
1 | General

"The Owner" means Burwell Technologies Pty Ltd (ABN 86 001 262 013) successors and assigns and all of its associated companies. "The Hirer" means any person, firm, corporation or entity that hires or purchases Equipment from The Owner and includes its employees, agents, servants, contractors or any other person to whom the Equipment is entrusted.

"The Terms" means these Standard Terms and Conditions of Hire or such other Terms and Conditions as may be notified in writing by The Owner, including those on any invoice, hire contract, delivery docket or other document.

"Equipment" means the Equipment supplied, or to be supplied under order, by The Owner and may extend to services where the context permits, as described in any invoice, quotation or other document issued by The Owner.

"The Hire Period" shall commence at the latter of the commencement date and time on the Hire Agreement or the date and time the Equipment is delivered to the Hirer, and shall cease at the later of when the Equipment is returned to The Owner, or on The Owner repossessing the Equipment pursuant to The Terms.

"Order" means the agreement resulting from the acceptance by The Hirer of The Owner's offer for the supply of equipment and is deemed to include The Terms, The Owner's current price list, the information on the face of any invoice and any variations thereto as agreed to in writing by The Owner and The Hirer.

"Hire Agreement" means a document that The Owner provides to The Hirer, which includes, amongst other things, the Equipment that has been hired, the relevant rates and other applicable charges and the anticipated hire period.

"Agreement" means Hire Agreement, Conditions of Hire and any related credit application.

"PPS Law" is a reference to Personal Property Securities Act 2009 and Personal Property Securities Regulations 2010.

"Long term hire" means equipment that is hired for a minimum period of 90 days.

"Remote location" means a location that is greater than 200 kilometres from any branch of the Owner.

2 | Contract

An Order, a Hire Agreement and The Terms contain the whole understanding between The Owner & The Hirer and cannot be varied unless by written agreement between The Owner & The Hirer. The Terms & the current price list supersede all previous Terms and price lists of The Owner. If any dispute arises over an Order or Hire Agreement (including any question of identity, authority or any telephone, facsimile or email Order), The Owner's internal records will be conclusive evidence of what was ordered.

3 | Acceptance

3.1 The Hirer is deemed to have agreed to and accepted these Terms for the purpose of any contract entered into with The Owner upon a copy of The Terms being made available to The Hirer and The Hirer subsequently placing an Order.

3.2 The Owner reserves the right to review and amend these Terms from time to time and any amendment will take effect from the date on which The Owner gives notice to The Hirer of such amendment.

3.3 Any amendment of The Terms will be deemed agreed to and accepted by The Hirer upon The Owner giving notice in accordance with The Terms.

4 | Hire Charges

4.1 Hire charges shall apply from the commencement of the Hire Period and continue until the Hire Period ceases.

4.2 The Hirer will pay to the Owner for the hire of the Equipment at the charge rate as set out in the Hire Agreement.

4.3 Daily rates are based on an 8 hour working day and weekly rates on a normal 5 days, with a maximum of 40 working hours per week. Special rates apply for long term hire and shift work.

4.4 The Owner is entitled to charge, and The Hirer agrees to pay to The Owner, an amount for a minimum Period of Hire for certain items of Equipment and in certain circumstances where applicable at The Owner's absolute discretion, such minimum Period of Hire to be advised to The Hirer at the time of the Contract.

4.5 The Owner is entitled to charge, and the Hirer agrees to pay to the Owner;

- (a) the costs of any consumables, fuel (or re-fuelling where necessary) or trade materials as supplied by The Owner in respect of the hire of the Equipment;
- (b) any fines, levies, penalties, tolls, environmental charges or any other charges whatsoever arising out of the Hirer's use, or the delivery of, the Equipment;
- (c) if the Hirer requires the Owner to deliver, collect, install or dismantle the Equipment, the costs of same as detailed in the Hire Agreement or otherwise as may be applicable;
- (d) if the Equipment is not returned to the Owner in good working condition, a charge for costs of repairing the Equipment; and
- (e) any charges for use of the Equipment in excess of the limits set out in the Contract, where applicable;

4.6 For the avoidance of any doubt, the anticipated hire finish date set out in the Contract is not considered to be The Hirer's notice to the Owner that the Equipment is available for collection.

The Owner is to be advised as soon as the equipment is no longer required otherwise invoicing will continue.

4.7 The term of the hire is renewable at the option of the hirer exercisable in writing and subject to acceptance by the Owner in writing for a further term or terms the total of which may

- (a) exceed one year; or
- (b) for goods that may or must be described by serial number in accordance with the PPS law, be equal to or exceed 90 days.

5 | Price and Terms of Payment

- 5.1 The Hirer shall pay the price stated in any invoice supplied by The Owner without deduction or set-off.
- 5.2 The Owner will invoice The Hirer at various times depending on the nature of the Contract, such time to be at the absolute discretion of The Owner. Unless notified on the face of the invoice or otherwise in writing by The Owner, payment of the amount stated on the invoice shall be made by The Hirer within thirty (30) days of the end of the following month of the date of the invoice and time will be of the essence in relation to all obligations of The Hirer to make payment to The Owner for the Equipment.
- 5.3 In the event of a conflict between The Terms herein and any terms outlined on the invoice, the latter shall prevail.
- 5.4 If the invoice is not paid by the due date;
- (a) The Owner is entitled to suspend all further hire of Equipment to The Hirer until payment is made in full on all outstanding invoices;
 - (b) The Owner is entitled to recover any Equipment that is on hire and may enter into or upon any premises where the equipment may be to so recover the Equipment.
 - (c) Where the Equipment cannot be removed for public safety or any other reasons;
 - (i) The Hirer agrees to assign or novate the Contract to another party, and do all things necessary to effect such assignment or novation to another party that The Owner authorises and agrees to, and The Hirer agrees to keep The Owner advised of all steps taken in this regard; and
 - (ii) Where The Hirer fails to assign or novate the Contract in accordance with this clause, The Owner is entitled to terminate the Contract and the Hirer agrees to pay to the Owner the price for the full replacement of the Equipment, such price to be calculated on a new-for-old basis.
 - (d) The Hirer shall indemnify The Owner for any cost or expense incurred by it for legal representation (on a Solicitor/Client basis), mercantile agents or other parties acting on The Owner's behalf in respect of any action instituted or being considered against The Hirer whether for payment of the debt, possession of any Equipment, taking of security or otherwise.
- 5.5 The Owner will only consider any claims by The Hirer for credits if such claims for credits are made in writing and within thirty (30) days of the end of the following month of the date of the invoice.
- 5.6 The Owner reserves the right at any time and in its absolute discretion to suspend credit or to vary the credit terms provided to The Hirer when in The Owner's sole opinion it is so warranted. In any such case, in addition to other remedies herein or at law, cash payments or satisfactory security from The Hirer may be required before dispatch of any Equipment, or the due date for any payment under any Contract may be accelerated by The Owner;
- 5.7 If The Hirer elects to pay its account by credit card, it agrees that The Owner is entitled to charge an additional amount to recover costs as a percentage of the value of the invoice; such amount being 2% for all payments over \$1,000.00. The Owner reserves the right to vary this charge at its sole discretion.
- 5.8 G.S.T. and other applicable taxes and duties shall be added to the price except where otherwise expressly agreed to;
- 5.9 The Owner reserves the right from time to time and at any time to vary the price of the Equipment subject of a Contract without notice to the Hirer.

6 | Delivery and Storage

- 6.1 Delivery of Equipment to a nominated third party or agent on behalf of The Hirer shall be deemed delivery to The Hirer.
- 6.2 Equipment delivered to The Hirer are subject to freight and/or courier charges as determined by The Owner from time to time which shall be payable by The Hirer and will be included in the invoice where applicable.
- 6.3 The Hirer shall make all arrangements necessary to take delivery of the Equipment whenever they are tendered for delivery. In the event that The Hirer is unable to take delivery of the Equipment, The Owner shall be entitled to charge a fee for any futile delivery and/or a reasonable fee for redelivery.
- 6.4 The Owner shall not, under any circumstances, be liable for any loss or damages whatsoever due to a failure by The Owner to deliver the Equipment as arranged, for whatever reason.
- 6.5 The failure of The Owner to deliver Equipment as arranged, for whatever reason, shall not entitle either party to treat the contract as having been repudiated.
- 6.6 A certificate signed by an officer of The Owner confirming dispatch of Equipment in the ordinary course of business shall be conclusive evidence of delivery, as shall any signed delivery docket.

7 | Storage

The Hirer agrees that during the Hire Period and thereafter until the goods are either returned to or collected by the Owner, it is responsible to ensure the Equipment is stored in a manner that is safe, secure and protected from theft, seizure, loss or damage.

8 | Service of Equipment

In respect to long term hire, the Owner will inspect and service the equipment regularly in conjunction with manufacturers' recommendations. Other equipment will be serviced on a "needs" basis as determined by the Owner and the Hirer. The Hirer must notify the Owner immediately the hired equipment is to be moved from the stated job site to another location. Should the Owners service technicians call on site in order to service the equipment and the equipment has been moved without prior notification, such call may be charged for separately and in addition to the actual hire charges. Normal daily checking of oils, lubricants and other consumables remain the responsibility of the Hirer. Only fuels and lubricants approved by the Owner may be used in the operation of the equipment.

9 | Title

Notwithstanding that The Hirer may have possession of the Equipment supplied by The Owner, ownership of the Equipment remains with The Owner and no legal or equitable interest or property in same shall pass to or vest in The Hirer.

10 | Assignment

The Hirer shall not transfer, assign, part with possession, mortgage, charge or encumber any right or obligation of the hire of any Equipment under these conditions without the prior written consent of the Owner.

11 | Personal Property Securities Act, 2009 ("PPSA")

- 11.1 The Hirer consents to The Owner affecting and maintaining a registration on the register in relation to any security interest contemplated or constituted by the Terms and agrees to sign any documents and provide any assistance and information to The Owner required to facilitate the registration and maintenance of any security interest. The Hirer waives any right to receive notice of a verification statement under Section 157 of the PPSA pursuant to Section 157 (3)(b) of the PPSA in relation to any registration in respect of the Equipment.
- 11.2 The Hirer undertakes to;
- (a) do anything that is required by The Owner so that The Owner acquires and maintains one or more perfected security interest under the PPSA in respect of the Equipment and its proceeds; to register a financing statement or financing change statement; and to ensure that The Owner's security position, rights and obligations are not adversely affected by the PPSA;
 - (b) not register a financing change statement in respect of a security interest contemplated or constituted by the Terms without prior written consent from The Owner; and
 - (c) not register or permit to be registered a financing statement or financing change statement in relation to the Equipment in favour of a third party without prior written consent from The Owner.
- 11.3 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or connected with these Terms and;
- (a) Section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and The Hirer will have no rights under them; Sections 95 (to the extent that it requires the secured party to give notices to the grantor); 96; 117; 118 (to the extent that it allows a secured party to give notices to the grantor); 120; 121(4); 123; 125; 128; 129; 130; 132(3)(d); 132 (4); 134(1); 135; 142; and 143; and
 - (b) Section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and The Hirer will have no rights under them; Sections 127; 129(2) and (3); 130(1); 132; 134(2); 135: 136(3), (4) and (5); and 137;
- 11.4 Unless otherwise agreed and to the extent permitted by the PPS, both The Hirer and The Owner agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person. The Hirer waives any right it may have had but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- 11.5 For the purposes of section 20(2) of the PPSA, the collateral is Equipment sold by The Owner to The Hirer from time to time. These terms are a security agreement for the purposes of the PPSA.
- 11.6 The Owner may apply amounts received in connection with these Terms to satisfy obligation secured by a security interest contemplated or constituted by these Terms in any way The Owner determines in its absolute and sole discretion;
- 11.7 The Hirer agrees to notify The Owner in writing of any change to the details as set out in the credit application within seven (7) days of such change.

12 | Use of Equipment

- 12.1 The equipment hired does not purport to be new stock or equal to new, but when delivered all items are in good working order under normal working conditions. Should a breakdown occur, Burwell are to be notified immediately. Minor repairs will be carried out on site but in cases of major breakdowns, the Owner will take all reasonable actions to repair or replace the equipment as quickly as possible.
- 12.2 It is the responsibility of the hirer to ensure that the operator is properly trained and familiar with the use and operation of the equipment. The hirer accepts the responsibility to ensure that the equipment is used in a safe and lawful manner conforming with all relevant laws, regulations and safe practices that apply to this equipment and that a safe working environment is maintained in connection with the use of the equipment.
- 12.3 The Hirer shall at his own expense clean, care for and maintain the Equipment in good and substantial repair and condition, save for reasonable wear and tear and The Owner is entitled to charge The Hirer for any costs incurred by The Owner arising out of The Hirer's failure to properly clean, care for or maintain the Equipment.
- 12.4 Before using the Equipment, The Hirer shall examine the Equipment and satisfy himself as to the quality and fitness for purpose of the Equipment. If the Equipment is in any way unsuitable for the purpose, the Hirer must return the Equipment immediately and notify The Owner of the reasons for same and The Owner, at its sole and absolute discretion may exchange the Equipment for another comparable item of Equipment.
- 12.5 The Hirer acknowledges that he is not relying on any representations made by or on behalf of The Owner in respect of the Equipment or its performance.
- 12.6 The Hirer indemnifies The Owner in respect of all actions, claims, suits demands or expense of The Hirer or any other person in relation to or arising from the use or possession of the Equipment by the Hirer during the Hire Period.

13 | Termination by The Owner

- 13.1 Notwithstanding the specified Hire Period, The Owner may terminate this agreement and repossess the Equipment;
- (a) If The Hirer fails to pay any hire charges by the due date;
 - (b) If The Hirer does or permits any act to be done to the Equipment by way of which the Owner's right in the Equipment may be prejudiced;
 - (c) If The Hirer becomes or is made insolvent or bankrupt or makes any arrangement or composition with its creditors or should any order be made or resolution passed for its winding up; or
 - (d) If the Hirer breaches any conditions of this agreement;
 - (e) In the event of a major breakdown of the equipment, the Owner and the Hirer may agree to terminate the Hire Agreement in the event the equipment cannot be repaired or replaced within a reasonable time period.
- 13.2 For the purposes of repossessing the Equipment, the Owner may enter into or upon the premises where the equipment may be to recover the Equipment without prejudice to the rights of the Owner and recover from the Hirer in respect of any claims, damages or expenses relating to or arising out of any action taken under this clause.
- 13.3 On the Owner repossessing the Equipment, the determination of the Hire Period shall be without prejudice to any claim that the Owner may have against the Hirer whatsoever.

14 | Defects

The Hirer shall inspect the Equipment on delivery and shall within (24) hours of delivery notify The Owner of any alleged defects or damage to the Equipment. The Hirer shall afford The Owner the opportunity to inspect the Equipment within a reasonable time. In the absence of such notice and opportunity to inspect, the Equipment will be presumed to be free of any defect or damage when delivered.

15 | Damage and Loss of Equipment

- 15.1 During the Hire Period, The Hirer is responsible for any loss, whatsoever, reasonable wear and tear excepted, including where the Equipment is allegedly stolen, or damage to the Equipment whether such loss or damage is caused by the negligence of The Hirer or for any other reason whatsoever.
- 15.2 The Hirer's responsibility shall continue until the Equipment has either been picked up by or delivered to The Owner.
- 15.3 Where the Equipment is lost or damaged during the Hire Period, The Hirer agrees to indemnify the Owner for any part of the cost of repairs to or replacement of the Equipment.
- 15.4 The Hirer acknowledges that,
- (a) Where the Equipment is damaged, the decision to either repair or replace the Equipment is at the absolute discretion of The Owner and will be made on reasonable commercial and safety grounds; and
 - (b) Where a replacement of the Equipment is necessary (due to either loss or damage), The Hirer agrees to indemnify the Owner for the costs of the replacement. The Hirer acknowledges that;
 - (i) The Owner will, in the first instance, use its best endeavours to replace the Equipment with another item of Equipment of similar age and wear. However, for reasonable practical and commercial reasons, The Owner may replace the Equipment on a new-for-old basis.
 - (ii) Where the Owner exercises its discretion in this regard, the replacement on a new-for-old basis is an accurate measure of what is required to return The Owner to the position it was in prior to the Equipment being lost or damaged, and is not a penalty; and
 - (iii) The Owner will not accept the Hirer sourcing replacement Equipment, save for The Hirer providing brand new Equipment of equivalent quality, make and specification.
 - (c) Where there is a delay in the lost or damaged Equipment being repaired or replaced, the Hirer agrees to indemnify the Owner for the lost hire opportunity during the period that the Owner is unable to hire its Equipment to other parties.
- 15.5 Where the equipment is to be used for abrasive blasting the hirer is to take all care not to situate the said equipment in such a position so that abrasive or dust could cause any damage whatsoever to the hire equipment, as any damage will be charged to the hirer.
- 15.6 Where the Equipment is not returned to The Owner within 7 days of the expiration of The Hire Period, The Owner may appropriate any deposit paid by The Hirer to mitigate any damages claim that The Owner may incur and The Owner shall be at liberty to immediately notify the Police of the circumstances and may pursue criminal or civil action as it deems necessary in the circumstances. The Owner is not liable for any loss, damage, injury, fines or costs sustained by The Hirer arising from such action.

16 | Damage Waiver

If the damage waiver is taken by the Hirer, the Owner agrees to waive its rights to claim from the Hirer for any loss or damage to the equipment in excess of the sum equal to 5% of the list price of the equipment which is caused by fire, storm, earthquake, collision, accident or theft provided that in the case of theft the Hirer has supplied to the Owner satisfactory evidence that he has promptly reported the theft to the police. This waiver shall not apply to the loss of or damage to equipment in the following circumstances:

- (a) Where damage is caused by overloading, misuse, abuse, exceeding rated capacity or improper maintenance of the Equipment;
- (b) Where damage is caused by misappropriation or wrongful conversion by the Hirer;
- (c) Where the Hirer has breached any of the terms and conditions herein;
- (d) Where damage is caused to tyres, tubes;
- (e) Where damage is caused to tools or accessories;
- (f) Where damage is caused by the use or operation of Equipment in violation of any statute, regulation or by-law.

16 | *Continued over*

- (g) Where damage or loss is caused by the negligence of the Hirer;
 - (h) Where the Equipment is being used for a purpose for or a manner in which it was not designed.
- 16.1 Unless waived by the Hirer, a basic damage waiver fee will be calculated based on a percentage of the hire charge. This may limit the Hirer's liability for damage to the Equipment and will be subject to a damage waiver excess. In the event of damage to the Equipment, a damage waiver excess will be payable by the Hirer in the amount of 5% of the list price of the equipment.
- 16.2 The Hirer expressly acknowledges that this Damage Waiver is not, and does not operate as, an insurance policy against loss or damage of Equipment.
- 16.3 The Hirer acknowledges that the damage waiver fee is not refundable under any circumstances.

17 | Breakdown and Damage to Property of and Injury to Third Parties

- 17.1 In respect of all Equipment, the Hirer shall, during the Hire Period, be responsible for any loss or damage to property of, or personal injury to, third parties resulting from or which is incidental to the use or possession of the Equipment or for any other reason whatsoever, including the use of the Equipment on any public road or highway, or if the Hirer or any driver or operator of the Equipment drives or operates that Equipment without a licence required by any statute or regulation or fails to use any prescribed safety apparatus installed in the equipment and the Hirer shall indemnify and keep indemnified the Owner in respect of all actions, claims, demands, or expenses of the Owner or any other person in relation to or arising out of the use of the Equipment under this contract;
- 17.2 In the event of a breakdown or failure of Equipment or defect in the Equipment becoming apparent during the Hire Period;
- (a) The Hirer shall immediately notify the Owner who will assess whether a service technician should be sent to the site or approve the return of the equipment to the Owner.
 - (b) The Hirer shall not repair or attempt to repair or cause any repair or attempt to repair to be carried out to the Equipment without the prior express consent of the Owner; and
 - (c) If the breakdown or failure is caused by reasonable wear and tear or a defect in the Equipment at the commencement of the Hire Period, and was not caused by or contributed to by misuse or negligence of the hirer or any person under his control or the nominated operator, the hire period shall cease on return or notification to the Owner.
 - (d) If after assessment by the Owners technicians that the equipment failure is the responsibility of the Hirer, due to misuse or negligence of the Hirer or any person under his control, the costs to repair the equipment will be charged for separately in addition to hire charges.
- 17.3 Under no circumstances whatsoever shall the Owner be responsible for any expenditure, damages, sum for delay, inconvenience or loss incurred by the hirer relating to or arising out of any breakdown or failure or defect in the Equipment whether caused by fair wear and tear, lack of repair, negligence or any other reason whatsoever.
- 17.4 No conditions or warranty shall be implied in these conditions except to the extent that any condition or warranty may be included or be implied by statute and may not be excluded by agreement. Any condition or provision inconsistent with such implied condition or warranty shall be of no force and effect to the extent of such inconsistency.

18 | Remote Location Maintenance

For the purposes of preventative maintenance or if the Equipment breaks down whilst located at a Remote Location, The Hirer will be required to pay to the Owner a charge for travel to and from the Remote Location, based on the amount of kilometres required to be travelled;

19 | Notices

Notice permitted or required to be given under the Terms shall be effected by The Owner either posting the Notice to The Hirer's last known street or postal address provided to The Owner or by emailing the Notice to The Hirer's last known email address provided to the Owner, and by The Owner publishing the Notice on its website where applicable.

20 | Severability

In the event that any provisions herein is invalid, void, illegal or unenforceable, it shall be considered to be severed from the Terms and the validity, existence, legality or unenforceability of the remaining provisions shall not be effected, prejudiced or impaired by such severance

21 | Waiver

The failure of The Owner to enforce any right or part thereof under the Terms shall not be considered a waiver of that right and shall not prevent The Owner from later enforcing that or any other right.

22 | Governing Law and Jurisdiction

The terms and any contract to which they apply shall be governed by the laws of New South Wales and The Hirer expressly agrees to submit itself to the Jurisdiction of the Courts of any State or Territory within Australia that The Owner, in its sole and absolute discretion, may select to commence proceedings in respect of any matter arising hereunder. The Hirer expressly acknowledges that such discretion as to jurisdiction is agreed to and is an essential term of the contract and material and fundamental to The Owner's decision to provide credit to The Hirer.