



KITCHENS ON THE RUN

Head Office: 1934 Hume Highway

Campbellfield Victoria 3061

T 1300 362 266 // F 03 9357 6321

E [info@korhire.com.au](mailto:info@korhire.com.au) // [W.korhire.com.au](http://W.korhire.com.au)

Kitchens On The Run Pty Ltd // ABN 33 754 062 027

## EQUIPMENT HIRE AGREEMENT – STANDARD TERMS

### Background

- A. The Owner agrees at the Hirer's request to hire the Equipment to the Hirer.
- B. The Owner and the Hirer have agreed to hire the Equipment as set out in the terms and conditions of this Agreement.

### Operative part

#### 1 Interpretation

- 1.1 In this Agreement, unless the context indicates a contrary intention:
- (a) Words importing the singular number include the plural and vice versa.
- (b) Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agent and their successors or representatives.
- (c) A reference to any deed, agreement, licence, document or other instrument (including this Agreement) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- 1.2 Where the Hirer comprises more than one person, the covenants and agreements on their part contained or implied in this Agreement bind them jointly and each of them separately.

#### 2 Term

- 2.1 Subject to any rights to early termination in this Agreement, this Agreement commences on the Agreement Date and continues until expiry of the last Hire Term.

#### 3 Hire

On and from the Commencement Date the Owner hires to the Hirer and the Hirer takes on hire from the Owner the Equipment for the Hire Term at the Rent and on the terms and conditions contained in this Agreement.

#### 4 Extension of Hire Term and holding over

- 4.1 The parties may agree in writing no less than ten (10) Business Days before expiry of any Hire Term to extend it for an unspecified period or until a particular date; however the Owner is under no obligation to agree to any extension.
- 4.2 Where a Hire Term is extended for an unspecified period, this Agreement will continue until it is determined by either the Owner or the Hirer giving thirty (30) days' written notice to the other party nominating an expiry date.
- 4.3 A Hire Term may be extended as often as the Owner and the Hirer agree in writing.
- 4.4 In any case where the Hirer continues in possession of Equipment after the expiration or sooner termination of this Agreement or a relevant Hire Term, the Hirer must (without prejudice to the exercise by the Owner of the Owner's rights, powers and remedies under this Agreement) continue to pay a monthly Rental equal to the amount determined from time to time by the Owner or, in the absence of such a determination, a monthly Rental equal to 1/12<sup>th</sup> of the annualised Rent then current. All other terms and conditions set out in this Agreement will continue to apply to that Equipment.

#### 5 Additional Equipment

- 5.1 Unless the parties enter into a separate hire agreement for any Additional Equipment, the Hirer agrees the provisions of this Agreement will apply to any Additional Equipment subject to any changes agreed in writing between the parties.

#### 6 Delivery and Installation of Equipment

- 6.1 The Hirer must obtain all necessary Approvals from all relevant Consent Authorities with respect to the delivery, installation and the Hirer's use of the Equipment at any delivery site and on request provide copies to the Owner prior to the delivery of any Equipment.

- 6.2 If the Hirer fails to obtain the necessary Approvals this does not entitle the Hirer to terminate this Agreement or withhold any Rent or other payments due to the Owner.
- 6.3 Delivery times are estimates only and the Owner is not liable for late delivery or non-delivery.
- 6.4 The Hirer is responsible for all freight and transport costs.
- 6.5 The Owner is not liable for any loss, damage or delay occasioned to the Hirer or any third party arising from late or non-delivery or late installation of the Equipment.
- 6.6 At least five (5) Business Days before delivery of any Equipment, the Hirer must provide the Owner a site plan showing where and how the site can be accessed for delivery and installation of the Equipment.
- 6.7 Suitability of, access to and on site arrangements for delivery and installation of Equipment is the Hirer's responsibility and the Hirer warrants having made all necessary arrangements for the safe delivery and installation of the equipment. Any costs arising from the site being unsuitable or the Owner's inability to access the site or install the Equipment due to the Hirer's failures will be payable by the Hirer and the Owner is not responsible for any loss the Hirer suffers from any resulting delivery or installation delays.
- 6.8 The Hirer acknowledges and agrees the maximum weight of the Owner's Equipment and the vehicle delivering it is 35 tonnes.
- 6.9 If the on-site conditions of the site change or the Hirer requires repositioning of the equipment or special lifting equipment is required, this will be at the Hirer's cost and must be paid for in full prior to the special lifting equipment being sourced and used at the site.
- 6.10 The Owner allows ninety (90) minutes for each delivery and collection of Equipment. In the event that delivery or collection takes longer than that period for any reason excluding the Owner's default, a charge per hour or part thereof will apply and will be invoiced to the Hirer.
- 6.11 If "YES" is marked in the Quote the Owner will install or disconnect (as indicated) the Equipment at the cost specified in this Agreement and if requested by the Owner, the Hirer will give the Owner exclusive possession of such part of the site as is reasonably required by the Owner to carry out installation or removal works. During this period of time the Hirer allow the Owner to allow or refuse anyone access to and may remove any unauthorised person from the relevant part of the site.
- 6.12 If "NO" is marked, the Hirer will install or disconnect the Equipment at the Hirer's cost and risk using suitably qualified persons.
- #### 7 Ownership of the Equipment
- 7.1 the Owner retains full title to the Equipment notwithstanding:
- (a) the delivery of the Equipment to the Hirer; and
- (b) the possession and use of the Equipment by the Hirer.
- #### 8 Rent and other payments
- ##### 8.1 Amounts payable by the Hirer
- (a) **(Security Bond):** The Hirer must pay the Security Bond prior to delivery of Equipment. The Security Bond is not subject to GST and is charged separately to the Rent and other charges.
- (b) **(Rent):** Subject to any contrary Credit Arrangement, the Hirer must pay the Rent on the Rent Payment Dates.
- (c) **(Duties and Taxes):** The Hirer must pay any and all GST, rates, registration fees, stamp duties imposed by any federal, state or municipal, statutory or other authority or otherwise at any time directly or indirectly upon the Equipment or its hire.
- (d) **(Insurance):** The Hirer must pay all premiums and any other amounts of whatever nature necessary or desirable in the Owner's opinion to maintain each and all of the insurances required by clause 11.1 current. Upon reasonable request the Hirer must produce to

- the Owner certificates of currency of the insurance policies and originals or certified copies of the insurance policies.
- (e) **(Use and repair of Equipment):** The Hirer must, in accordance with clause 10.5(f), pay for the cost of any damage to the Equipment caused by any unauthorised services, repairs or modifications of the Equipment.
- (f) **(Other items):** The Hirer must pay all other amounts required to be paid as set out in this Agreement.
- 8.2 Where any, or any part of any, Rent or other moneys payable by the Hirer under this Agreement is not paid to the Owner on or before its due date for payment Default Interest will be charged and payable on the outstanding amount. Default Interest will accrue on and from the date following the due date for payment of any outstanding amount up to and including the date of its payment. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.
- 8.3 Where any Rent is paid upfront no credit or refund is given for any part of the period where Equipment is not used for any reason or returned prior to the expiry of the Hire Term.
- 8.4 The Hirer must on demand from the Owner reimburse the Owner for all costs, charges, expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Owner of or incidental to:
- (a) any breach, default or repudiation of this Agreement by the Hirer (including the fees of all professional consultants properly incurred by the Owner in consequence of, or in connection with, any such breach, default or repudiation); and
- (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Owner under or by virtue of this Agreement, including all amounts incurred in repossessing the Equipment from the Hirer under the terms of this Agreement and in enforcing this Agreement generally.
- 9 Exclusion of liability**
- 9.1 To the extent permitted by law the Owner excludes all warranties whether express, implied, statutory or otherwise relating in any way to the supply of Equipment or services or other subject matter of this Agreement.
- 9.2 For any warranties not able to be excluded under clause 9.1, the Owner's liability is limited to the extent permitted in Schedule 2, section 64A of the *Competition and Consumer Act 2010 (Cth)*, to circumstances where:
- (a) defects in any Equipment have arisen solely from faulty materials or workmanship;
- (b) the Equipment has not received maltreatment, inattention or interference; and
- (c) the Equipment was manufactured or produced by the Owner,
- at the Owner's option, to repairing or replacing, or paying the cost of repairing or replacing the relevant Equipment, as the case may be; or
- (d) with respect to any services the Owner provides
- (1) the supplying of the services again; or
- (2) the payment of the cost of having the services supplied again.
- 9.3 The Hirer agrees to use and possess any Equipment at the Hirer's risk. The Hirer agrees the Owner has no responsibility or liability for any loss or damage to any of the Hirer's property as a result of the Hirer's use of the Equipment. To the full extent permitted by law the Hirer releases and discharges the Owner and the Owner's Associates from:
- (a) all claims and demands on the Owner; and
- (b) any loss or damage whatsoever and whenever caused to the Hirer or the Hirer's Associates whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise,
- arising directly or indirectly from or incidental to a breakdown of, or defect in any Equipment or any accident to or involving any Equipment or its use, operation, repair, maintenance or storage
- or which may otherwise be suffered or sustained in, upon or near any Equipment.
- 9.4 Subject to clause 9.2, to the extent permitted by law, the Owner's maximum liability (whether before or after the expiry or termination of this Agreement) for any loss or damage which the Hirer or any third party suffers arising from, or caused or contributed to by, the Owner's negligence or the negligence of the Owner's Associates is limited to the Rent paid by the Hirer.
- 9.5 The Hirer agrees the Owner is not liable for and will not make any claim against the Owner for any special, indirect or consequential loss or damage as a result of the Owner's breach of this Agreement including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of any Equipment and the costs of any substitute goods or services which the Hirer acquires.
- 10 Covenants regarding possession and use of Equipment**
- 10.1 Following the delivery of the Equipment and throughout the term the Hirer must at all times retain possession and control of the Equipment and on the Owner's request the Hirer must notify the Owner of the location of the Equipment.
- 10.2 Condition of Equipment
- (a) The Hirer must at all times keep and maintain the Equipment properly serviced, in proper working order and condition and in good and substantial repair. The Owner will make due allowance for normal wear and tear but the Equipment must at all times be capable of being operated fully and efficiently for the purpose and to the capacity specified by the manufacturer;
- (b) The Hirer is fully responsible to the Owner for any loss of or damage to the Equipment (however occasioned). The Hirer must give reasonable notice to the Owner in writing of any such loss or damage of a substantial or material nature; and
- (c) The Hirer must maintain the Equipment in accordance with recognised methods and standards for Equipment of their type and only by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation.
- 10.3 Use of Equipment
- (a) The Hirer must ensure the Equipment is not misused or abused and must only operate and ensure the Equipment is only operated in a proper and skilful manner by properly trained and competent persons in strict compliance with all Guidelines and applicable laws and regulations (including all relevant health and safety and food hygiene legislation) and is liable for all loss and damage resulting from the Hirer's breach of this clause.
- (b) Without limiting the generality of clause 10.3(a), the Hirer must comply in all respects with the Guidelines relating to the Equipment and to their use, in particular where any failure in compliance would limit the obligations of that person to the Owner or the Hirer under any statute, agreement or otherwise.
- 10.4 Inspection of Equipment by the Owner
- (a) The Hirer grants the Owner the right, and the Hirer will use its best endeavours to ensure that others grant the Owner the right, at all reasonable times upon the Owner giving the Hirer reasonable notice and without unduly interfering with the Hirer's operations, to:
- (1) inspect the state of repair of the Equipment;
- (2) carry out such tests on the Equipment as may seem necessary to the Owner;
- (3) observe the use of the Equipment;
- (4) inspect any maintenance records in respect of the Equipment; and
- (5) do any act, matter or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect the Owner's rights in the Equipment.
- (b) In the case of an emergency, as determined by the Owner in its reasonable opinion, no notice will be

- required to be given by the Owner to the Hirer under clause 10.4(a) and the prohibition in that clause on the Owner unduly interfering with the Hirer's operations will not apply.
- 10.5 Repair or replacement of Equipment
- (a) **(Notice):** The Owner may serve on the Hirer a notice in writing of any defect or deficiency in the Equipment or its operation or both (whether that defect or deficiency comes to the Owner's attention in the course of any inspection under clause 10.4 or otherwise) requiring repair or replacement.
- (b) **(Repair):** If the Owner decides repairs are required to the Equipment the Hirer agrees that it is lawful for the Owner to enter upon the Hirer's premises with workmen (if necessary) and all necessary materials for the purpose of carrying out those repairs.
- (c) **(Replacement):** Subject to availability, if the Equipment can not be repaired the Owner will replace the Equipment with equivalent Equipment as soon as reasonably practicable.
- (d) **(Cost):** Where the damage to the Equipment is caused by the Hirer's failure to use the Equipment in accordance with the Hirer's obligations under clause 10.3 or by unauthorised services, repairs or modifications to the Equipment under clause 10.5(f), the cost of all repairs and replacements (if any) of the Equipment will be borne by the Hirer.
- (e) **(Authorised Personnel):** The Equipment must not be serviced, repaired or modified in any manner (including the removal of any labels, trade marks, advertising or other markings) by anyone other than the Owner or its Associates or any other person authorised by the Owner.
- (f) **(Unauthorised Repairs):** The Hirer will be liable for the cost of any damage to the Equipment caused by any unauthorised services, repairs or modifications of the Equipment.
- 10.6 Support services
- (a) Technical support is available to the Hirer during the Owner's regular business hours by telephone. The Owner will use reasonable efforts to respond to any request for service, repair or replacement of the Equipment by telephone.
- (b) If the Hirer's request cannot be resolved by the Owner over the telephone, a technician will be sent to the Hirer's premises as soon as reasonably practicable.
- 10.7 Miscellaneous Items
- (a) Fire extinguishers and fire blankets are supplied exclusive of the Rent cost. The Hirer must pay for any fire extinguishers and/or fire blankets used in addition to any items opened or seals removed as these will be considered used and must be replaced by the Hirer. The Hirer must advise the Owner in writing of the reason for any use.
- (b) A set of keys is provided on delivery of Equipment. Keys lost or not returned at the end of the Hire Term period will be invoiced at a cost of \$170.00 plus GST per set.
- (c) Gas bottles and gas supply are the Hirer's responsibility and such supply must be in accordance with applicable Guidelines.
- 10.8 The Hirer must not without the Owner's prior written consent:
- (a) remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Equipment;
- (b) move the Equipment to any new location after it is delivered to the relevant delivery address specified in the Quote;
- (c) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Equipment;
- (d) conceal or alter the Equipment or make any addition to the Equipment except as required pursuant to this clause 10; or
- (e) carry out or permit any work to be carried out on any Equipment except as otherwise permitted in this Agreement.
- 10.9 The Hirer must notify any person seizing the Equipment of the Owner's ownership of the Equipment and must give immediate written notice to the Owner of such seizure.
- 11 Insurance**
- 11.1 The Hirer must effect and maintain at all times during the Term and any extension of this Agreement or holding over under this Agreement the following insurances:
- (a) **(General insurance):** insurance of the Equipment for its full insurable value against damage or destruction caused by accident; any insurable risk commonly insured against in regard to Equipment of a similar nature to the Equipment; and such other insurable risks as the Owner may reasonably stipulate;
- (b) **(Indemnified risks):** insurance with respect to the Hirer's liability to the Owner's pursuant to the indemnity provisions in clause 14.1;
- 11.2 While any moneys remain owing to the Owner under this Agreement, the Owner will be entitled to receive all moneys payable to the Hirer or to the Owner and the Hirer by the insurer under any relevant insurance policy or by any other person in respect of damage to, or loss of, the Equipment. The Hirer appoints the Owner and each and every duly authorised officer of the Owner as the Hirer's attorney to recover or reasonably compromise in the Hirer's and the Owner's respective names any claim for loss or damage under any such policy or otherwise and to give effectual releases and receipts for any claim.
- 12 Personal Property Securities Act 2009 ("PPSA")**
- 12.1 In this clause:
- (a) 'Financing Statement' has the meaning given to it in the PPSA;
- (b) 'Financing Change Statement' has the meaning given to it in the PPSA;
- (c) 'PPS Register' means the Personal Properties Securities Register established under section 147 of the PPSA;
- (d) 'Security Agreement' has the meaning given to it in the PPSA; and
- (e) 'Security Interest' has the meaning given to it in the PPSA.
- 12.2 Upon execution of this Agreement by the Hirer, the Hirer acknowledges and agrees that this Agreement:
- (a) constitutes a Security Agreement; and
- (b) creates a Security Interest in:
- (1) the Equipment previously supplied by the Owner to the Hirer (if any); and
  - (2) all Equipment that is supplied to the Hirer in the future by the Owner collectively known as the 'Goods'.
- 12.3 The Hirer undertakes to:
- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which the Owner may reasonably require to:
- (1) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Goods;
  - (2) register any other document on the PPS Register which is necessary to perfect the Owner's Security Interest over the Goods; or
  - (3) correct a defect in any document referred to in clause 12.3(a)(1) and 12.3(a)(2);
- (b) indemnify, and upon demand reimburse, the Owner for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register;

- (c) not register a Financing Statement or a Financing Change Statement in respect of the Goods without the Owner's prior written consent;
- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the Owner's prior written consent;
- (e) keep full and complete records of the Goods; and
- (f) without limiting any other right the Owner may have, immediately return the Goods if requested to do so by the Owner following non-repayment of any amount owing by the Hirer to the Owner or following the Owner's breach of any other obligation.
- 12.4 The Owner and the Hirer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.
- 12.5 The Owner is not required to give any notice or statement under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 12.6 The Hirer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Owner, the Hirer waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.
- 13 Caveats**
- 13.1 The Hirer hereby grants the Owner a caveatable charge over all real estate, as security for amounts payable by the Hirer.
- 14 Indemnities**
- 14.1 The Hirer assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless the Owner and the Owner's Associates from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):
- (a) arising out of or alleged to arise out of the delivery, selection, acceptance or rejection, ownership, possession, use, repair, maintenance, storage, or operation of the Equipment, and by whomsoever used or operated (except where used by the Owner or any person on behalf of the Owner); or
- (b) incurred by the Owner in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment.
- 14.2 The indemnities and assumptions of liability contained in clause 14.1 will continue in full force and effect notwithstanding the termination of this Agreement whether by expiration of time or otherwise.
- 15 Default and termination**
- 15.1 Events of default
- Each of the following events is an Event of Default, namely:
- (a) If the Hirer fails to pay Rent or other moneys payable under this Agreement or where credit has been extended on the terms of such Credit Arrangement on the due date for payment and such failure continues for more than 5 Business Days;
- (b) if the Hirer fails to perform or observe any of the covenants or provisions of this Agreement on the Hirer's part to be performed or observed (other than a failure of the type contemplated by clause 15.1(a)) and (if capable of remedy) such default continues for more than 10 Business Days (or such longer period as the Owner in its absolute discretion permit) after notice from the Owner requiring the Hirer to remedy the same;
- (c) if the Hirer breaches a term of a Credit Arrangement;
- (d) the Hirer sells or closes its business or ceases trading;
- (e) if the Hirer suffers an Insolvency Event;
- (f) where the Hirer is a partnership the Hirer dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving the partnership; or
- (g) the Hirer being a natural person dies.
- 15.2 Consequences of default
- If an Event of Default occurs the Owner at its option may:
- (a) **(Enforce performance)**: by proceeding by appropriate court action, either at law or in equity, enforce performance by the Hirer of the applicable terms and provisions of this Agreement or recover damages for the breach concerned; or
- (b) **(Termination)**: terminate this Agreement and the Hirer's right to possession of the Equipment by notice in writing to the Hirer. Upon service of such notice all of the Hirer's rights to possess or use the Equipment will terminate and the Owner may, directly or by the Owner's agent, take possession of the Equipment. Any damages reasonably occasioned by the Owner taking possession are expressly waived by the Hirer. The Owner will, upon taking possession of the Equipment hold, possess and enjoy the Equipment free from any right of the Hirer or the Hirer's successors or assigns to use the Equipment for any purpose. The Hirer will remain liable to the Owner as provided in clause 16.2.
- 15.3 Events constituting fundamental breach
- (a) It is expressly agreed and declared by the Hirer and the Owner that should any Event of Default occur, its occurrence will be a breach of an essential and fundamental provision of this Agreement by the Hirer amounting to a repudiation by the Hirer of this Agreement.
- (b) The presence of clause 15.3(a) does not mean, and will not be construed as meaning, that there are no other terms and conditions which are fundamental and essential terms and conditions of this Agreement.
- (c) If the Owner terminates this Agreement following any such repudiation by the Hirer then without prejudice to any other right or remedy available to the Owner it is expressly agreed and declared that the Owner shall be entitled to recover from the Hirer by way of liquidated and ascertained damages for such breach the aggregate amount determined under clause 16.2.
- 15.4 General right to terminate
- Either party may terminate this Agreement upon twenty (20) calendar days notice in writing to other party. If such notice is provided by:
- (a) the Owner, the Hirer is only liable to pay to the Owner all outstanding Rent as at the date of termination of the Agreement specified in the notice; and
- (b) the Hirer, the Hirer must pay the Owner the full Rent amount the Owner would have received for the relevant Hire Term but for the Hirer's early termination plus any other amounts due but unpaid under this Agreement up to the date of termination.
- 16 Amounts due upon expiry and upon early termination**
- 16.1 Subject to clause 15.4, upon the expiry of the Term, including the expiration of any extension of the Term under clause 4.1 or the cessation of any holding over, the Hirer must pay to the Owner the Balance Due (if any).
- 16.2 Subject to clause 15.4, upon early termination of this Agreement, the Owner:
- (a) may retain the Security Bond; and
- (b) may recover from the Hirer any and all additional damages and expenses sustained by the Owner by reason of such early termination or by reason of the breach of any covenant, representation or warranty contained or implied in this Agreement other than for due payment of Rent.
- If the payment of any amount included in a payment required by this clause 16.2 to be made by the Hirer to the Owner is held to be unenforceable the payment will be unenforceable only to the extent of such amount. The Hirer's obligation to make the balance of the payment will remain unaffected by such unenforceability.
- 17 Return of Equipment**
- 17.1 Upon the expiry of the relevant Hire Term or termination of this Agreement, unless otherwise agreed by the Owner in writing, the

	Owner will retake possession of the Equipment and the Hirer will permit the Owner or procure from any relevant third party permission for the Owner to access the site where the Equipment is located for the purpose of removing the Equipment. The costs of removal and transport of the Equipment to the Owner's Return Address is payable by the Hirer.	19.5	Whenever the Hirer is obliged or required under this Agreement to do or effect any act, matter or thing, then the doing of such act, matter or thing will, unless this Agreement otherwise expressly provides, be at the Hirer's sole risk and expense.
17.2	Unless otherwise permitted under this Agreement or the Owner provides its prior written consent, which may be withheld at the Owner's discretion, the Hirer must not remove or allow any third party to remove the Equipment from its location on the site at the relevant Delivery Address.	19.6	None of the terms or conditions of this Agreement, nor any act, matter or thing done under or by virtue of, or in connection with, this Agreement will operate as a merger of any of the Owner's rights and remedies in or under this Agreement or otherwise. All the Owner's rights and remedies will continue in full force and effect.
17.3	Prior to the redelivery in clause 17.1 or 17.2 the Hirer shall restore the Equipment so that the Equipment is in the same condition as it was when the Hirer took possession under clause 4. The Owner will, acting reasonably, determine the extent of any restoration required under this clause. If the Equipment is not returned in the required condition the Hirer must reimburse the Owner for the Owner's costs of restoring the Equipment.	19.7	Nothing contained or implied in this Agreement will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Owner and the Hirer.
<b>18</b>	<b>Force Majeure</b>	19.8	The Hirer may at any time assign, charge or otherwise deal with the Equipment or its right, title and interest pursuant to this Agreement. The Hirer must not assign or charge this Agreement or any of the Hirer's rights or obligations under this Agreement without the Owner's prior written consent.
	If a party ( <b>Affected Party</b> ) becomes unable, wholly or in part, by Force Majeure to carry out an obligation placed on it under this Agreement (other than on obligation to pay money):	19.9	If any provision of this Agreement is or at any time becomes void or unenforceable the remaining provisions will continue in full force and effect. Any void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which so far as possible achieves the same economic benefit or burden for the Owner and the Hirer as the unlawful or unenforceable provision was intended to achieve. All the Hirer's obligations under this Agreement will survive the expiration or termination of this Agreement to the extent required for their full observance and performance.
	(a) the Affected Party must give the other party prompt notice of reasonable particulars of the Force Majeure; and so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation;	19.10	Except where expressed otherwise, time is of the essence in this Agreement. However, no failure or delay on the Hirer's part to exercise any power or right under this Agreement will operate as a waiver of that power or right. Nor will any single or partial exercise of any power or right under this Agreement preclude any other or further exercise of that power or right. The Hirer will only be taken to have waived any power or right under this Agreement, including (without limitation) any right in respect of any Event of Default, to the extent that the right or power has been expressly waived in writing.
	(b) the relevant obligation, so far as it is affected by the Force Majeure, will be suspended for the duration of the Force Majeure; and	19.11	The Hirer must at the Hirer's expense do any further act and execute any further documents which the Owner may reasonably request in order to protect the Owner's title to the Equipment and the Owner's rights, powers and remedies under this Agreement.
	(c) the Affected Party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible.	19.12	Any notice or demand to be given under or in relation to this Agreement will be deemed to be duly given or made if it is in writing and in the case of the Hirer left or sent by prepaid post addressed to the Hirer at the Hirer's place of abode or business last known to the officer sending such notice or demand or at the Hirer's registered office being a company and in the case of the Owner if it is in writing and left at or sent to the Owner by prepaid post to the Owner's address set out in this Agreement or at the Owner's registered office. Any notice or demand sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered.
<b>19</b>	<b>General</b>	19.13	This Agreement will be construed in accordance with the law of the State of Victoria and the law of such State will be the proper law of the contract. The parties submit to the non-exclusive jurisdiction of the courts of that State and any courts which may hear appeals there from.
19.1	Acceptance of any payment of Rent by the Owner:	<b>20</b>	<b>GST</b>
	(a) within sixty (60) days after the Owner becomes aware of an Event of Default or an event constituting a repudiation of this Agreement by the Hirer; or	20.1	In this clause 20, a word or expression defined in the GST Act has the meaning given to it in that Act.
	(b) more than sixty (60) days after the Owner becomes aware of an Event of Default or an event constituting a repudiation of this Agreement by the Hirer where Rent has been accepted by the Owner expressly without prejudice to the Owner's rights and remedies in respect of that Event of Default or that repudiation, will be without prejudice to the exercise by the Owner of the powers conferred upon the Owner by this Agreement. Such acceptance will not operate as an election by the Owner either to exercise or not to exercise any of the Owner's rights, powers or privileges under this Agreement.	20.2	Any prices quoted for goods or services supplied under this Agreement are quoted exclusive of GST unless expressly provided otherwise.
19.2	The remedies provided in this Agreement in the Owner's favour arising pursuant to an Event of Default or after a repudiation of this Agreement by the Hirer will not be deemed to be exclusive but will be cumulative and will be in addition to all other remedies in its favour existing at law, in equity or in bankruptcy. The election at any time to enforce any such remedies will in no way bar the later enforcement from time to time of any other such remedies.	20.3	If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 20.3 ( <b>GST Exclusive Consideration</b> ) is increased by an amount equal to the
19.3	If the Hirer pays the Rent and all other moneys payable under this Agreement and duly and punctually performs all of its other obligations under this Agreement, and subject to clause 10.4 (inspection) and 10.5 (repair) of this Agreement, the Hirer may peaceably possess and enjoy the Equipment during the relevant Hire Term without any interruption or disturbance from the Owner or any other person or persons lawfully claiming by, from or under the Owner.		
19.4	In any case where, under or pursuant to this Agreement, the doing or execution of any act, matter or thing by the Hirer is dependent upon the consent or approval of the Owner, such consent or approval may be given conditionally or unconditionally or may be withheld by the Owner in the Owner's absolute uncontrolled discretion, unless this Agreement otherwise expressly provides.		

- 20.4 GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.  
A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates
- 21 Multiple Sites**
- 21.1 If Equipment is located at more than one site, the Owner may elect to terminate the whole or part of the Agreement in respect of some sites (**Terminated Sites**) and the termination provisions will apply in respect to the Equipment located at such Terminated Sites.
- 21.2 In respect of the remaining sites (**Continuing Sites**) this Agreement will continue to apply for the Equipment at those sites, subject to any rights the Owner may have for any default by the Hirer.

- 22 Special Conditions**  
In the event of any inconsistency between the Special Conditions these General Terms then the provisions in the Special Conditions will prevail to the extent of any inconsistency.
- 23 Unsigned Agreements**  
If the Hirer fails to provide the Owner with a copy of this Agreement signed by the Hirer or no Agreement Date is specified in this Agreement, this Agreement will be deemed binding and to have commenced on the date the Equipment leaves the Owner's premises for delivery to the Hirer.
- 24 Promotional Matters**  
The Hirer consent to the Owner and the Owner's Associates, upon reasonable notice to the Hirer, coming onto the land where the Equipment is located, to photograph or film it and to use any images, photographs or film for promotional purposes.

## DEFINED TERMS

Capitalised terms in the Details and the Commercial Terms have the meaning set out in those sections unless otherwise set out below. In addition to any terms contained in the Details and Commercial Terms the following terms have the following meanings set out in this Agreement.

<b>Additional Equipment</b>	means any equipment not listed in the Commercial Terms which is provided by Us to You under the terms of this Agreement and set out in an Equipment Update Notice.
<b>Agreement</b>	means this agreement which consists of the Details, Commercial Terms, Defined Terms and Standard Terms and any schedule or annexure to those documents.
<b>Approval</b>	means any consent, permit, authority, licence, agreement, permit or understanding required to do an act or thing.
<b>Associates</b>	means a party's officers, employees, agents, contractors and subcontractors.
<b>Balance Due</b>	means that amount which is the sum of: (a) all Rent and other amounts due or accrued due but unpaid under this Agreement; and (b) interest on the amounts in paragraph (a) calculated in accordance with clause 8.2.
<b>Business Day</b>	means a day on which banks are open for retail banking business other than a Saturday or Sunday in the capital city of the State or Territory noted as the Governing Law.
<b>Commencement Date</b>	Means the Agreement Date in the Details or if no date is written then the date the Equipment is collected by You or despatched by Us to You, whichever is relevant in the circumstances, or such other date as You and Us agree in writing.
<b>Consent Authority</b>	means any individual, corporation, government body, court or agency who grants a necessary Approval.
<b>Corporations Law</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Credit Arrangement</b>	means an arrangement agreed to or approved by Us where we extend You a period of credit for You to pay Us any amounts under this Agreement, whether such arrangement follows Your submission of a credit application to Us or otherwise.
<b>Default Interest</b>	means the rate + 3% charged by Our principal bankers on overdraft facilities of \$100,000.
<b>Delivery Date</b>	means the date on which the Equipment is delivered to You at the Delivery Address.
<b>Equipment</b>	means the equipment specified in the Details and any Additional Equipment supplied to You by Us after the date of this Agreement.
<b>Equipment Update Notice</b>	means a notice in the form of Annexure B, specifying any Additional Equipment and terms relevant to that equipment such as Rent, Term, Rent Payment Dates or Customer Support Services.
<b>Event of Default</b>	has the meaning given to it in clause 15.1.
<b>Force Majeure</b>	means a circumstance beyond the reasonable control of a party which results in that party being unable to observe or perform on time an obligation under this Agreement including: (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; (b) civil commotion, national emergency, power shortage, strike or other labour difficulty (whether or not involving employees of a party concerned), action or inaction of a government or other competent authority; and (c) breakdown of plant, machinery or equipment or shortages of labour, equipment or material.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and <b>GST</b> has the meaning set out in the GST Act.
<b>Guidelines</b>	means the set up, operating procedures and equipment manual with respect to the Equipment.
<b>Insolvent</b>	means bankrupt or insolvent or otherwise unable to pay debts when due for payment, in receivership or receivership and management, under administration, in liquidation, under official management or any other form of administration, wound up, dissolved, subject to any arrangement, assignment or composition, or protected from creditors under statute and 'insolvency' has a corresponding meaning.
<b>Related Body Corporate</b>	has the meaning set out in the <i>Corporations Act 2001</i> (Cth).
<b>Return Address</b>	means the address to which the Equipment must be returned by You as set out in the Details or as otherwise notified by Us to You in writing.
<b>Security Deposit</b>	means the amount set out in the Commercial Terms.
<b>Special Conditions</b>	means those terms (if any) set out in the section headed " <i>Special Conditions</i> " in Annexure A.
<b>Us, We, Our</b>	refers to the Owner.
<b>Your, Your</b>	refers to the Hirer.