5. This clause ceases to operate at the end of the hire period unless an extension by the owner is granted in writing and an additional agreed fee is paid.
- 20.6. This clause will not apply to loss or damage which arises from:
 - 20.6.1. breach of this agreement where the breach increased the risk of or causes the loss or damage;
 - 20.6.2. breach of any statute or other law or regulations in connection with the use of the equipment by the hirer where the breach increased the risk of or causes the loss or damage;
 - 20.6.3. misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
 - 20.6.4. theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
 - 20.6.5. lack of lubrication or non-adherence to other normal maintenance requirements that are required by or could reasonably be expected of the hirer under this agreement;
 - 20.6.6. disregard for instructions given to the hirer by the owner in respect of the proper use of the equipment or in contradiction of the manufacturer's instructions if supplied with the equipment at the commencement of hire;
 - 20.6.7. unexplained disappearance of the equipment;
 - 20.6.8. theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where that security is not properly used by the hirer to secure the equipment whilst it is left unattended; or
 - 20.6.9. loading or off loading equipment from maritime vessels, transportation of equipment on maritime vessels or the use of equipment on any wharf or bridge or over any body of water.