



# Morooka Rental.Com Pty Ltd

## CONDITIONS OF TRADING

### 1. Definitions

"Equipment" means the items hired out by the Owner to the Hirer from time to time including all tools, accessories, attachments, parts, manuals, instructions, packing and transportation materials, substitute and replacement equipment which for the purposes of these conditions will be deemed to be owned by the Owner whether owned by the Owner or not.

"Hirer" means any person who requests the Owner to hire Equipment to it, its successors, permitted assigns, employees, agents and any person claiming through, under or on trust for such person.

"Owner" means Morooka Rental.Com Pty Ltd (ABN: 44 116 275 015) its successors, assigns, related bodies corporate (within the meaning of the Corporations Law), sub contractors, employees and agents.

### 2. Terms of Payment

2.1 Unless otherwise agreed, hire charges will commence from the time the Equipment leaves the Owner's premises (if collected by the Hirer) or from the time it arrives at the destination the Hirer specified (if delivered by the Owner) until termination of the hire of the Equipment in accordance with clause 10.

2.2 Hire charges will be based upon an eight hour period, representing one work shift. Hire charges will continue to accrue over weekends and public holidays. If the Hirer operates more than one work shift in a day, additional charges will apply at the sole discretion of the Owner.

2.3 The rate of hire charges will be as specified by the Owner from time to time and may be varied by the Owner at its sole discretion. Variations will apply from the time of notification of the variation to the Hirer.

2.4 The Hirer will pay a deposit if required by the Owner which will be forfeited to the Owner if the Hirer breaches this agreement. Forfeiture will not affect any other rights of the Owner under this agreement.

2.5 In addition to the hire charges specified by the Owner the Hirer will pay to the Owner the amounts of any tax, GST, duty, levy, charge or other expense paid or payable by the Owner to any government or government authority in respect of the use of the Equipment together with the Owner's standard delivery and/or collection charges from time to time together with any expenses incurred by the Owner as a result of a breach by the Hirer of its obligations pursuant to this agreement (including legal costs on a solicitor-client basis).

2.6 The Hirer agrees to pay the Owner's hire and other charges at the time and in the manner specified by the Owner or, if not specified within seven days of the date of the relevant invoice without set-off or demand. The Owner may at its option render invoices to the Hirer at the commencement or completion of the hire period or periodically throughout the hire period.

2.7 Where any amount becomes overdue all unpaid amounts will immediately become due and payable by the Hirer to the Owner.

2.8 The Owner may, in its discretion, deduct any individual item on an invoice that is in dispute from the total amount paid until the item is resolved. The Hirer will not withhold any payments due on items or invoice amounts not in dispute.

2.9 The Hirer must pay interest at the rate of 20% per annum on any charges due and payable by the Hirer to the Owner but unpaid.

### 3. Property

3.1 Ownership of the Equipment will at all times remain in the Owner and no person will be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the Owner's rights or these conditions. Neither payment of compensation or event will amount to, constitute or result in any transfer of property or interest in the Equipment from the Owner.

3.2 The Hirer acknowledges that the Owner may inspect the Equipment at any time during the period of hire, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide to the Owner all assistance and co-operation necessary to facilitate such inspection of the Equipment. The Hirer shall indemnify the Owner in relation to any action of trespass in the course of the Owner reasonably exercising its right to inspect the Equipment.

3.3 This agreement is personal to the Hirer and the Hirer will not:

- (a) assign or sub-contract its rights and obligations, or
  - (b) sell or offer for sale, assign, mortgage, pledge, lend or otherwise part with possession of the Equipment; or
  - (c) allow any other person to use or have possession of the Equipment; or
  - (d) allow any lien to be levied upon the Equipment whether for repairs or otherwise;
- without the prior written consent of the Owner, which may be withheld at the Owner's absolute discretion.

3.4 The Hirer will protect the Equipment against execution or seizure and will indemnify the Owner against all resultant losses (including any consequential losses), costs, charges, damages and expenses (including any legal costs on a solicitor and client basis) incurred by the Owner as a result of a breach of clause 3 by the Hirer.

3.5 The Owner may assign or sub-contract its rights and obligations under this agreement without notice to the Hirer.

### 4. Loss of or Damage to Equipment

4.1 If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner of the details. Notification shall not absolve the Hirer from its obligations under this agreement to safeguard the Equipment until it has been returned to the Owner.

4.2 In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall immediately stop using the Equipment and take all steps necessary to prevent the Equipment from sustaining any further damage. The Hirer must also take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment and not repair or attempt to repair the Equipment without the Owner's Prior written consent.

SIGNED BY THE HIRER ----- DATE -----

4.3 If the Equipment is lost or damaged and the loss of or damage to the Equipment is caused by the negligence of the Hirer or the breach of any term of this agreement by the Hirer, the Hirer shall be liable for the following;

- (a) any costs incurred by the Owner in repairing or replacing the Equipment;
- (b) hire charges for the Equipment until the Equipment is repaired or replaced;
- (c) any other costs whatsoever incurred by the Owner as a result of the damage to or loss of the Equipment.
- (d) any abuse or excessive track wear will be calculated on a pro rata basis.

4.4 If the Owner is required by any relevant authority, is requested by the Hirer or elects in its unfettered discretion to salvage the Equipment, then all salvage costs shall be payable by the Hirer.

## 5. The Hirer's Obligations

5.1 The Hirer will:

- (a) upon delivery or collection of the Equipment immediately examine the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. In accepting the Equipment the Hirer acknowledges that it has duly examined the Equipment and has satisfied itself as required. The Hirer acknowledges that it has not in any way relied upon the skill or judgement of any representation made by or on behalf of the Owner in respect of the Equipment, its purpose or performance.
- (b) use the Equipment in a skilful, proper, safe and prudent manner and only for the purpose and capacity for which it was designed.
- (c) ensure that the Equipment is operated by a suitably qualified, trained, experienced and (if necessary) certified operator. If the Owner supplies an operator to operate the Equipment the operator shall be under the sole direction and control of the Hirer and for the purpose of this agreement shall be deemed to be the employee of the Hirer. The Hirer shall be responsible for any claims whatsoever arising in connection with the operation of the Equipment by such an operator or any third party and, if an operator is provided by the Owner, the Hirer shall not allow any other person to operate the Equipment without the Owner's prior written consent;
- (d) at its own expense clean, fuel, lubricate and keep and maintain the Equipment in good conditions and repair in compliance with the requirements of the Owner, failing which the Hirer will reimburse the Owner for any costs, loss, damage or expenses (including legal expenses on a solicitor client basis) incurred by the Owner;
- (e) repair or replace at its own cost any flat and/or damaged tyres or tracks.
- (f) clean the Equipment thoroughly on the expiry of the hire period. If the Hirer fails to clean the Equipment properly in the Owner's opinion, then the owner may undertake the cleaning and the Hirer shall be liable for a cleaning charge;
- (g) ensure that the Equipment is stored safely, securely and protected from theft;
- (h) not alter, make additions to, deface or erase any identifying mark, plate, trademark writing or number on or in the Equipment or interfere with or modify the Equipment in any other manner;
- (i) be liable for the cost of freight to retrieve Equipment that has been abandoned for any reason;
- (j) comply at its own expense with all local authority, State and Federal laws, ordinances and regulations including in particular any occupational health and safety laws which may affect the Equipment while it is in the possession of or being used by the Hirer;
- (k) not without the prior written consent of the Owner keep or store in the Equipment or on or near any of the Equipment any volatile spirits or explosive goods which are or may become dangerous, corrosive, highly combustible, offensive (including radioactive materials) or likely to encourage any vermin or pests. Any such goods stored in or near the Equipment may at any time be destroyed, disposed of, abandoned or rendered harmless by the Owner without compensation to the Hirer and without affecting the Owner's rights under this agreement. The Hirer authorizes the Owner to have unrestricted access to the Equipment for the purpose of exercising the Owner's rights under this clause;
- (l) supply the operator of the Equipment with all necessary manuals and instructions (both written and oral) necessary for the safe use of the Equipment and the appropriate safety clothing.

## 6. Exclusion of Warranties etc

6.1 Any warranty, condition description or representation whether express or implied as to the description, state, quality, merchantability or fitness of the Equipment for the purpose for which it is hired is hereby excluded to the extent that Commonwealth, state and territorial laws permit.

6.2 Notwithstanding any other clause in this agreement, the Owner will not be liable for any economic or consequential loss or damage of any nature whatsoever.

6.3 To the extent permitted by law, the Owner's liability (if any) for breach of any of the terms of this agreement (expressed or implied) is limited to (at the option of the Owner):

- (a) the repair or replacement of the Equipment or the supply of equivalent Equipment; or
- (b) the payment of the cost of repairing or replacing the Equipment or the supply of equivalent Equipment.

## 7. Release and Indemnity

The Hirer hereby released the Owner from, and agrees to indemnify the Owner in respect of any third party claims, actions, suits, demands, costs and expenses for damage or injury to person or property arising directly or indirectly out of the hire or use of the Equipment by the Hirer or this agreement whether caused by the negligence of the Owner, the Hirer or any other person, or the breakdown, failure, operation, mis-delivery or non-delivery of the Equipment of any other matter.

## 8. Insurance

The Hirer will maintain at its own expense all appropriate policies of insurance;

8.1 for theft and damage to the Equipment hired in an amount not less than the full replacement cost of the Equipment.

8.2 third party and public liability risks in respect of the hire or use of the Equipment by the Hirer for not less than \$10 million for any one occurrence.

SIGNED BY THE HIRER ----- DATE -----

**9. Termination of Hire**

- 9.1 The Owner may at any time and in its sole discretion terminate the hire of the Equipment to the Hirer whereupon the Hirer shall immediately attend to any of the obligations remaining under this agreement and make the Equipment available for collection.
- 9.2 The Hirer may terminate the hire of the Equipment by;
  - (a) delivering the Equipment to the Owner during normal working hours; or
  - (b) notifying the Owner that the Equipment is ready for collection, provided that the Hirer keeps the Equipment safe and secure until collection. When notifying the Owner that the Equipment is ready for collection, the Hirer must obtain an "off hire" number failing which the Hirer will not be deemed to have notified the Owner that the Equipment is ready for collection.
- 9.3 Subject only to clause 4.4 if the Equipment is returned to or collected by the Owner in a state which is unsatisfactory or In breach of the terms of this agreement then the hire period will be deemed to continue until the Equipment is in a state which is satisfactory to the Owner or any breach of this agreement has been remedied (whichever is the later). The Owner undertakes to take all reasonable steps to put the Equipment into a satisfactory state as soon as is reasonably possible after the return or collection of the Equipment.
- 9.4 Upon termination of hire, the Owner is entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Owner as his agent and authorizes and licences the Owner to:
  - (a) enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated;
  - (b) disconnect, dismantle and remove the Equipment whether or not it is affixed to the land or premises, connected to property or equipment not owned by the Owner, in use by the Hirer or any other person or containing property not owned by the Owner.
- 9.5 After termination of hire, and until the Equipment has been collected by the Owner, the Equipment shall remain at the sole risk of the Hirer and the Hirer will indemnify the Owner in respect of any loss or damage to the Equipment in those circumstances and where an off hire number has been obtained but the Owner has not collected the Equipment.

**10. Force Majeure**

If the Owner is unable at any time whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes, lockouts, fires, riots, civil commotion or unrest, interference by civil or military authorities or act of war) the Owner may give written notice to that effect to the Hirer, giving full particulars of such force majeure and the obligations of the Owner under these conditions shall, to the extent that they are affected by the force majeure, be suspended during the term of the fore majeure. The Owner shall not be liable for any loss or damages suffered by the Hirer as a result of any delays caused by such force majeure events.

**11. Miscellaneous**

- 11.1 This agreement replaces and supersedes all other terms and conditions of hire, if any, previously in force between the Owner and the Hirer and no variation of these conditions will bind either party unless confirmed by the Owner in writing.
- 11.2 Any notice or invoice which by this agreement may be served or rendered by the Owner may be served or rendered by leaving it at or posting to the address of the Hirer as stated in this agreement or last notified in writing by the Hirer to the Owner and will be deemed to have been served or rendered at the time of leaving or if posted, on the business day following the day of postage and any notice may be signed by a manager, director or solicitor of the Owner on behalf of the Owner.
- 11.3 The person signing this agreement for and on behalf of the Hirer agrees wit 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 this 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.
- 11.4 If this agreement or any part of it becomes void or unenforceable for any reason then that part will be served from this agreement to the intent that all parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts.
- 11.5 The rights and obligations of the Hirer and the Owner will continue and not be affected by termination of the hire of the Equipment. Termination of the hire of the Equipment will be without prejudice to any right of action already given to the Hirer or Owner in respect of any breach of this agreement by the other party.
- 11.6 The parties acknowledge that this agreement contains the entire agreement concluded between the parties notwithstanding any prior or subsequent negotiations or discussions or representations. Any such conditions, warranties or representation are herby expressly excluded.
- 11.7 Time is to be of the essence of all obligations of the Hirer in this agreement.
- 11.8 Failure by the Owner to insist upon strict performance of any terms contained herein, or to exercise in whole or in part any right that it may have under this agreement at law, shall not be deemed to be a wavier of any rights that the Owner may have and shall not be deemed a waiver of any subsequent breach of any term in this agreement.
- 11.9 A statement in writing made up from the books of the Owner and signed by any director, secretary or credit manager of the Owner of the amount due or owing by the Hirer as at the date mentioned in that statement will e prima facie evidence that the amount is due and owing without it being necessary to produce any books or vouchers to verify the same.
- 11.10 Any credit accommodation granted may be withdrawn at any time for any reason without notice.
- 11.11 The Hirer agrees that in the event of any litigation arising in connection with this agreement that the action be commenced out of a out of a Court of competent jurisdiction in the central business district of the capital of the state in which this agreement is signed by the Owner.

SIGNED BY THE HIRER ----- DATE -----`