



Conditions of Hire Amended Version 13.04.10

1. Definitions and General Provisions

- (a) In these Conditions of Hire the "Owner" Altro Holdings Pty Ltd trading as Orange Hire ABN 97 133 373 154, shall let and the "Hirer" shall take on hire all and singular the "Equipment" (including tools, accessories and parts) to possession of which the Owner warrants itself to be entitled provided that during the currency of the said hire the title and property in the said Equipment shall remain in the Owner and the Hirer shall be a Bailee thereof only.
- (b) The hiring rate is based upon the Equipment being hired at the sole discretion of the Owner. The hiring rate may be varied and applied at a weekly or monthly rate.
- (c) Hire is charged to the time the Equipment is out of the possession of the Owner at the Hirer's request (inclusive of weekends & public holidays); not only the time the Equipment is used.

2. Hiring Charges

- (a) Hiring charges shall commence from the time the Equipment is collected by the Hirer from the Owner's premises, until returned to the said premises (Hire Period). In the event of the Hirer failing to return the Equipment to the Owner's premises until after 8.00am the day following the day of hire, the Hirer will be charged an additional hire period. Should the Owner agree with the Hirer to deliver and collect the Equipment, hire charges shall commence from the time the Equipment leaves the Owner's premises until the Owner is notified by the Hirer that the Equipment is available for collection, at which time the Owner will give an "off-hire" number as verification that such notification has been received.
- (b) The Owner shall endeavour to have the Equipment available to the Hirer on the commencement of the Hire Period. The Hirer agrees that the Owner will not be liable for any loss or damage (nor will these conditions of hire be affected by) any delay or failure in delivery or failure of the Equipment during the Hire Period.
- (c) The notification shall be given by the Hirer in time for the Equipment to be picked up and returned to the Owner's premises by 5.00pm on the day of cessation of hire, except where notification is received on a Friday without suitable time to effect a collection prior to 5.00pm whereupon at the sole discretion of the Owner, rental charges may apply until the following Monday. In the event of insufficient notice being given the Hirer will be held responsible for the safekeeping of the Equipment until collection, & may be charged extra hire charges, at and within the Owner's absolute discretion and judgment.
- (d) All hiring rates exclude GST, government duties and charges which will be charged to the Hirer on invoicing.

3. The Hirer shall -

- (a) Determine the condition and suitability of the Equipment hired for the purpose required.
- (b) Use the Equipment in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
- (c) Ensure that the Equipment is operated by a suitably certified operator (whether supplied by the Hirer as its cost, or employed and provided by the Owner) who will work entirely in accordance with the direction of the Hirer or his authorised representative.
- (d) At its own expense service and maintain the Equipment in good and substantial repair and condition.
- (e) Clean the Equipment properly and thoroughly upon completion of the hire or to be charged at and within the absolute discretion of the Owner a cleaning fee at the rate of \$50.00 plus GST per man hour (minimum charge \$50.00) for any cleaning required to be performed by the Owner or his representative/s.
- (f) Accept full responsibility for the safe-keeping of the Equipment, and except as specified hereafter, indemnify the Owner for all loss, theft or damage to the Equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer or its servants, agents or employees.
- (g) Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the hire period, however arising, whether from negligence of the Hirer or Owner or otherwise and without limiting the foregoing whether or not the Equipment was being operated by a servant of the Owner or any other person for whose acts the Owner might be or is held to be responsible in connection with operation of the Equipment.
- (h) Not be entitled to lien over the Equipment, not without the Owner's prior written consent part with possession of the Equipment or assign the benefit of the hire agreement, nor remove the Equipment or allow it to be removed from the state of New South Wales.
- (i) Not alter, make any additions to deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- (j) Pay the Owner all hire and related charges and other costs in accordance with the payment terms.



- (k) Accept responsibility and fully reimburse the Owner for the cost of freight to retrieve Equipment abandoned for any reason.
- (l) Not under circumstance repair or attempt to repair the equipment without prior consent of the owner.
- (m) Immediately advise the Owner orally of any failure in or damage to the Equipment, howsoever arising and within 48 hours provide written conformation.

4. Termination by the Owner. Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement:

- (a) At any time by giving to the Hirer 24 hours notice of its intention so to terminate, such termination to be effective as the expiry of the said 24 hours.
- (b) Without notice if the Hirer shall commit any breach of the hire agreement or have winding up petition presented against it or be wound up, or go into voluntary liquidation or commit any act of bankruptcy, or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or its business is placed under official management or if it ceases to carry on business. Upon termination of this hire agreement as aforesaid the Owner shall be entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Owner its agent and authorises the owner to enter on any land or premises owned by or under the control of the Hirer upon which the Equipment is then situated and agrees to indemnify the owner in respect of any claim, damages or expenses arising out of any action taken under this condition.

5. Payment obligations

- (a) The Hirer must:
 - (i) make all payments within [Insert time period] days from the date of the invoice.
 - (ii) not withhold any payment under this agreement or make a deduction from it for any reason including because:
 - (A) the equipment is damaged, does not operate, or is not in Hirer's possession,
 - (B) Hirer claims to have set -off, counterclaim, or other right against Owner or any other person.
- (b) No claims for credit will be recognised after 7 days from the date of the invoice.
- (c) The Owner reserves the right to revise the Schedule of Hire Rates and related charges without notice

6. Overdue Payments

An interest rate of 15 % annum will be applied to any overdue accounts.

7. Trade Practices Act.

- (a) Certain conditions and warranties may be implied into the hire agreement by the Trade Practices Act and State Legislation and these conditions are to be read subject to such legislation.
- (b) The Hirer agrees that the Owner is not liable to the Hirer for any loss or damage suffered by the Hirer or by any other party directly or indirectly arising out of these Conditions of Hire whether arising as a result of the negligence of the Owner, its employees, servants and agents, or otherwise and all warranties and conditions implied by law or statute are to the maximum extent permitted by law excluded from these Conditions of Hire. To the extent that such warranties and conditions are unable to be excluded or negated then the liability of the Owner there under is absolutely limited to either the resupply of the Hire of the Equipment or the amount due to the Owner under these Conditions of Hire for that part of the Hire Period to which the loss or damage relates at the option of the Owner.
- (c) The Hirer shall be responsible for and indemnify the Owner against any loss or damage to the Equipment through any cause whatsoever during the Hire Period and in addition any Consequential Damage arising directly or indirectly there from such as any hire charges forgone whilst the equipment is unavailable for hire undergoing repairs or otherwise whenever this occurs. Consequential Damage in these conditions of hire includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against the Hirer by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage
- (d) No warranty or representation is given by the Owner as to the performance, state, fitness for purposes of capacity of the machinery or as to its ability to perform any work for which it has been hire. Any statutory warranty or presentation (expressed or implied) as to the ability, fitness or capacity of the machinery to perform the work for which it has been hired is expressly excluded.



8. Authorised Officer.

The person signing the document for and on behalf of the Hirer hereby covenants with the Owner that he or she has the authority of the Hirer to make this agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person signing this agreement failing to have such power and or authority.

10. Insurance.

(a) Hirer to take out own insurance. Unless a Damage Waiver Exemption Form is provided by you stated in this agreement, during the period of hire, the Hirer will comprehensively insure and keep insured the machinery (including public liability insurance and motor vehicle insurance) for an amount not less than the amount shown in this agreement, for the following risks:-

- (i) damage to the machinery,
- (ii) third party property damage,
- (iii) public liability insurance for an amount of not less than \$10,000,000.

(b) Damage Waiver Option (*Hirer must choose either option and the other option should be deleted)

(i) Unless the Damage Waiver box on the Application for Credit Account is marked "Not Applicable" or "Not Required" and initialled by the Hirer then the damage waiver charge will apply.

(ii) In the event of damage to the Equipment \$500.00 per item or 10% of the cost of repairs to the Equipment, whichever is greater.

(iii) This waiver will not apply to damage to Equipment in the following circumstances:

In the case of all Equipment:

- (A) Damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment,
- (B) Damage caused by misappropriation or wrongful conversion by the Hirer or its employees, servants, independent contractors or agents or by any other person to whom the Equipment is entrusted by the Hirer
- (C) Damage caused by the use or operation of Equipment in contravention of any of these Conditions of the Hire
- (D) Damage caused by the use or operation of equipment in violation of any statute (Commonwealth or State) of any regulation or bylaw thereunder
- (E) Damage to tools or accessories
- (F) Damage to tyres or tubes
- (G) Damage to batteries
- (H) Damage to Equipment occurring for any reason whilst located, used, unloaded, transported on, over or adjoining water including, without limiting the generality hereof whilst located, used, loaded or transported over or on wharfs, bridges, barges and vessels of all kinds,
- (I) The Equipment is lost or stolen
- (J) The damage or loss is caused by the negligence of the Hirer or any persons under his control including the case of a motor vehicle any damage caused by the vehicle being driven without adequate water, engine oil, brake fluid, or tyre air pressure,
- (K) The Equipment is used for a purpose for which it was not designed.

11. The Hirer acknowledges that the Owner has not represented itself to the Hirer as a person carrying on the business of insurance

12. Any previous negotiations, understandings, written or oral representation, warranties, memorandum or commitments in relation to the Equipment are superseded by these conditions and no amendment to these conditions of hire will bind the parties unless in writing and executed by or on behalf of the Owner.