



## TERMS AND CONDITIONS OF SALE AND HIRE DATED: September 2021

### 1. DEFINITIONS

A reference to the following terms in these Terms and Conditions of Hire has the meaning set out below:

- (a) "Agreed Servicing" means periodic servicing of the Equipment, if and when required by CORSAIR HIRE, but does not include day to day maintenance, lubrication and care of the Equipment.
- (b) "Collection Fee" means the fee payable by the Customer to CORSAIR HIRE for collection of the Equipment by CORSAIR HIRE from the Delivery Site.
- (c) "Customer" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from the Owner.
- (d) "Default Rate" means the interest rate which is equal to prevailing rate detailed in the Penalty Interest Rates Act 1983.
- (e) "Delivery Fee" means the fee payable by the Customer to CORSAIR HIRE for delivery of the Equipment by CORSAIR HIRE to the Delivery Site.
- (f) "Delivery Site" means the site where the Equipment is to be delivered and collected by CORSAIR HIRE and used by the Customer.
- (g) "Environmental Laws" means any statute, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including without limitation the use or protection of the environment.
- (h) "End Date" means the date when CORSAIR HIRE will collect the Equipment from the Customer.
- (i) "Equipment" means any equipment provided by CORSAIR HIRE to the Customer under this Hire Contract.
- (j) "Force Majeure" means the happening of an event or circumstance which:
  - a. is beyond the reasonable control of a party and prevents or delays that party from performing any of its obligations under this contract; and
  - b. could not have been avoided or overcome by that party by the exercise of reasonable foresight, care and due diligence; and
  - c. includes, but is not limited to:
    - i. an act of God including but not limited to earthquake, flood, fire, explosion, landslide, lightning, action of the elements, force of nature, washout, storm or storm warning or natural disaster;
    - ii. strike, lockout, boycott, work ban or other labour dispute or difficulty; and
    - iii. acts of terrorism, civil disturbance, blockade, embargo, sabotage, insurrection, riot, malicious damage or epidemic; but excludes:
      - a. hardship due to currency fluctuation; and
      - b. change in market conditions or market prices.
- (k) "GST" has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
- (l) "Owner" is CORSAIR HIRE PTY LTD ACN 646 014 085 as trustee for the CORSAIR HIRE Trust.
- (m) "Start Date" means the date when CORSAIR HIRE delivers the Equipment to the Customer.
- (n) "CORSAIR HIRE" means CORSAIR HIRE PTY LTD ACN 646 014 085.

### 2. HIRE PERIOD

- (a) The Hire Period commences on the Start Date and shall continue until the End Date.
- (b) The daily rate is based upon the Equipment being hired for a maximum hire period of 8 hours.
  - i. If Equipment is used in excess of 8 hours per day, an additional hiring charge will be applied.
- (c) The weekly rate is based upon the Equipment being hired for a minimum of 5 days unless otherwise specified.

### 3. TAXES AND DUTIES

- (a) Except as otherwise provided by the law all sales, excise and similar taxes or duties which the Owner may be required to pay or collect with respect to the Equipment or its supply to the Customer shall be paid by the Customer.
- (b) Where the Customer claims exemption from duty or tax the Customer must furnish appropriate exemption certificates to the Owner.
- (c) The Owner will determine and advise the Customer of additional amounts payable as a result of the Goods and Services Tax applying to the supplies made by the Owner to the Customer under these Conditions of Sale and Hire after 1 July 2000 and having regard to the impact of related tax changes.
- (d) The Customer shall pay the additional amounts notified by the Owner immediately, or at such time or times as otherwise determined by the Owner.

### 4. TERMS OF PAYMENT

- (a) Where the Owner is responsible for delivery of Equipment, it will not be responsible for the delays in delivery or failure to deliver due to causes beyond its control including but not limited to acts of God, War, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages or inability to obtain shipping space or transportation.

- (b) Hire is charged for the time the Equipment is out of the possession of the Owner at the Customer's request (inclusive of weekends and public holidays).
  - i. Hire is charged even if Equipment is not used.
- (c) Payment is required in full, within 30 days from the date of invoice.
  - i. Payment is for all hiring charges and any other amounts in accordance with these Conditions of Sale and Hire.
  - ii. The Customer cannot make a claim for credit after 14 days from the date of the invoice.
- (d) The Owner reserves the right to revise its hire and related charges without notice.
- (e) Hire charges cover only the fee for hiring the Equipment to the Customer. If the Customer requires their Equipment to be delivered, the Customer shall pay in addition to the Owner all freight and other charges incurred in transporting the Equipment, including loading and unloading at site.
- (f) The Owner shall, if requested by the Customer, but only if personnel are available, attend the site and instruct the Customer in the operation of the Equipment, and the Customer shall be subject to standard charges (if applicable) for such services. Any other additional service, including the provision of an operator, shall be paid for by the Customer.
- (g) The Owner may charge interest on all amounts not paid by the Customer by the due date at the rate per annum equal to 2% plus the National Australia Bank's commercial overdraft interest rate, from and including the due date to the date of the actual receipt of payment.
- (h) The Customer will pay the Owner the new price of any Equipment which is for whatever reason not returned to CORSAIR HIRE.
- (i) The Customer will pay the Owner all costs incurred in cleaning and decontaminating the Equipment including, if required by law or otherwise in CORSAIR HIRE's reasonable judgement, CORSAIR HIRE believes the Equipment or the operators have been exposed to harmful contaminants or substances such as asbestos or infectious diseases such as Covid 19.
- (j) The Customer will pay the Owner the full cost of repairing any damage to the Equipment except to the extent caused by CORSAIR HIRE, unless otherwise expressly agreed in this Hire Contract.
- (k) The Customer will pay the Owner stamp duty, GST and other taxes, fines, all tolls, and penalties payable in respect of this Hire Contract or arising from the Customer's use of the Equipment.
- (l) The Customer will pay the Owner all costs incurred by CORSAIR HIRE in delivering and recovering possession of the Equipment to the extent that such costs exceed the Delivery Fee and the Collection Fee, except to the extent that CORSAIR HIRE caused or contributed to the additional cost.
- (m) The Customer will pay the Owner fees or charges payable by CORSAIR HIRE for payments made by the Customer by credit card.
- (n) The Customer will pay the Owner the cost of fuels and consumables provided by CORSAIR HIRE.
- (o) The Customer will pay the Owner any reasonable charges incurred by CORSAIR HIRE if CORSAIR HIRE is unable to inspect or carry out maintenance on the Equipment during normal working hours.
- (p) The Customer will pay the Owner any additional Hire Charges if the Equipment is not ready and able to be collected by the time agreed with CORSAIR HIRE on the Off-Hire Date.
- (q) The Customer will pay the Owner any reasonable costs and expenses incurred by CORSAIR HIRE in enforcing this Hire Contract due to the Customer's Default, including but not limited to, where the debt is passed to a third party for collection, debt commissions, legal fees and any out-of-pocket expenses.
- (r) Without limiting CORSAIR HIRE's rights under this Hire Contract, the Customer authorises CORSAIR HIRE to charge any and all amounts due and payable by the Customer under this Hire Contract to the credit card and/or debit such amounts from any bank account notified by the Customer. The Customer agrees to ensure that sufficient funds are available to pay all amounts payable under this Hire Contract.
- (s) The Customer agrees that its obligation to pay amounts payable under the Hire Contract continues notwithstanding any defect in, breakdown, accident, loss, theft or damage to the Equipment; and is not subject to set-off or reduction for any reason.

## 5. CORSAIR HIRE' OBLIGATIONS

- (a) CORSAIR HIRE will:
  - i. Allow the Customer to use the Equipment from the Start Date until the End Date;
  - ii. Make the Equipment available to the Customer in good working order and condition;
  - iii. Facilitate either collection by the Customer or delivery to the Delivery Site;
  - iv. Unless otherwise agreed by the parties, collect the Equipment from the Delivery Site within a reasonable period of the End Date agreed to by CORSAIR HIRE.

## 6. CUSTOMER OBLIGATIONS

- (a) The Customer must:
  - i. Satisfy itself on the Start Date of the condition and suitability of the Equipment hired for the purpose required;
  - ii. Carry out a thorough hazard and risk assessment before using the Equipment and comply with all applicable laws including occupational health and safety laws;
  - iii. At all times, operate the Equipment safely, only for its intended use, within the capacity for which it was designed and strictly in accordance with the law and any instructions of the manufacturer;
  - iv. Ensure equipment is operated with suitable motor vehicles and power sources (as applicable) as per any instructions of the manufacturer and CORSAIR HIRE;
  - v. Ensure that the Equipment is operated by a suitably certified or trained operator and where required, hold current certificates of competency and full licenses;
  - vi. Ensure that at all times the Equipment is stored safely and securely up to and including the End Date;

- vii. Ensure that when not in use, and up until the End Date, the Equipment must be kept in a safe and secure location that allows access for collection by CORSAIR HIRE;
- viii. Ensure that the Customer authorises in writing, any person collecting the Equipment on behalf of the Customer;
- ix. Display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by the operators of the Equipment and others working at the Delivery Site;
- x. At the customer's own cost, clean, fuel, lubricate and keep the Equipment in good condition, in accordance with the manufacturer's and CORSAIR HIRE's instruction;
  - a. Prearranged major servicing will be carried out by the Owner, at the Owner's cost, during normal working hours.
- xi. Notify CORSAIR HIRE immediately if the Equipment breaks down or fails to operate properly;
- xii. Accept full responsibility for all flat and/or damaged tyres (where applicable);
- xiii. Report and provide full details to CORSAIR HIRE of any accident or damage to the Equipment within 24 hours of the accident or damage occurring;
- xiv. Not alter, make any addition to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment and its intended operation.
- xv. Allow CORSAIR HIRE to enter the Delivery Site (or other site at which the Equipment is located approved by CORSAIR HIRE) during normal working hours to inspect and maintain the Equipment from time to time during the Hire Period;
  - a. Additional charges may apply if CORSAIR HIRE cannot inspect or maintain the Equipment during normal working hours;
- xvi. Ensure the Equipment is clean and in good repair when collected by or returned to CORSAIR HIRE or be charged at the absolute discretion of the Owner a cleaning fee at the rate to be nominated by the Owner for any cleaning required to be performed by the Owner or its representative/s;
- xvii. Pay to the Owner all hire and related charges and other costs as stipulated in accordance with this agreement;
- xviii. Understand and accept that an additional charge for FIRE LOST THEFT WAIVER (see also condition 11 below) is automatically included in the Owner's charges for any Equipment (excluding accessories) where replacement value of the Equipment exceeds \$250.00 except upon the Owner receiving written advice from the Customer that the FIRE LOSS THEFT WAIVER is not required, and that the Customer accepts the full replacement or reinstatement costs (whichever is applicable) for any loss, theft or fire damage to the Owner's Equipment based on the then current list price of the Equipment;
  - a. In the event that written advice is received from the Customer that the FIRE LOSS THEFT WAIVER is not required, the Owner may, at its absolute discretion, require proof that the Customer has current insurance policies which insure the Equipment during the hire period for its full replacement or reinstatement cost;
- xix. Comply with all Environment Laws from time to time and immediately rectify any breach of an Environment Law caused by the use of the Equipment. The Customer indemnifies and agrees to keep the Owner indemnified against any loss, cost, damage or expense incurred or which may be incurred by the Owner arising from the use of the Equipment under this contract. And;
- xx. Accept full responsibility for the safe-keeping and insuring 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 Customer.
- xxi. Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Equipment during the hire period however arising, whether from negligence of the Customer or Owner or otherwise and without limiting the generality of 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 the operation of the Equipment.

(b) The Customer must not:

- i. Damage the Equipment;
- ii. Repair the Equipment;
- iii. Move the Equipment from the Delivery Site without CORSAIR HIRE' prior written consent;
- iv. Sell, dispose of, deal with or encumber the Equipment in any way;
- v. Lease, hire, bail or give possession of the Equipment to anyone else ('sub-hire') unless CORSAIR HIRE gives its prior written approval, in its absolute discretion;
  - a. Any such sub-hire must be in writing in a form acceptable to CORSAIR HIRE and must be expressed to be subject to the rights of CORSAIR HIRE under this Hire Contract;
  - b. The Customer must not vary a sub-hire without the prior written consent of CORSAIR HIRE which may be withheld in its absolute discretion;
- vi. Rely on any representation relating to the Equipment or its operation other than those contained in this Hire Contract;
- vii. Exceed the recommended or legal load and capacity limits of the Equipment;
- viii. Use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- ix. Allow any person to operate the Equipment that is affected by drugs and/or alcohol;
- x. Exceed recommended or legal speed limits for the Equipment; or
- xi. Use the Equipment after the End Date.

## **7. CANCELLATION OF SALES ORDERS**

- (a) Upon placing an order to purchase any Equipment, the Customer must pay the Owner a deposit nominated by the Owner at the time of sale (the "Deposit").
- (b) The Customer will forfeit the Deposit if the order is cancelled at any time after 24 hours have passed from the time of the making of the order. Waiver of this condition is in the absolute discretion of the Owner.

## **8. LATE RETURN OF HIRING EQUIPMENT**

- (a) Hiring shall commence from the time the Equipment is collected by the Customer from the Owners premises, until returned to the said premises.
- (b) In the event of the Customer failing to return the Equipment to the Owners premises until after 8.00 am on the day following the day of hire, the Customer will be charged an additional half day hire if the Equipment is returned before 12 noon, or an additional full day's hire if the Equipment is returned after 12 noon.
- (c) Should the Owner agree with the Customer 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 Customer 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.
- (d) The notification shall be given by the Customer in time for the Equipment to be picked up and returned to the Owner's premises during normal business hours on the day of cessation of hire.
- (e) In the event of insufficient notice being given, the Customer will be held responsible for the safekeeping of the Equipment until collected the following day and may be charged an extra half-day hire at and within the Owner's absolute discretion.

## **9. BREAKDOWN OF HIRE EQUIPMENT**

- (a) In the event of any Equipment breakdown the Customer is required to notify the Owner immediately.
- (b) If the Customer notifies the Owner immediately of a breakdown, the Owner may determine not to charge hire during the time in which the Equipment is not working, unless such condition is due to negligence or misuse on the part of the Customer.
  - a. Such notification does not absolve the Customer from its requirement to safeguard the Equipment and in the event of a breakdown the Customer shall not repair, or attempt to repair, the Equipment without prior consent of the Owner.
- (c) If the Equipment breaks down or becomes unsafe, the Customer must immediately stop using the Equipment and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Equipment.
- (d) The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising out of any breakdown in the Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or any other reason whatsoever.
- (e) If any Equipment breaks down or is damaged due to the Customer's negligence or misuse the Owner will continue to charge hire charges until the Equipment has been repaired or replaced.

## **10. TERMINATION OF HIRE**

- (a) Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement:
  - i. At any time by giving to the Customer 24 hours' notice of its intention to so terminate, such termination to be effective as of the expiry of 24 hours or as agreed under the hire contract.
  - ii. Without notice, if the Customer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owner's rights in or to the Equipment may be prejudiced, or have a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an 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 if its creditors or its business is placed under official management or if it ceases to carry on business.
- (b) Upon termination of this hire agreement the Owner shall be entitled to take possession of the Equipment and for this purpose the Customer irrevocably appoints the Owner as its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Customer upon which the Equipment is then situated and agrees to indemnify the Owner in respect of any claims, damages and expenses arising out of any action taken under this condition.
- (c) Following collection of the Equipment, additional charges may apply in accordance with clause 4.0 of these Terms and Conditions of Hire.
- (d) Termination of the Agreement does not affect any rights CORSAIR HIRE has under this Hire Contract or at law or in equity.

## **11. FIRE LOSS AND THEFT WAIVER**

- (a) The Customer is responsible for theft, loss and fire damage to Equipment and/or its accessories whilst on hire and the costs of replacement or repairs to such will be charged to the Customer. Where FIRE LOSS AND THEFT WAIVER charges have been charged to the Customer, the Owner agrees, upon prompt submission of a written Police Report, to waive its right to claim for loss and damage to the Equipment caused by fire, storm, collision, accident, theft or burglary, providing adequate precautions have been taken to safeguard the Equipment and the loss and damage was not incurred due to negligence by the Customer. Such waiving of rights is subject to payment by the Customer of an excess of:
  - i. In the event of loss of Equipment: \$2,000.00 per item or 10% of the new replacement cost of the Equipment (whichever is greater).
  - ii. In the event of damage of the Equipment: \$2,000.00 per item or 10% of the cost of repairs to the Equipment (whichever is greater).

- (b) Expressly excluded from the above FIRE LOSS AND THEFT WAIVER are loss of damage defined below:
- i. Damage due to misuse, abuse or overloading of the Equipment or any components thereof;
  - ii. Wrongful conversion of the Equipment or any components thereof;
  - iii. Loss or damage in contravention of the conditions of this hire agreement;
  - iv. Loss or damage from use in violation of any statutory laws and regulations;
  - v. Loss or damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories;
  - vi. Damage caused to tyres and tubes by blowouts, bruises, cuts or other causes inherent in the use of the Equipment;
  - vii. Glass breakage;
  - viii. Loss or damage relating to lack of lubrication or other normal servicing of the Equipment;
  - ix. Loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - x. Loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrically powered tools and machines;
  - xi. Damage caused by exposure to any corrosive substance e.g., Caustic, cyanide, salt water, acid, etc;
  - xii. Theft of the Equipment unless reasonably locked and secured;
  - xiii. Loss or damage during transportation, except where transported by the Owner;
  - xiv. Loss or damage caused by the negligence of the Customer.

#### **12. EXCLUSION OF CONDITIONS AND WARRANTIES**

- (a) To the full extent permitted by the law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or State legislation.

#### **13. EXCLUSION OF CONDITIONS AND WARRANTIES**

- (a) The Owner and the Customer agree that in the event of the Customer suffering any loss, damage or claim howsoever arising as a result of hiring or purchasing the Equipment, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Equipment, the liability of the Owner is limited to the repair or replacement of the Equipment and is not to include economic or consequential damages of any nature whatsoever.

#### **14. MISCELLANEOUS**

- (a) The person signing the document for and on behalf of the Customer hereby covenants with the Owner that he or she has the authority of the customer to make this agreement on the Customers behalf and is empowered by the customer to bind the Customer to this agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this agreement not in fact having such power and/or authority.
- (b) Termination of the hire period shall not affect any of the conditions that are expressed or implied to operate or have affect after termination.
- (c) Time is to be of the essence of all obligations of the Customer in these conditions.
- (d) If any of the Conditions of Sale and Hire are found to be void, voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.
- (e) This agreement is governed by the Laws of the State of Victoria.