

Leader Terms and Conditions of Hire

1. Definitions

1.1 For the purposes of these Terms and Conditions:-

Account Application means the Leader Access Hire Account Application document completed by the Hirer upon the application with Leader for the hire of Equipment from Leader on credit, as varied by Leader from time to time

Equipment includes (but is not limited to) any and all elevated work platforms, vertical and scissor lifts, boom lifts, telehandlers, articles, machinery, motor vehicles and other plant and/or equipment hired by Leader to the Hirer and includes any and all affixed and/ or accompanying accessories.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

Hirer is

- a. the Person identified in the Account Application as the Applicant requesting the provision by Leader of hire of Equipment on credit; or
- b. otherwise, the Person requesting the hire of Equipment from Leader, either directly or by their employee or agent

Leader is Leader Organisation Pty Ltd ACN 159 319 954, trading as Leader Access Hire, including its substitutes, successors and permitted assigns.

Notice include any approvals, consents, instructions, orders, directions, statements, requests and certificates or other communications that may be given, or are required to be given, under the Terms and, unless expressly stated otherwise, all Notices must be:

- a. in writing (either by email or post); and
- b. signed — if the party is a company, then the Notice must be signed by the company's directors or solicitors; and
- c. left at an address, sent by prepaid ordinary post, sent by fax, or given in any other way permitted by law; and
- d. take effect from the earlier of the following:-
 - i. the time the Notice is received; or
 - ii. four (4) business days from the date of posting via Australia Post ordinary prepaid post

Period of Hire means the period commencing at the date and time that the Equipment is:-

- i. delivered to the Hirer by Leader; or
- ii. collected by the Hirer from Leader (whether from the Leader Address or any other address expressly authorized by Leader in writing); and continuing indefinitely until the date and time that either:-
 - iii. the Equipment is returned by the Hirer to Leader in the same condition (subject to any fair wear and tear) as it was hired (being no less than twenty four (24) hours from the date and time of commencement of the Period of Hire [subject to the exception in Clause 5.2 of the Terms]); or
 - iv. Leader confirms collection of the Equipment pursuant to Clause 3 of the Terms; or
 - v. Leader repossesses the Equipment pursuant to Clause 11.1 of the Terms; or
 - vi. the insurance company (in the event of the Equipment being stolen or damaged beyond repair) confirms that the Equipment has been stolen or damaged beyond repair; or
 - vii. Leader otherwise terminates the hire of the Equipment in writing pursuant to the Terms

Person means an individual, corporation, government or governmental agency, estate, trust, partnership, association or other legal or commercial entity or undertaking.

PPSA means the *Personal Property Securities Act 2009* (Cth)

PPSR means the Personal Property Security Register as defined in the PPSA

Price List means Leader's published price list for the hire of the Equipment, as varied by Leader from time to time

Terms means these Terms and Conditions of Hire, as varied by Leader from time to time

The Leader Address is 17 Leader Street, Somerton in the State of Victoria 3062.

1.2 In the Terms, unless the context otherwise indicates, a reference to a party's executors, administrators, successors and permitted assigns.

1.3 The singular includes the plural and vice versa and any gender includes any other gender.

2. Rental of Equipment

2.1 Leader agrees to rent Equipment to the Hirer for the Period of Hire and pursuant to the Terms

2.2 In consideration of the rental provided by Leader pursuant to Clause 2.1 of the Terms, the Hirer agrees to pay Leader upon request:-

- a) the relevant rental charge (either at a rate agreed between Leader and the Hirer or otherwise as set out in the Price List) for the Period of Hire of the Equipment hired from Leader pursuant to Clause 2.1 of the Terms; and
- b) any damage waiver fee, pursuant to Clause 8 of the Terms; and
- c) any charges for delivery and/or collection of the Equipment; and
- d) any reasonable costs of fuel and other consumables provided with the Equipment by Leader and consumed by the Hirer; and
- e) any applicable credit card surcharge levied upon Leader for credit card payments made by the Hirer; and
- f) any other duties, stamp duty, fees, outgoings, penalties, fines, demands, tolls, charges or costs imposed by any authority on or in connection with the hire of the Equipment; and
- g) any reasonable cleaning costs incurred as a result of a failure of the Hirer to comply with their obligations under Clause 6.1 d) of the Terms; and
- h) any applicable GST on the items listed in Clause 2.2 a) to g) inclusive above

2.3 The Hirer agrees that Leader may charge a reasonable cancellation fee where the Hirer:-

- a) books the hire of Equipment with Leader; and
- b) subsequently cancels that hire within twenty four (24) hours of the anticipated commencement of the Period of Hire.

2.4 For the avoidance of doubt, the Hirer agrees that Leader may render a charge to the Hirer under Clause 2.2 a) of the Terms up to and including the actual end date and time of the Period of Hire for the Equipment, even where the actual end date and time of the Period of Hire exceeds the originally contemplated end date and time anticipated by Leader and the Hirer at the commencement of the Period of Hire.

3. Delivery and Collection of Equipment

3.1 The time of delivery of the Equipment by Leader will be at the exclusive discretion of Leader.

3.2 Where delivery of the Equipment is effected by Leader:-

- a) to an address nominated by the Hirer as the delivery address for the Equipment; and
- b) on a date specified by the Hirer as suitable for delivery and Leader is unable at the time of delivery (after making reasonable enquiries) to either:-
 - c) gain access to the address specified by the Hirer under Clause 3.2 a) of the Terms; or
 - d) leave the custody of the Equipment with the Hirer or an authorised employee or agent of the Hirer

the Hirer agrees that:-

- e) Leader may effect delivery by leaving the Equipment near or outside the address nominated by the Hirer under Clause 3.2 a) of the Terms; and
- f) delivery pursuant to Clause 3.2 e) of the Terms constitutes delivery of the Equipment for the purposes of determining the commencement of the Period of Hire under the Terms

3.3 The Hirer agrees to return the Equipment

to the Leader Address at the Hirer's expense, unless prior arrangements have been made with Leader for the collection of the Equipment by Leader.

3.4 Where collection of the Equipment by Leader is arranged by the Hirer pursuant to Clause 3.3 of the Terms, Leader will endeavor to collect the Equipment within a reasonable period of any such request.

3.5 For the purposes of determining the end of the Period of Hire, provision by Leader to the Hirer of Notice of a pick-up number confirming the date and time of collection of the Equipment will constitute the sole conclusive evidence of collection of the Equipment by Leader.

3.6 The Hirer accepts liability for the Equipment:-

- a) after delivery is effected by Leader pursuant to Clause 3.2 e) of the Terms; and
- b) at all material times up to the end of the Period of Hire of the Equipment as defined in the Terms (even where the Hirer has otherwise ceased operational use of the Equipment).

4. Hirer's Warranties

4.1 The Hirer warrants to Leader that the Hirer:-

- a) has provided information in the Account Application that is true and correct in every respect and is not misleading in any way (including, but not limited to, any omission in completion of the Account Application by the Hirer);
- b) will provide Notice to Leader (within seven (7) days of such a change) of any change in the structure, management or legal entity of the Hirer specified in the Account Application including (but not limited to) any change in director(s), management, partnership or trustee or change of the trading and/or registered and/or mailing address of the Hirer;
- c) has not relied upon Leader's skill or judgment (or upon any representations made by or on behalf of Leader by their agents or employees) in making their selection of the Equipment;
- d) will only use the Equipment for its intended purpose and in accordance with specifications for the Equipment provided by the manufacturer and/or Leader;
- e) will maintain, store and transport the Equipment with due care and diligence and strictly in accordance with any instructions provided by the manufacturer and/or Leader;
- f) will (at all material times during the Period of Hire) only allow the Equipment to be operated by individuals properly and validly authorised, licensed and certified to use the Equipment (including, but not limited to, valid and current holders of required driver's licenses, operator's licenses or certificates of competency for the Equipment);
- g) holds and will continue to hold at all material times during the Period of Hire (including for transportation of the Equipment) current policies of insurance relevant to the possession and operation of the Equipment (including, but not limited to, worker's compensation insurance and public liability insurance);
- h) will not permit operation of the Equipment by anyone other than the Hirer without the express written permission of Leader;
- i) will strictly comply with all relevant Commonwealth, State and Local Government occupational health and safety laws and regulations relating to the proper operation and use of the Equipment;
- j) will not use the Equipment (nor make the Equipment available for use by any other party) for any illegal purpose;
- k) will not repair, alter or modify the Equipment in any way (nor permit another party to repair, alter or modify the Equipment) without the prior written consent of Leader;
- l) will not remove the Equipment from the State of Victoria without the prior express written consent of Leader;
- m) will report any damage to and/or loss of the Equipment to Leader immediately upon becoming aware of such damage or loss;

5. Leader's Warranties

5.1 The Hirer will fully examine the Equipment at the commencement of the Period of Hire for the purposes of determining if the Equipment provided by Leader is of acceptable quality and fit for the Hirer's purposes

5.2 Insofar as the Hirer (upon conducting the inspection defined in Clause 5.1 of the Terms) determines that the Equipment is not of acceptable quality and/or not fit for the Hirer's purpose, the Hirer must immediately:-

- a) terminate use of the Equipment; and
- b) return the Equipment to the Leader Address or arrange for collection of the Equipment by Leader; and
- c) provide Notice to Leader of the basis upon which the Hirer asserts that the Equipment is not of acceptable quality and/or fit for purpose

5.3 Insofar as Leader determines (in their absolute discretion and upon compliance by the Hirer with Clause 5.2 of the Terms) that the Equipment returned by the Hirer is not of acceptable quality and/or fit for purpose, Leader warrants to provide the Hirer with a suitable replacement for the Equipment

5.4 If the Hirer:-

- a) retains the Equipment following the inspection detailed in Clause 5.1 of the Terms; or
- b) the steps detailed in Clause 5.2 of the Terms are not undertaken by the Hirer within twenty four (24) hours following the commencement of the Period of Hire of the Equipment

then the Hirer acknowledges and agrees that the Hirer has accepted the Equipment as being of acceptable quality and fit for the Hirer's purposes

5.5 Subject to Clauses 5.1 – 5.3 and any statutory rights which cannot be excluded by Leader (including under the Australian Consumer Law), all warranties, conditions, guarantees and terms in relation to the state, quality or fitness of the Equipment and of every other kind whether expressed or implied by use, statute or otherwise are expressly excluded by Leader.

6. Hirer's Obligations

6.1 The Hirer agrees that, during the Period of Hire of the Equipment, they will:-

- a) use the Equipment in a skillful and professional manner at all times;
- b) not misuse the Equipment;
- c) not use or permit the use of the Equipment in an illegal manner (including by the Hirer's servants, employees or agents);
- d) keep the Equipment clean and free of all foreign matter at all times (at the Hirer's own expense);
- e) maintain the Equipment in good repair and condition;
- f) indemnify Leader for:-
 - i. any breach of the Terms committed by the Hirer's servants, employees or agents; and
 - ii. any injury and/or fatality arising from the Hirer's possession, use, maintenance, storage or transport of the Equipment.

7. Payment by the Hirer for Rental of the Equipment

7.1 Leader will render a tax invoice to the Hirer setting out the applicable charges arising (pursuant to Clause 2.2 of the Terms) for the rental of the Equipment by Leader to the Hirer (pursuant to Clause 2.1 of the Terms)

7.2 Any tax invoice rendered by Leader to the Hirer (pursuant to Clause 7.1 of the Terms) is due and payable and must be paid in full and without deduction by the Hirer:-

- a) thirty (30) days from the end of month in which the invoice is rendered (where the Hirer holds a current Account Application with Leader); or
- b) prior to or on the commencement of the Period of Hire for the Equipment (in all other instances)

7.3 Where any tax invoice is:-

- a) rendered by Leader to the Hirer (pursuant to Clause 7.1 of the Terms); and
- b) any amount remains unpaid at the expiration of the relevant time period set out in Clause 7.2 of the Terms

the Hirer agrees that Leader may charge interest (calculated daily) at the rate set under the *Penalty Interest Rates Act 1983 (Vic)* (as varied from time to time) plus two (2) per cent on the unpaid amount.

8. Damage Waiver Fee

8.1 Where the Hirer has made payment of the relevant damage waiver fee for the Equipment (and subject to Clause 8.2 of the Terms), Leader agrees to be responsible for the costs of repairs to and/or replacement of the Equipment for the Period of Hire.

8.2 For the avoidance of doubt, the liability of Leader under Clause 8.1 of the Terms:-

- a) pertains only:-
 - i. to the Equipment against which the Hirer has paid the damage waiver fee; and
 - ii. for the Period of Hire of the Equipment; and
 - iii. where use of the Equipment by the Hirer fully and strictly complies with the Terms; and
- b) is expressly excluded where the relevant repair and/or replacement sought by the Hirer relates to or arises directly or indirectly from:-

- i. any breach of Commonwealth, State or Local Government law, statute or regulation by the Hirer and/or their servants, employees or agents;
- ii. any misuse or abuse of the Equipment or willful or malicious act(s) against the Equipment by the Hirer and/or their servants, employees or agents;
- iii. any negligent and/or reckless use and/or overloading of the Equipment by the Hirer and/or their servants, employees or agents;
- iv. theft, loss or damage to tools and/or accessories supplied by Leader to the Hirer with the Equipment (including, but not limited to, hoses, drills, bits, grease guns, electric leads, tyres and tubes);
- v. failure by the Hirer to apply recommended lubrication to the Equipment during the operation period of the Equipment;
- vi. the failure of the Hirer to otherwise adhere to ordinary maintenance requirements that could otherwise be reasonably expected given the nature of the Equipment and the operation period of the Equipment;
- vii. any other act(s) that would otherwise void an insurance claim by Leader on the Equipment

8.3 Other than as provided for in Clause 8.1 of the Terms, the Hirer agrees to otherwise be responsible for all loss or damage to the Equipment during the Period of Hire irrespective of the cause of the loss or damage (save for genuine fair wear and tear to the Equipment)

8.4 The Hirer agrees that nothing in Clause 8.1 of the Terms is to be construed as an agreement by Leader to pay any compensation, damages or loss occasioned or alleged to have been occasioned whatsoever by the Hirer, either resulting from the repairs to and/or replacement of the Equipment or otherwise

9. Ownership of the Equipment

9.1 The Hirer acknowledges and agrees that Leader and/or its associated entities retain title to the Equipment and any possession of the Equipment by the Hirer is as a mere bailee only

9.2 The Hirer further acknowledges that they will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, on-hire or otherwise part with or attempt to part with the personal possession of the Equipment or otherwise deal with the Equipment, nor to conceal or alter the nature of the Equipment

10. Indemnity

10.1 The Hirer agrees to indemnify Leader against any claim or loss arising from or related in any way to any dealing between Leader and the Hirer or anything arising as a result of any breach of the Terms

11. Termination and Recovery by Leader upon Default

11.1 In the event that the Hirer commits any event of default under the Terms, the Hirer agrees that Leader may elect at their discretion to do any or all of the following:-

- a) immediately terminate the hire of the Equipment;
- b) repossess the Equipment from the Hirer;
- c) commence recovery action against the Hirer (including, but not limited to, mercantile agent recovery action, legal proceedings and lodgment of notifications or registrations of security against real or personal property) for any unpaid monies or amount(s) due and payable to Leader, either under the Terms or otherwise;
- d) terminate the future provision of hire on credit under the Account Application without liability to the Hirer or any third party

11.2 For the purposes of Clause 11.1 of the Terms, an event of default includes (but is not limited to):-

- a) any failure whatsoever by the Hirer to pay any tax invoice rendered by Leader (pursuant to Clause 7.1 of the Terms) within the relevant payment terms applicable to that tax invoice (pursuant to Clause 7.2 of the Terms);
- b) any breach whatsoever by the Hirer of:-
 - i. the Hirer's Warranties (pursuant to Clause 4 of the Terms); or
 - ii. the Hirer's Obligations (pursuant to Clause 6 of the Terms); or
 - iii. Clause 9.2 of the Terms
- c) any commission by the Hirer of an insolvency event (including, but not limited to):-
 - i. non-compliance by the Hirer with a creditor's statutory demand or bankruptcy notice (whether served by Leader or otherwise);
 - ii. the filing against the Hirer of any winding up proceedings or creditors petition;
 - iii. the filing by the Hirer of a debtors petition;
 - iv. the proposition of or making of any deed of company arrangement, debt agreement or personal insolvency agreement by the Hirer (or any other arrangement or composition with the creditors of the Hirer affecting the rights of Leader);
 - v. the making of a winding up order or sequestration order against the Hirer; or
 - vi. any appointment of a receiver, manager, administrator, liquidator or trustee in bankruptcy to the affairs of the Hirer
- d) any failure of the Hirer to surrender the Equipment at the completion of the Period of Hire (upon provision of Notice by Leader requesting same)

11.3 The Hirer agrees that Leader may exercise any or all of their rights under Clause 11.1 of the Terms notwithstanding that the Period of Hire for the Equipment previously agreed between Leader and the Hirer may not have otherwise ended

11.4 For the purposes of effecting repossession of the Equipment under Clause 11.1 b) of the Terms, the Hirer agrees that:-

- a) Leader may lawfully enter into or upon any premises where the Equipment may be located to recover the Equipment from the Hirer;
- b) the Hirer will indemnify Leader for any costs and/or damages to any third party however caused arising from the collection of the Equipment; and
- c) any such recovery and determination of the Period of Hire will not prejudice the rights of Leader to further recover from the Hirer any additional claims, damages or expenses arising out of default of the Hirer or otherwise under the Terms

11.5 In the event that Leader commences any action whatsoever under Clause 11.1 of the Terms, the Hirer agrees to indemnify Leader for all costs and expenses incurred by Leader and its Australian legal practitioners, mercantile agents and other parties acting on Leader's behalf in respect of anything instituted or considered against the Hirer (including, but not limited to, costs of repossession of the Equipment, recovery of outstanding debt to Leader or otherwise)

12. Charge

12.1 To secure the Hirer's obligations to Leader under the Account Application and/or the Terms, the Hirer charges in favour of Leader all their estate or interest in any freehold or leasehold land wherever situated which the Hirer now has or may subsequently acquire.

13. Privacy Act

13.1 The Hirer consents and agrees to Leader (subject to Leader's obligations under the Privacy Act 1988 (Cth)) collecting, using and/or disclosing commercial and/or consumer information about the Hirer relating to (but not limited to):-

- a) the identity, credit history and solvency of the Hirer; and
- b) an assessment of the creditworthiness and risk of the Hirer for the purposes of enforcement of Leader's rights
- c) the seeking from or provision to a Credit Reporting Agency of personal information about the Hirer; and
- d) the contacting of any trade references or other credit providers and acquisition from them or provision to them of personal information in relation to the Hirer and its credit worthiness.

13.2 The execution of the Account Application by the Hirer may be produced as conclusive evidence of the Hirer's consent to the matters set out in Clause 13.1

14. Force Majeure

14.1 If Leader is unable to perform (in whole or in part) any obligation under these Terms by reason of any fact, circumstance, matter or thing beyond the reasonable control of Leader:-

- a) Leader is relieved of that obligation under the Terms to the extent and for the period that it is unable to perform such obligation; and
- b) Leader will not be liable to the Hirer or any other party for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause.

15. No Waiver

- 15.1 No delay by Leader in exercising any right or power under the Account Application or the Terms will operate as a waiver of that right or power.
- 15.2 No single or partial exercise by Leader of any right or power under the Account Application or the Terms will preclude any other or further exercise of that right or power

16. Credit Limit

- 16.1 Any credit limit specified in the Account Application is an indication only of Leader's intention at the time of entering the Account Application.
- 16.2 Leader may (at their absolute discretion) vary or withdraw the credit limit specified in the Account Application at any time without any liability to the Hirer or any other party

17. Review of Terms and Conditions

- 17.1 Leader reserves the right to review the Terms at any time.
- 17.2 If there is to be any change to the Terms following any such review, the Hirer agrees that the relevant amendments will take effect from the date on which Leader notifies the Hirer of such change.

18. Entire Agreement

- 18.1 The Hirer agrees that the Terms:-
- a) shall apply to the exclusion of all others, including any terms and conditions of the Hirer; and
 - b) constitute the whole agreement between the parties, unless otherwise agreed in writing.

19. Rights of Third Parties

- 19.1 The Terms do not, and are not intended to, confer any rights or remedies upon any person other than Leader and the Hirer.

20. Severability

- 20.1 If any provision of the Terms are prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Terms and rendered ineffective as far as possible without modifying the remaining provisions of the Terms, and shall not in any way affect any other circumstances of or the validity or enforcement of the Terms.

21. Payment Claim

- 21.1 The parties agree that any invoicing issued by Leader under Clause 7 of the Terms constitutes a payment claim for the purposes of the *Building and Construction Industry Security of Payment Act 2002* (Vic)

22. PPSA

- 22.1 The Hirer grants a security interest (as defined in the PPSA) to Leader registrable on the PPSR in respect of any security interest arising under the Account Application and/or the Terms.
- 22.2 For any security interest arising under the Account Application and/or the Terms, the parties agree that:-
- a) the Account Application and the Terms constitutes the security agreement; and
 - b) the collateral is any of the Equipment hired by Leader to the Hirer after the Account Application is signed, adopted or accepted by the Hirer
- 22.3 The Hirer may not, without Leader's consent, do or agree to do any of the following in respect of the collateral (as defined in 22.2 b) above):-
- a) sell, assign or otherwise dispose of the collateral;
 - b) lease or license the collateral;
 - c) part with possession of the collateral, other than by giving possession to Leader;
 - d) change the nature of the collateral;
 - e) move the collateral outside Australia;
 - f) deal in any other way with the collateral or any interest in it, or allow any interest in it to arise or be varied (including, but not limited to, any further security interest under the PPSA)
- 22.4 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest created under Clause 22.1, the parties agree that (to the extent that the PPSA allows) that the following PPSA provisions will not apply to the enforcement of the security interest:-
- a) s.95 (to the extent that it requires Leader to give notice to the Hirer); s.96; s.121(4); s.125; s127; s129(2) and (3); s. 130; s.132; s. 132(3)(d); s.132(4); s.134(2); s. 135; s.136(3),(4),(5); s.137; s.142; s.143
- 22.5 The Hirer waives their right to receive a verification statement under s.157 of the PPSA

23. Applicable Law

- 23.1 This agreement will be governed by and construed and interpreted in accordance with the laws of the State of Victoria.
- 23.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the state of Victoria.