

# SOUTH COAST HIRE

## HIRE AGREEMENT

### **Terms and Conditions**

### **About each Hire Agreement**

A hire agreement comes into existence in relation to the goods on hire, subject to the terms herein, upon any of the following:

1. Ordering of goods by phone, email or any other direction to South Coast Hire.
2. Through any other manner as directed by the customer to South Coast Hire
3. Acceptance of delivery of the goods on hire; or
4. At any such time the customer has entered into an agreement with South Coast Hire.

By accepting the delivery of goods on hire, the client consents to be bound by these terms of the hire agreement and further consents to the rate of hire as previously agreed between the client and South Coast Hire.

The customer acknowledges that these terms and conditions of hire have been made available to him / her prior to entering into the agreement and or prior to accepting delivery of the goods on hire.

**Name of Client or Client's Agent:**

.....

**Signature**

..... **dated**

## HIRE AGREEMENT TERMS AND CONDITIONS—GENERAL

### Part A – The *goods*

#### *Ownership and interest*

**1.1** The *goods* always remain property of South Coast Hire (“SCH”) during the term of the *hire agreement*. You only have a right to use them during that term.

**1.2** You must protect South Coast Hire’s interest in the *goods at all time and while on hire*, including where necessary, making clear to others that they are the property of SCH.

**1.3** You must not place, or allow to be placed, on the *goods* any plates or marks that are inconsistent with our ownership or that would indicate that the goods are owned by anyone other than SCH.

If we ask, you must allow us to put our logo or marking in order to demonstrate ownership in order to prohibit any dealing in them outside of the hire agreement.

**1.4** Despite our ownership in the *goods*, you bear the entire risk of loss arising in connection with the possession, use, storage, maintenance, and repair of the *goods* should any loss or damage arise. (This includes loss arising because of theft, destruction or damage and loss arising out of claims of injury.)

**1.5** You must not part with possession of the *goods* without our consent. If you are to remove the goods from the agreed location, we require notification of this immediately and prior to relocation.

**1.6** You must not create any *security interest* over the goods on hire or cause one to arise.

**1.7** You agree that we may disclose any information or documents we reasonably consider necessary to help us exercise demonstrate our proof of ownership of the goods whilst on hire to any third party.

#### *Delivery and installation*

**2.1** You are responsible for:

- (a) obtaining the *goods*; and
- (b) having them delivered and installed; and
- (c) having them put in good working order.
- (d) And returning them in identical condition to when they were hired to you.

**2.2** We will be taken to have delivered the *goods* to you and you will be taken to have accepted them when you obtain them under any circumstance set out in page 2 of this agreement in the “about each hire agreement” section of this document.

**2.3** You must not attach the *goods* to any property without our consent. If they are attached to land, they do not become fixtures and we can still remove them in accordance with the *hire agreement*.

#### *Re-location*

**3.1** Except when *goods* are a motor vehicle or designed to be transportable, you must not change the place where the *goods* are used or ordinarily kept without our prior written consent which will not be unreasonably withheld.

**3.2** If the *goods* are a motor vehicle you must not change the place where the *goods* are housed without our prior written consent which will not be unreasonably withheld.

#### *Use*

**4.1** You must use the *goods* only for the purpose for which they are designed.

**4.2** You must ensure that the *goods* are used in accordance with the supplier’s and manufacturer’s instructions and recommendations, in compliance with all laws that apply to the *goods* or their and only by suitably qualified operators.

**4.3** SCH shall not interfere with your use of the *goods on hire* unless the *hire agreement* allows us to do so.

#### *Maintenance*

**5.1** You must take proper care of the *goods* and keep them in good working order whilst under your hire as well as keeping them in good repair (fair wear and tear excepted).

**5.2** Where applicable you must do all things necessary to maintain the supplier’s and manufacturer’s warranties.

**5.3** You must not say or imply that we will pay for any work done to the *goods*.

**5.4** In the event maintenance is required during your term of hire and you are required to have the goods serviced, you must keep all maintenance records and all other records relating to the inspection, commissioning or alteration of the *goods* and make these records available to us upon request. You acknowledge receiving all relevant maintenance records and other records for the *goods* from us. Upon return you must produce a copy of your maintenance records for the *goods* whenever we request it.

**5.5** You must maintain all logbooks or other records customarily maintained for such *goods* unless otherwise agreed between you and SCH.

#### *Access*

- 6.1** After we give you reasonable notice (except where we reasonably consider the goods are at risk) you must allow us or our agent, at reasonable times, to enter the place where the *goods* are stored or being used, to:
- (a) inspect the *goods*; or
  - (b) check whether the terms of the *hire agreement* are being complied with; or
  - (c) exercise any of our rights under the *hire agreement*.
- 6.2** We must give you prior notice of entry unless we reasonably believe that this could materially impair our rights in relation to the *goods*.
- 6.3** You must tell us in writing if any third party makes a claim in connection with the *goods* which is inconsistent with your or our rights and interest in the *goods*.

#### **Loss or damage**

**7.1** You must tell us if any of the *goods* are:

- (a) stolen; or
- (b) lost; or
- (c) seized; or
- (d) destroyed; or
- (e) damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.

**7.2** If any of these events happen, and you and we agree to the affected *goods* being replaced (which agreement must be in writing) the replacement goods will then be the subject of this *hire agreement*.

**7.3** We are entitled to receive all amounts which are payable to you by any insurer or other person because any of the things in clause 7.1 happens.

**7.4** If within 30 days after the event in clause 7.1 happens, you and we have not agreed to a replacement, then on the next payment date after the 30-day period, you must pay us in addition to any *rent instalment* or other amounts due on that date:

- (a) the *termination value* of the affected *goods*  
on that date; less
- (b) any money we have received from an insurer or other person because the event in clause 7.1 happened.

Without limiting any other clause of this *hire agreement*, you must also pay on its due date any *rent instalment* or other amount that falls due during the 30-day period. If, before the next payment date after the event in clause 7.1 happens, you and we have agreed not to replace the affected *goods*, then on that payment date, you must pay in addition to any *rent instalment* or other amount due on that date, the amount referred to in (a) less the amount referred to in (b).

**7.5** This *hire agreement* terminates in relation to the affected goods when you make payment under clause 7.4. We will then notify you of the revised *rent instalments* which are payable on the goods not affected calculated on the basis of the value we attributed to the affected goods at the start of this *hire agreement*.

**7.6** If we receive money from the insurer or any other person after you have paid us the amount due under clause 7.4, we will refund to you, up to the amount you paid us, the amount we receive less all money then payable by you under the *hire agreement*.

#### **PART B – RENT, COSTS AND OTHER AMOUNTS**

##### **Rent**

- 8.1** You must pay the *rent instalments* on the payment dates, to our address stated in the *our invoice*. If we notify you of a different address, you must pay them to that address. Once paid, these amounts are not refundable for any reason.
- 8.2** If we agree your *rent instalments* are due on the 29th, 30th or 31st of a month, and a particular month does not have that date, you must pay your *rent instalment* on the last day of that month.

##### **Duties, taxes, fees and charges**

**9.1** When we ask, you must pay us our *costs* in connection with and all fees, taxes and charges payable in connection with:

- (a) our hire of the *goods*; and
- (b) any new fee or charge that becomes apparent during the period of your hire. This will be payable
- (c) any payment, receipt or other transaction arising out of our of the *goods* or the *hire agreement*, including any increase in the stamp and financial institutions duty stated in the *goods schedule*.

**9.2** Unless expressly stated otherwise in the *hire agreement*, all amounts and payments are exclusive of GST.

##### **Overdue payments**

**10.** You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.

**10.1** The rate of interest applying to each daily balance is the *implicit daily hire rate* plus 3% per annum.

## Indemnities

- 11.** You indemnify us against any liability or loss arising from and any reasonable costs (including on account of funds borrowed, contracted for or used to fund any amount payable by us in connection with our of the *goods* or the *hire agreement* and legal fees and expenses other than those caused by our negligence, fraud or wilful misconduct) reasonably incurred in connection with:
- 11.1** Our exercising a right under the *hire agreement*; or
- 11.2** You not doing what you should have done under the *hire agreement*; or
- 11.3** a person being injured or killed or property being damaged directly or indirectly by the *goods* or their use; or
- d.** any claim made against us by any party in relation to the *hire agreement* or the *goods*. If we ask, you agree to assume responsibility for the defence of any proceedings relating to any such matters; or
  - e.** any proceedings or prosecutions commenced against us or any fine or penalty imposed on us under occupational health and safety legislation in relation to the *goods* or their use.
- 11.4** Each indemnity in the *hire agreement* is a continuing obligation, separate and independent from your other obligations. It continues after the *hire agreement* ends or is terminated. It is not necessary for us to incur expense or make a payment before we enforce a right of indemnity.

## PART C – INSURANCES

- 12.** You must always insure against:
- 12.1.1** loss or damage to the *goods* caused by fire, theft or accident for no less than the then *termination value* of the *goods* (or such other amount as agreed by us); and
- 12.1.2** public liability for bodily injury or damage to property arising in connection with the *goods* for no less than \$10 million or any other amount notified by us; and
- 12.1.3** any other risk as we may reasonably direct to protect, directly or indirectly, our interest in the *goods*.
- 13.** The insurances must:
- 13.1** be with an insurer registered with the Australian Prudential Regulatory Authority or an insurer reasonably approved by us and on terms that are satisfactory to us; and
- 13.1.1** Must not do anything, or fail to do anything, which would allow the insurer to refuse or reduce a claim; or
- 13.2** You must produce evidence of the insurance policies whenever we ask for them.
- 14. You must ensure that:**
- (a)** You do not become insolvent whilst in possession of the hired goods *insolvent*; and
  - (b)** you pay on time any amount due under the *hire agreement* or other agreement you have with us; and
  - (c)** you give us correct and not misleading information in connection with any *hire agreement*, any guarantee of a *hire agreement* or a security; given in connection with a *hire agreement*; and
- 15.** If you lose the *goods* or they are stolen, seized or destroyed, you must comply with our reasonable directions in relation to remedial action.

## PART D – WHAT HAPPENS IF YOU REPUDIATE THE HIRE AGREEMENT?

- 16.** The fundamental provisions of the *hire agreement* are that you must:
- (a)** pay all money due on time and as required by the *hire agreement*; and
  - (b)** You will repudiate the *hire agreement* and we may terminate it by notice to you if:
    - (b)** you do not comply with the fundamental provisions of the *hire agreement* except that for the purposes of this clause you will have complied with the requirement to pay all money due on time and as required by the *hire agreement* if it has been paid within 2 *business days* of the due date; or
    - (c)** your conduct indicates, in our reasonable opinion, that you no longer intend to be bound by the *hire agreement*; or
    - (d)** we reasonably believe you or another person associated with the *hire agreement*, has acted unlawfully or fraudulently in connection with the *hire agreement*,
    - (e)** you have repudiated any other hire with us.
- 17.** If we give you notice that the agreement needs to be terminated you must, immediately return the *goods* to us in good working order, and in good repair (fair wear and tear excepted) to a place we nominate; and give us any certificates of registration, insurance certificates, log books, instructions and service manuals and other documents relating to them, and a signed transfer of all certificates of registration in favour of us or a person we nominate; and pay us the *termination value* for all the *goods* calculated as at the day we give you notice,

18. Pay us all amounts owing under the *hire agreement* including:
1. all arrears of *rent instalments*.
  2. *any rent instalment*; and
  3. repossession costs, due on the day we give you this notice and other payments due up to and on that day.
19. We may take possession of the *goods* without terminating the *hire agreement* on your repudiation of it.

#### **PART E – WHAT YOU ACKNOWLEDGE IN ENTERING THE *HIRE AGREEMENT***

##### **About the *Hire Agreement***

20. You acknowledge that:
- a. you have not relied on our skill or judgement in deciding to enter into the *hire agreement*; and
  - b. unless you have told us otherwise, you do not enter into the *hire agreement* as trustee of any trust; and
  - c. you have no connection with the supplier of the *goods* unless previously disclosed to us; and
  - d. the *hire agreement* may not be terminated by you except with our consent; and
  - e. we have not made any representation or statements as to the accounting, legal or taxation treatment of any *hire agreement* and you have obtained your own accounting, legal and taxation advice; and

##### **About the *goods***

21. You acknowledge that:
- a. You alone are responsible for examining the *goods* before accepting them and for satisfying yourself about them, including:
    - a. their compliance with their description; and
    - b. their condition, suitability and fitness for your purposes; and
    - c. the validity of any manufacturer's, dealer's, or supplier's warranties or guarantees, and entitlements to patents; and
  - b. if an intermediary or consultant has been engaged in connection with the *hire agreement*, that intermediary or consultant is not our agent and is not authorised to make any representation on our behalf; and
  - c. you are responsible for obtaining and always maintaining all licences or registrations required by law in connection with the *goods* or their use; and
  - d. you have satisfied yourself that the *goods* and their supply and use do not constitute a breach of any patent, copyright or other intellectual property; and
  - e. we are not the manufacturer of the *goods* nor a dealer in property of that kind; and
  - f. you have sole control of and responsibility for the safe operation and use of the *goods* during the term of the *hire agreement*; and

##### **About legal warranties and limitations**

22. You acknowledge that:
- a. we have not made any representation, warranty or undertaking about the condition or the quality of the *goods outside of the suitability or intention for which they were hired* and except those implied by legislation including the *Competition and Consumer Act 2010* (Cth) (to the extent it applies and cannot be excluded); and
  - b. to the full extent permitted by law, we are not liable for any injury to any person or loss or damage to property arising from the possession, operation or use of the *goods* (including any injury, loss or damage arising from our negligence); and
  - c. Whether or not the relevant provisions of the *Competition and Consumer Act 2010* (Cwth) or any law to a similar effect applies, our liability for anything in relation to the *goods*, their use, or their installation, including damage or economic loss to anyone, is limited as much as it can be.

##### **Reliance**

23. Your acknowledgments contained in the *hire agreement* take effect as representations and warranties. You enter into the *Hire Agreement* on the basis of the representations and warranties made by us at the time of entering into the agreement.

#### **PART F – OTHER REQUIREMENTS**

##### **Our right to act**

24. If you do not return the *goods* when you are required to under the *Hire Agreement*, we may enter the place where the *goods* are and take possession of the *goods* without prior notice to you.

##### **How we may exercise our rights**

25. We may exercise a right, remedy or power or give or refuse our consent in any way we consider appropriate including by imposing conditions.
26. If we do not exercise a right, remedy or power at any time, we can still exercise it later.

27. We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, remedy or power, except where it is caused by our fraud, gross negligence or wilful misconduct.
28. Our rights, remedies and powers under the *hire agreement* are in addition to any other rights, remedies and powers provided by law independently of it.
29. Our rights and remedies may be exercised by any of our directors, any of our employees or any other person we authorise.

#### **How we may use money we receive**

30. We acting reasonably, may use any money received under the *hire agreement* towards meeting any part we choose of the amounts you owe us.

#### **Notices and other communications**

31. Notices, certificates, consents and other communications in connection with the *hire agreement* must be in writing.
32. They must be:
  - a. left at the address last notified; or
  - b. sent by prepaid post to the address last notified; or
  - c. sent by email to the address last notified and take effect from the time they are received unless another time is specified in them.

#### **Variation**

33. A term of the *hire agreement*, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

#### **Business days**

34. If a date for payment of money under the *hire agreement* is not a business day, the money must be paid on the preceding business day.

#### **Applicable law**

35. The *hire agreement* is governed by the law of the place where the terms are deemed to have been agreed upon.

#### **The *Hire Agreement* and the law**

36. Any present or future law that varies the terms or rights hereunder is excluded to the extent allowed by law if it affects our rights or remedies adversely.
37. You warrant that your use of the goods we provide will not breach any law of Australia or any other country.

#### **Acting fairly**

38. We will act fairly and reasonably in accordance with our legitimate business interests in exercising our rights and discretions under this hire agreement and so in good faith in all dealings with respect to this agreement.