



ABN 45 166 692 762

## Direct Access & Equipment Pty Ltd – Terms and Conditions of Hire Contract

Direct Access will hire the Equipment to you on the terms and conditions set out in this document. You must sign a completed Hire Contract and any other documents required by Direct Access in order to hire the Equipment. These Terms and Conditions will apply to any Hire Contract entered into between You and Direct Access. Direct Access may also require You to complete other documents including, but not limited to: credit application and guarantee and indemnity. This document in and of itself does not constitute an offer and Direct Access is not obliged to agree to hire the Equipment to you.

From time to time Direct Access may amend these Terms and Conditions. Notice of such amendment will be either sent to you at the e-mail, facsimile or physical address provided by you and displayed at any of the premises where Direct Access operates from.

### 1. Interpretation

**You** - The client or client's representative.

**Commencement** – When You take possession of the Equipment.

**Direct Access** – Direct Access and Equipment Pty Ltd.

**Equipment** – The items hired by You from Direct Access.

**Fee** – The amount or amounts shown in the Hire Contract that you will pay to Direct Access to hire the Equipment.

**Hire Contract** – The documents that Direct Access will require You to sign (or accept in another way), which will include but not be limited to the particulars of the Equipment, Hire Period, Fee, these terms and conditions of hire and any other information that Direct Access may require.

**Hire Period** – The period from Commencement until the Return Date of the Equipment, as set out in the Hire Contract. You may agree with Direct Access to extend the Hire Period, in which event Direct Access may require You to sign or accept a new Hire Contract. The minimum hire period is for 8 hours per 24 hour period. Weekly hire is based on 8 hours (one shift) for 5 business days, however for a 7 day hire Saturday and Sunday, (or second or third shift per day) may also be charged. All equipment damaged or that is under claim with Equipment protection cover remains on hire until the claim is settled or the equipment repair is completed.

Wet weather/stand down's are by negotiation only and are not 100% auto due to wet weather. Any stand down request must be made to the branch by 8am on the day of bad weather.

**Kilometre Charge** – The amount that you will pay to Direct Access for the kilometres travelled by a Motor Vehicle forming part of the Equipment during the Hire Period.

**Motor Vehicle** – A Travel Tower, Tip truck, Trailer or utility that forms part of the Equipment.

**Return Date** – The date shown of the Hire Contract when You are to return the Equipment.

### 2. What we will do

Direct Access will:

- (a) Grant you permission to use the Equipment for the Hire Period;
- (b) Provide the Equipment in clean and good working order; and
- (c) Accept return of the Equipment on the Return Date.

### 3. What You will do

#### 3.1 You must:

- (a) Return the Equipment to Direct Access:
  - (i) on the Return Date; and
  - (ii) clean and in good repair;
- (b) be satisfied at Commencement that the Equipment is fit for the purpose for which you require it;
- (c) operate the Equipment:
  - (i) safely;
  - (ii) in accordance with the law and good practice;
  - (iii) for its intended use only; and
  - (iv) in accordance with the manufacturer's instructions;

- (d) indemnify Direct Access for any injury or damage caused to any person or property during the Hire Period;
- (e) have adequate insurance to cover any liability or risk associated with the use of the Equipment;
- (f) ensure that any person collecting the Equipment is authorised by You to do so;
- (g) ensure that any person operating or using the Equipment is sufficiently instructed in the safe and proper use of each item of Equipment;
- (h) where necessary, ensure that any person operating or using the Equipment holds a current and relevant certificate of competency or licence;
- (i) comply with the occupational health and safety laws applicable to the relevant jurisdiction and conduct a thorough hazard and risk assessment prior to using the Equipment;
- (j) safely secure any items loaded in or on the Equipment and indemnify Direct Access against any damage or injury suffered by way of items falling from the Equipment;
- (k) use the Equipment with a recommended and adequate vehicle or power source;
- (l) report the nature and details of any accident or damage to the Equipment to Direct Access within 2 business days of such accident or damage occurring.

#### 3.2 You must not:

- (a) Damage, tamper with or attempt to repair the Equipment;
- (b) Lose or misplace the Equipment;
- (c) On-hire or lend the Equipment;
- (d) Allow any person to drive a Motor Vehicle forming part of the Equipment where that person:
  - (i) Does not hold a full unrestricted licence to drive that class of Motor Vehicle; or
  - (ii) Is affected by drugs or alcohol;
- (e) Exceed the recommended or legal load and capacity limits of the Equipment;
- (f) Use or carry any illegal, prohibited or dangerous substance or item in or on the Equipment.

### 4. Payment

4.1 At Commencement, or as otherwise agreed in writing between You and Direct Access, You will pay the Fee;

4.2 You will also pay to Direct Access:

- (a) the Kilometre Charge;
- (b) the new list price of any Equipment not returned to Direct Access on the Return Date;
- (c) any cost incurred in cleaning the Equipment;
- (d) any cost of repairing any damage to the Equipment;
- (e) any stamp duty, administration fee, Equipment protection cover, GST or other tax or duty payable in respect of the Hire Contract
- (f) any cost incurred by Direct Access in delivering or recovering the Equipment;
- (g) interest calculated daily at a rate of 20% per annum on any amount owed by You to Direct Access;
- (h) any cost of fuel and consumables provided by Direct Access and not replaced or returned by You;
- (i) any expense or legal costs incurred by Direct Access in enforcing the Hire Contract;
- (j) any costs of repairing or replacing tyres, including road service; and
- (k) where any Equipment protection cover or theft waiver applies, any amount that You are liable for as set out in the Hire Contract.

4.3 You authorise Direct Access to charge any amount owing under the Hire Contract to any credit card or account details that You have provided to Direct Access.

### 5. Payment terms for Direct Access and Equipment.

#### (a) CALENDAR MONTH ACCOUNTING

Direct Access credit accounts are based on “regular” calendar month periods.  
This means for all accounting purposes the normal calendar months apply - we commence invoices (or credits) on the first day of the calendar month and “close” the month on the last day of the calendar month.  
This means your Direct Access statement reflects you’re trading for the calendar month.

#### **(b) PAYMENTS - 30 DAY TERMS**

For an account to remain current and delivery of our equipment and service to continue unimpeded, payment must be received by the end of the month following the month in which the equipment or service are delivered and/or invoiced, eg. Equipment or service delivered and/or invoiced between 1 July and 31 July must be fully paid for on or before 31 August.

To assist prompt payment and accurate processing of your payment, please forward your remittance advice from your statement to [admin@directaccessandequipment.com.au](mailto:admin@directaccessandequipment.com.au) with your payment.

#### **(c) CREDIT HOLD**

Where an account is not fully paid by the end of the month following the month in which the equipment or service was delivered and/or invoiced the account will, without further notice, be automatically placed on credit hold and no further equipment or service will be made until the account is made current.

It is not the policy of Direct Access and Equipment Pty Ltd to advise the account verbally when it is placed on credit hold (our experience has been that some accounts object vehemently to this information being discussed over the phone).

It is however Direct Access and Equipment Pty Ltd policy to advise a customer who is on credit hold and who places an order that no equipment or service can be provided until the account is fully paid. As soon as full payment is received the account is released from credit hold.

If payment is not received within 7 days from the end of the month the account is advised by email or letter that the account is on credit hold.

Continued late payment may be sufficient reason for credit account facilities to be terminated.

Maintaining a current credit account is a condition of Direct Access and Equipment Pty Ltd Accounts.

Direct Access and Equipment Pty Ltd reserves the right to charge interest on overdue accounts as per our terms and conditions.

#### **(d) ACCOUNTS PROBLEMS - SHORT PAYMENTS**

Most accounting problems investigated by Direct Access relate to short payments.

If you short pay your account for any reason your account will be treated as overdue and automatically placed on credit hold.

#### **(e) CREDIT CARD PAYMENTS**

5.1 Credit card payments are welcome by Direct Access for pre 30 days EOM with written consent from You. This can be achieved by completing and returning our credit card authorisation form available from any branch state-wide.

5.2 Please note if the payment is made post 30 days an extra 3% credit card surcharge and overdue interest, as per our terms and condition, will apply when payment is made.

### **6. Personal Property Security Law**

6.1 Where the Hire Contract provides for a security interest as defined in the *Personal Property Securities Act 2009* ('PPSA'), or any replacement or subsequent legislation to that effect, this clause will apply.

6.2 Direct Access may register a security interest against the Equipment.

6.3 You will provide any information, documents or signatures required by Direct Access to:

- (a) Ensure that Direct Access' security interest is effective under the PPSA;
- (b) Enable Direct Access to gain first priority (or any other priority agreed to by Direct Access in writing) for its security interest; and
- (c) Enable Direct Access to exercise its rights with respect to the security interest.

6.4 Where Chapter 4 of the PPSA applies to any security interest under the Hire Contract the following provisions of the PPSA do not apply and are contracted out of (within the definition of section 115 of the PPSA):

- (a) Section 95;
- (b) Section 96;
- (c) Section 121(4);
- (d) Section 125;
- (e) Section 130;
- (f) Section 129(2) and 129(3);
- (g) Section 132(3)(d) and 132(4);
- (h) Section 135;
- (i) Section 142; and
- (j) Section 143.

6.5 You waive the right to receive a verification statement in respect of PPSA secured property under section 157 of the PPSA.

6.6 You must not dispose of, create or permit to be created any security interest in the Equipment other than with the express written consent of Direct Access.

### **7. Equipment protection cover**

7.1 Equipment protection cover is not insurance, nor is it an excess reduction. It is an agreement between You and Direct Access that your liability for damage to the Equipment may be limited in **some circumstances**. In those circumstances your payment liability to Direct Access is limited to the amount called the equipment protection excess..

7.2 The equipment protection cover is included in the overall Fee.

7.3 The equipment protection excess payable is:

- (a) for Motor Vehicles and for other Equipment –the lesser of:
  - (i) \$5,000.00 per damaged item; (which includes damaged, destroyed or written off Equipment) or;
  - (ii) The actual recovery, repair and/or replacement cost of the Equipment if damaged, destroyed or written off.

7.4 Equipment protection cover does not apply to (and will not limit your liability) in the following circumstances:

- (a) Lost or stolen Equipment;
- (b) Where You have breached any term of the Hire Contract (including these Terms and Conditions);
- (c) Where the damage is caused by:
  - (i) Your negligence or by the negligence of Your agent or employee;
  - (ii) Vandalism;
  - (iii) A collision with a bridge, car park, awning, gutter tree or any other overhead structure or object, due to insufficient clearance;
  - (iv) A truck mounted loading device;
  - (v) Overloading;
- (d) Where the damage is:
  - (i) To glass;
  - (ii) To tyres;
  - (iii) Caused while the Equipment is being driven or towed on any road that is unsealed, not a public road or off road;
- (e) Other than in the ordinary use of the Equipment by You.

7.5 Direct Access may determine, in its absolute discretion, that one or more of the exclusions referred to in clause 7.4 if do not apply if You establish to the satisfaction of Direct Access that that exclusion or those exclusions do not apply.

7.6 Removal of equipment protection cover is achievable by providing a copy of your current certificate of currencies for Plant and Equipment to Direct Access, to the value of 1 million dollars and Public Liability to 20 million dollars.

### **8. Damages**

8.1 You cannot recover damages or compensation from Direct Access for any damages arising from the Hire Contract or the use of the Equipment.

- 8.2 This clause does not apply to the extent of any rights that You may have under the *Australian Consumer Law* or any other law to the extent that Direct Access is unable to contract out of, excluded or modified by the Hire Contract (including these Terms and Conditions).

**9. Breach of Hire Contract**

- 9.1 If You breach any clause of the Hire Contract (including these Terms and Conditions), or if you become bankrupt, insolvent or cease to trade – then:

- (a) Direct Access may:
  - (i) Terminate this contract;
  - (ii) Repossess the Equipment, and enter any premises where the Equipment is located in order to do so; and
- (b) Any Equipment protection cover is invalidated from the date of any such breach.

- 9.2 You indemnify Direct Access in respect of any breach of the Hire Contract by You, Your agent or employee.

**10. Warranties**

- 10.1 To the full extent permitted by law, Direct Access makes no warranties as to the suitability, fitness for purpose or quality of any of the Equipment, other than as provided for in this agreement.

- 10.2 Direct Access' only obligation resulting from any breach by it of this agreement is for the resupply or repair of the Equipment subject to the Hire Contract.

- 10.3 This clause does not apply to the extent of any rights that You may have under the *Australian consumer law* or any other law to the extent that Direct Access is unable to contract out of, excluded or modified by the Hire Contract

**11. Disputes**

- 11.1 You must immediately check the Fee. Any dispute regarding the Fee must be made in writing within 30 days of Commencement.

- 11.2 Where a dispute arises from the Hire Contract or the hire or use of the Equipment (with the exception of amounts owed by You to Direct Access), You and Direct Access agree to attempt to settle the dispute with the assistance of the Hire and Rental Association of Australia prior to either party commencing any litigation.

**12. Governing Law**

- 12.1 The Hire Contract is governed by the Law of Tasmania and both You and Direct Access submit to the jurisdiction of the Courts in Tasmania.

- 12.2 The Hire Contract is a payment claim under the *Building and Construction Industry Security of Payment Act 2009* (Tasmania).