

HOME HIRE & HANDYMAN SERVICES PTY LIMITED

ACN 606 084 682
ABN 80 606 084 682

[Mark – insert here your
Mailing address, business phone, email etc details]

HIRE CONTRACT CONDITIONS

1. Interpretation

In this Contract, the words in bold below have the meanings adjacent to them:

Commencement: The date that the Customer takes possession of the Equipment.

Customer: The person or organisation hiring Equipment from HSSS under this Contract.

Equipment: The item or items of equipment, plant, machinery, tool and/or vehicle referred to in any Schedule or other document evidencing the items being hired by HSSS to the Customer.

Hire Charge: The amount or amounts shown in the Schedule to this Contract for the hire cost of the Equipment.

Hire Period: The period from Commencement until the Equipment is returned to HSSS. HSSS may impose a Return Date as contained in the Schedule.

HHHS: Home Hire & Handyman Services Pty Limited.

PPSA: Means the Personal Property Securities Act 2009 and any amendment or replacement of the same.

PPSR: Means the Register created under the PPSA

Return Date: The date upon which the Equipment must be returned by the Customer to HSSS.

Schedule: A document forming part of this Contract containing information required by HHHS about the hiring specific to the Customer which can include (but is not limited to) the details of the Customer, any Guarantor, the Equipment, the Hire Period, the Return Date and such other details as required by HHHS.

Service: A notice or document is served under this Contract:

- i. Two days after it has been posted by prepaid post to the address of the recipient set out in the Schedule.
- ii. By personal delivery to the recipient or to the recipient's place of business.
- iii. By email on the day sent by email to the email address of the recent set out in the Schedule.

Travel Charge: A charge payable by the Customer to HHHS for any delivery or collection of Equipment by HHHS to or from the Customer's advised or otherwise known to HHHS location.

2. Hire Agreement

- 2.1 These Conditions apply notwithstanding anything else proposed by the Customer, unless that proposal has been agreed between the Customer and HHHS in writing.
- 2.2 HHHS agrees to hire Equipment to the Customer in accordance with the Conditions contained in this Contract.
- 2.3 For any hire, the Customer must complete and sign and supply such documentation as HHHS may require. This may include (but may not be limited to) identification evidence, acknowledgment having received and agreeing to abide by the terms of or execution of this Contract and execution of any Schedule.
- 2.4 In addition, HHHS may require the Customer to provide a completed and executed Credit Application, Guarantee, Indemnity or other document in the form supplied or required by HHHS which document or documents shall form part of this Hire Contract.
- 2.5 HHHS may decline to hire equipment to any customer without providing any reason.
- 2.6 HHHS gives no warranty or promise that the Equipment or any item is suitable for the purpose for which the Customer is hiring the same.
- 2.6 HHHS will, subject to the conditions contained in this Contract:
 - i. Allow the Customer to take and use the Equipment for the Hire Period;
 - ii. Provide the Equipment to the Customer in good working order;
 - iii. If requested in writing by the Customer and at the Customer's cost, collect the Equipment from the Customer. If no such request is made the Customer must, at the Customer's cost, return the Equipment to HSSS.

3. Amendment

- 3.1 HHHS may amend, alter or vary these Conditions or any of them at any time.
- 3.2 Any amendment, alteration or variation is effective and becomes part of this Contract immediately when:
 - i. Service of the same has been effected on the Customer; and/or
 - ii. The same is published on the website of HHHS and the Customer is notified by HHHS of such publication.

- 3.3 In all other cases, the amendment, alteration or variation will only apply to hire contracts entered into after the date of publication of the same.

4. Customer's Obligations

4.1. The Customer must:

- a. Return or hand over the Equipment to HHHS on or before the Return Date.
- b. Return or hand over the Equipment properly cleaned and in good repair and condition (see below for obligations if any item is damaged whilst in the Customer's possession).
- c. Operate the Equipment:
 - i. Safely;
 - ii. In accordance with any applicable law or regulation;
 - iii. In accordance with any instructions supplied with the hire, but otherwise according to good practice.
- d. Ensure that any person (including the Customer) using or handling any item of Equipment:
 - i. Is properly instructed or knowledgeable in the safe and proper use of the same; or
 - ii. Is suitably qualified (where that is prudent or necessary) or is otherwise experienced in the proper use of the same; and
 - iii. Complies with all OH&S requirements that may be applicable or prudent to follow; and
 - iv. Is not affected by drugs and/or alcohol; and
 - v. Is properly authorised by the Customer to do so.
- e. Ensure that all items of Equipment are secured when in transit and are always kept safe whilst in the possession of the Customer.
- f. Report any fault in or damage to any item of Equipment to HHHS within 2 business days of the fault or damage occurring and comply with all requirements and directions of HHHS advised in relation to such item.
- g. Pay to HHHS the cost to HHHS of the repair or replacement of any item of Equipment which is lost or damaged whilst in the possession of the Customer;
- h. Indemnify HHHS and keep it indemnified against all and any claim, action or demand arising out of the hire by the Customer including (but not limited to) that arising out of the handling, operation, use or carriage of any item of Equipment.
- i. HHHS recommends that the Customer ensures that it has adequate insurance cover against any loss or damage incurred by any person or organisation arising out of the hire by the Customer including (but not limited to) that arising out of the handling, operation, use or carriage of any item of Equipment.

4.2 The Customer must not:

- a. Tamper with, damage or repair any item of Equipment (the Customer acknowledges that any malicious damage can be reported to the police);
- b. Lose, dispose of, lease, hire, sell or part possession with any item of Equipment;
- c. Create or purport to create or allow any other person to create or purport to create a 'security interest' under the PPSA in respect of the Equipment;
- d. Exceed the recommended loading or operating conditions or operating limits of any item of Equipment;
- e. Use any item of Equipment for any use which is or potentially could be illegal, prohibited or dangerous.

5. Hire & Other Payments by the Customer

- 5.1 Unless the parties have arranged otherwise, the Hire Charge is payable by the Customer to HHHS on or before Commencement.
- 5.2 The Customer must also pay to HHHS on demand:
- a. the cost to HHHS of the repair or replacement of any item of Equipment which is lost or damaged whilst in the possession of the Customer;
 - b. the replacement cost to HHHS of any item of Equipment which the Customer fails to return to HHHS by the Return Date or any agreed extension thereof;
 - c. The labour and materials cost involved in cleaning any item of Equipment which the Customer has failed (in the sole opinion of HHHS) to properly clean;
 - d. All taxes (including GST), duties, fines and penalties payable by HHHS in relation to this Contract;
 - e. All costs, including legal costs and disbursements on an indemnity basis, of HHHS in enforcing any provision of this Contract;
 - f. Any Travel Charge as advised in the Schedule relating to the cost of delivery or collection by HHHS to or from the Customer;
 - g. The cost of any Damage Waiver as advised in the Schedule;
 - h. Interest on any amount of money overdue calculated on daily balances at the rate of 3% per month;
 - i. The cost of any consumables provided by HHHS to the Customer.
- 5.3 The Customer authorises HHHS to charge to any credit or charge card or account of the Customer details of which are held by HHHS with any amount or amounts which are due and payable by the Customer to HHHS.

6. Personal Property Securities Act 2009

- 6.1 This Contract creates a 'security interest' under the provisions of the above Act (PPSA).

- 6.2 HHHS may register its interest under this Contract in the Register (PPSR). The Customer must comply with all requirements of HHHS (including obtaining consents and signing documents) to enable any such registration, including as necessary for registration as a first priority security interest.
- 6.3 If HHHS does not have registration in the PPSR ensuring a first priority security interest, the Hire Period under this Contract shall, notwithstanding the nominated Return Date or anything contained in the Schedule or anything otherwise agreed:
- i. be 90 days for equipment which may or must be described by serial number for a PPSR registration; or
 - ii. be one year in any other case,
- which period includes any aggregate of consecutive hirings.
- 6.4 The rights of HHHS under this Contract are in addition to and not in substitution for any rights it has under the PPSA or any other law. HHHS is therefore not restricted to any regime or process it may apply in exercising its rights under this Contract.
- 6.5 In so far as Chapter 4 of the PPSA applies to any security interest under this Agreement, for the purposes of section 115 of the PPSA the following provisions of that Act are "contracted out" and do not apply to this Agreement:
- Section 95 - (notice of removal of accession)
 - Section 96 - (retention of accession)
 - Section 121(4) - (Notice to guarantor)
 - Section 125 – (obligations to dispose of or retain collateral)
 - Sections 129(2) and 129(3) – (obligation of HHHS in disposal of collateral by acquiring same itself)
 - Section 130 – (notice of disposal to the extent it requires HHHS to give a notice to the Customer)
 - Section 132(3)(d) – (content of statement of account after disposal)
 - Section 132(4) – (statement of account if no disposal)
 - Section 135 – (notice of retention)
 - Section 142 – (redemption of collateral)
 - Section 143 – (reinstatement of security agreement)
- 6.6 Subject otherwise to the PPSA the Customer acknowledges and agrees that
- i. HHHS has, in the event of default by the Customer, rights to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only as may be subject to the provisions of the PPSA but also as additional and independent rights under this Agreement; and
 - ii. HHHS may undertake such actions as referred to in clause 6.6i. above in any manner it sees fit including in respect of dealing with and disposal by auction, private or public sale, lease or license.

7. Exclusion of Warranties and Guarantees

- 7.1 Any warranties or guarantees which apply to this Contract under consumer legislation and cannot be excluded, the same *ipso facto* remain in force.
- 7.2 Unless provided by HHHS in writing to the Customer (including manufacturers' warranties) all other warranties and guarantees are excluded.
- 7.3 Other than as contained in clause 7.1 or 7.2 HHHS makes no representation nor gives any warranty or guarantee and is not liable to the Customer for any loss, damages, cost or liabilities whatsoever (including for consequential loss) in relation to or arising out of the hire under this Contract.
- 7.4 For compliance with any applicable warranty or guarantee, the obligation of HHHS extends only to the supply of the Equipment again sufficient to meet the requirements warranty or guarantee.

8. Breach by the Customer

- 8.1 The Customer is in breach of this Contract if the Customer:
- i. Enters into a composition arrangement with creditors;
 - ii. becomes bankrupt, or, if a company, goes into liquidation or has an administrator or receiver appointed;
 - iii. Fails to comply with obligation on the Customer's part contained in this Contract.
- 8.2 Upon any breach by the Customer HHHS shall be entitled:
- i. Terminate this Contract by Notice to the Customer;
 - ii. Recover all monies due and owing by the Customer to HHHS including under such legal proceedings as may be required to do so;
 - iii. Demand return of the Equipment or (as HHHS may decide) repossess the Equipment for which purpose HHHS its employees and/or agents are authorised by the Customer to and may enter any premises where the Equipment is located.
- 8.3 The Customer indemnifies and shall keep indemnified HHHS from and against any loss, damage or costs (including legal costs on an indemnity basis) arising from or caused by breach by the Customer of any provision of this Contract.

9. Disputes

- 9.1 Any dispute the Customer may have relating to any charge or amount payable to HHHS under this Contract must be notified in writing to HHHS with seven (7) days of any such charge or amount becoming due and payable. If the Customer failed to provide such notice within the time limited the Customer will be deemed to have accepted the charge or amount and thereafter will have no entitlement to dispute any of the same.

- 9.2 Any dispute which does arise under clause 9.1 above and which cannot be resolved by negotiation shall be referred in the first instance by either party for mediation by the Hire and Rental Association of Australia. If mediation fails, or mediation is not implemented within 21 days of a dispute arising, then the parties may proceed to litigation.
- 9.3 Any other dispute which may arise between the parties shall entitle HHHS to determine this Contract in which case clause 8.2 above shall apply.

10. Privacy

- 10.1 HHHS will comply with all and any privacy laws which may apply to this Contract and to its dealing with the Customer.
- 10.2 A copy of the Privacy Statement of HHHS is available on request or on the company's website.

11. Applicable Law

- 11.1 This Contract constitutes a payment claim under the Building and Construction Industry Security of Payment Act 1999 (NSW) as amended.
- 11.2 The governing law applicable to this Contract is that of New South Wales.
- 11.3 The parties submit to the jurisdiction of the courts of New South Wales.

12. Guarantee

- 12.1 In the following guarantee provisions, a reference to Hire Charge (whether or not it is a reference to a Hire Charge due or payable under this Contract) includes:
- (a) The Hire Charge as defined in Clause 1 above;
 - (b) The Travel Charge as defined in Clause 1 above;
 - (c) other money which may be payable by the Customer to HHHS under this Contract for any purpose; and
 - (d) damages,
- under, resulting from, relating to or arising from or, in the case of damages, arising from the breach of or from failure to perform or comply with a term or agreement contained in the Contract.
- 12.2 The Guarantor is the person or persons referred to as such in the Schedule. If the Guarantor comprises more than one person:
- (a) each is liable even if the others do not execute the guarantee;
 - (b) each becomes liable as soon as he or she executes the guarantee; and
 - (c) the liability of those that execute the guarantee will be joint and several.
- 12.3 In consideration of the HHHS entering into this Contract at the request of the Guarantor, the Guarantor:
- (a) guarantees to the HHHS that the Customer will duly and punctually pay the Hire Charge and other moneys payable under the Lease;
 - (b) guarantees to the HHHS that the Customer will duly and punctually observe and perform its obligations; and
 - (c) undertakes to the HHHS that, with the Customer, he or she will be jointly and severally liable to the HHHS for the payment of the Hire Charge and other moneys and the due and punctual observance and performance of the Customer's obligations.
- 12.4 The Guarantor's liability will not be discharged or reduced by:
- (a) HHHS's granting any time, concession or indulgence to the Customer;
 - (b) HHHS's entering into any composition or scheme of arrangement with the Customer;
 - (c) HHHS's waiving any breach or default by the Customer;
 - (d) HHHS's failure to enforce the terms of this Contract against the Customer;
 - (e) the disclaimer of this Contract on the insolvency of the Customer; or
 - (f) any payment by the Customer which is avoided or set aside under any statute relating to insolvency or under any other statute.
- 12.5 If the terms of this Contract are not enforceable against the Customer for any reason, the Guarantor will indemnify HHHS against any loss it may suffer as a result. That loss will include all moneys which would have been payable by the Customer had this Contract been fully enforceable against the Customer.

Effective Date of these Conditions – 6 July 2015