



# MJP HIRE

## TERMS OF AGREEMENT



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# MJP Building Projects – Terms of Trade – Equipment Hire

## Definitions

“MJP” means MJP Building Projects PTY LTD its successors and assignees or any person acting on behalf of and with the authority of MJP Building Projects PTY LTD

“Customer” means the Customer or any person acting on behalf of and with authority of the Customer, as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally

“Equipment” means all Equipment (including accessories) supplied on hire by MJP and listed in the invoice or Hire Schedule

“Hire Period” means the Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by MJP to the Customer

“Hire Charge or Fees” means the Fees and charges payable by the Customer under these Terms Trade

“ACL” means the Australian Consumer Law as contained in the competition and Consumer Act 010 (cth) as amended from time to time

“Dry’ hire means hire of equipment without an operator supplied by MJP

“Events of Default” means any of the following events – where the Customer fails to pay for Equipment Hire and/or the Customer breaches these trading terms and/or if the Customer ceases or threatens to cease carrying on business

“Full Day Hire” means 8 machine hours or one days Hire

“Premises” means each site or location at which the Equipment is to be delivered

“Sub-Contractor” means each and any sub-contractor engaged by MJP from time to time

“Trading terms” means all Terms and Conditions of Trade (as they appear herein) and/or other agreements as maybe be amended by MJP from time to time

## Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the client places an order for, accepts delivery of the Equipment.

2.2 These terms and conditions may only be amended with MJP’s consent in writing and shall prevail to the extent of any inconsistency with other document or agreement between Customer and MJP.

2.3 The Client agrees that MJP reserves the right to review, withdraw, and/or vary the Customer credit terms at any time and without reason.

## Hire Charge Payment

3.1 At MJP’s sole discretion the Hire Charge shall be either:

- As indicated on invoice provided by MJP to the Customer in respect of Equipment supplied on hire:
- or
- MJP’s current Hire Charge, at the date of delivery of the Equipment, according to MJP’s current price list or

3.2 MJP reserves the right to change the Hire Charge in the event of a variation to MJP’s quotation

3.3 At MJP's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be refunded to the Client with 14 days of return of the Equipment, provided that the client has complied with their obligations hereunder. The deposit maybe used to offset any applicable charges payable by the Customer under Clause 3.

3.4 The Hire Charge will be payable by the client on the date/s determined by MJP which maybe:

- Before delivery of the Equipment: or the date specified on any invoice or other form as being date for payment
- Payment maybe made by cash or electronic bank transfer, or any other method as agreed between the customer and MJP.
- Unless otherwise stated the Hire Charge does not include GST, in addition to the Hire charge the Customer must pay to MJP an amount equal to any GST
  - In addition, the customer must pay any other taxes and duties that may be applicable in addition to the Hire Charge except where they are expressly included in the Hire charge.
  - Receipt by MJP of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

#### **Hire Period**

4.1 The Hire period shall commence from the time the Equipment departs from MJP premises and will continue until the return of the Equipment to MJP's premises, and/or until the expiry of the Hire Period, whichever lasts occurs. The Hire period can be extended by one on more definite periods by mutual agreement.

4.2 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.

4.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless agreed to between the MJP and Customer. In the event of Equipment breakdown provided client notifies MJP immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the client.

#### **Delivery**

5.1 Delivery ("Delivery") of the Equipment is taken to occur at the time:

- The customer or the customer's nominated agent takes possession of the Equipment at MJP premises; or
  - MJP (or MJP's nominated carrier) delivers the equipment to the Customer's nominated address even if the Customer is not present at the address
- The cost of Delivery is in addition to the Hire Charge
  - If the Customer is unable to take delivery of the Equipment as arranged, then MJP shall be entitled to charge a reasonable fee for delivery.
- Any time or date given by MJP to the Customer is an estimate only. The Customer must still accept delivery of the Equipment even if late and MJP will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- MJP reserves the right to amend delivery date due to circumstances beyond its control including but not limited to breakdowns, inclement weather, staffing issues or any other like matters.



## **Equipment Breakdown or Loss**

7.1 If the equipment breaks down or becomes unsafe during the Hire Period the Customer shall immediately stop using equipment and notify MJP and not repair or attempt to repair without prior consent of MJP

7.2 If the equipment is lost, damaged or destroyed due to any fault of the Customer, its servants, agents, employees or invitees including through failure to comply with these Trading Terms the Customer shall make good the Loss or damage at its expense immediately upon demand of MJP

## **Risk**

6.1 The Equipment is and will always remain the absolute property of MJP nonetheless all the risk for the Equipment passes to the Customer on delivery.

6.2 The Customer accepts full responsibility for the safe keeping of the equipment and indemnifies MJP for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether such loss, theft, or damage is attributable to any negligence, failure or omission of the Customer

6.3 The Customer accepts full responsibility for and shall keep MJP indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of Equipment during the Hire Period and whether or not arising from any negligence, failure or omission of the Customer or any other person

## **Termination of Engagement**

7.1 MJP may, in its absolute discretion, terminate the agreement at any time with immediate effect if the Customer fails comply with essential terms of these Trading Terms or if at any time, commits an event of Default or if the Customer is in breach of any law, regulation or directive of any competent authority by which MJP or its sub-contractor is bound.

## **Title**

8.1 The Equipment is and will always remain the absolute property of MJP, and the Customer must return equipment to MJP upon request to do so.

8.2 Nothing in this agreement entitles the Customer to retain or hold Equipment, or creates any proprietary interest in the Equipment in favour of the customer

8.3 If the client fails to return Equipment as is required under this agreement or when requested to do so, then MJP or MJP's agent may (as the invitee of the Client) enter upon and into any land and premises where the Equipment is situated and take possession of the Equipment without being responsible for any damage thereby caused

## **Obligations of the Customer**

9.1 Ensure Equipment is stored safely and securely and is protected from theft

9.2 The customer must not alter, remove deface or erase any identifying mark, plate number, notices or safety information on the equipment.

9.3 Return Equipment to MJP clean and in good repair

9.4 Satisfy itself at Commencement that the equipment is suitable for its purposes

9.5 The customer must not, without prior approval from MJP move the equipment to another site

9.6 Use or carry any illegal, prohibited or dangerous substances in or on the Equipment

9.7 Employ the equipment solely for the purposes for which is hired and shall not permit the Equipment or any part thereof to be used by any other party for any other work.

9.8 Operate the Equipment safely, strictly in accordance with law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by MJP or posted on the Equipment.

9.9 Indemnify MJP for all injury and/or damage caused to persons and property in relation to the Equipment and its operations and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment.

9.10 Ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised.

9.11 Ensure that all persons operating the Equipment are suitably instructed in safe and proper use and where necessary hold relevant certificate of competency and/or are licensed to operate Equipment.

9.12 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all occupational health and safety laws relating to the equipment

9.13 Report immediately to MJP any accident or damage to the Equipment occurring

9.14 The customer must not tamper with damage or repair the equipment, lose or part possession of the Equipment or exceed the recommended legal load and capacity limits of Equipment

9.15 On termination of the Hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted to MJP

9.16 Refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Customer in addition to Equipment Hire.

### **Damage Waiver**

10.1 Damage Waiver is not insurance, but is an agreement by MJP that the customers liability for damage to the Equipment can be limited in some circumstances only, to an amount called Damage Waiver Excess. A Basic Damage Waiver Fee is included in the Hire Charge. The Damage Waiver Excess is the actual recovery and repair cost of equipment, or 10% or the replacement cost of the Equipment, whichever is the lesser amount.

10.2 Basic Damage Waiver does not apply and will not limit the Customers liability in the following circumstances:

- Where equipment is lost or stolen
- Where the Customer has breached any clause of the Customer or customers agent
  - Where the damage is caused vandalism or MJP reasonable opinion in any way whatsoever other than by the ordinary use of the Equipment by the Customer
  - Where the damage is caused by a collision by any overhead structure or object whatsoever without any clearance.

### **Cancellation**

11.1 MJP may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered. On cancellation MJP must repay to the Customer any sums paid in respect of the Hire Charge. MJP shall not be liable for any loss or damage whatsoever arising from such cancellation.

11.2 In the event that the Customer cancels delivery of the Equipment the Customer shall be liable for all loss incurred (whether direct or indirect) by MJP as a direct result of the cancellation (including, but not limited to any loss of profits).

### **Warranties**

12.1 Other than as set out in these Trading Terms (except for the consumer guarantees provided by the ACL) all conditions, warranties and obligations whether implied or imposed by statute or otherwise, in respect of the provision of any services provided by the Customer are excluded.

12.2 No warranty is provided by MJP in respect of the condition of the Equipment or its fitness for any particular purpose. The Customer shall indemnify and hold harmless MJP in respect of all claims arising out of the use of the Equipment.

### **Liability**

13.1 MJP will not be liable for any loss or damage whatsoever suffered by a customer as a result of an act, omission or statement made by MJP, its employees, contractors or agents

13.2 Subject to any liability under the ACL which cannot be excluded, MJP does not accept liability for any personal injury, death, direct loss, indirect loss, consequential Loss or Damage, however caused which the Customer may directly or indirectly suffer in connection with the Hire of Equipment

### **Indemnity**

14.1 The customer will indemnify MJP in relation to any direct or indirect loss, liability or damage suffered by MJP or any other person as a result of the customers negligence or breach of these Trading Terms

14.2 Each indemnity of the customer given herein is a liability of the Customer separate and independent of any other liability of the customer under these Trading terms and survives and continues after performance of the works and in the event of termination of the engagement, that termination.

### **Joint and Several**

15.1 If the Customer consists of more than one person, the obligations of each person are joint and several.

### **Severance**

16.1 Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part found to be invalid or ineffective, the other clauses or sub clauses or parts will not be adversely affected.

### **General**

17.1 The failure by MJP to enforce any provisions of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MJP's right to subsequently enforce that provision.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales.

17.3. The customer shall not be entitled to set off against or deduct from hire Charge any sums owed or claimed to be owed to the customer by MJP nor withhold payment of any invoice because part of the invoice is in dispute.

17.4 Neither party shall be liable for any default due to any act of God, war, terrorism fire flood, storm or other event beyond reasonable control of either party.