

RENTAL TERMS

1 Definitions

'**Agreement**' has the meaning specified in clause 2.1.

'**Customer**' means the customer identified in the Rental Agreement and includes the Customer's employees, executors, administrators and representatives.

'**Date Out**' means the date on which the Equipment is rented as specified in the Rental Agreement.

'**Dealer**' means the dealer specified in the Rental Agreement and includes its officers, employees, agents, successors and related parties.

'**Equipment**' means the equipment rented by the Dealer to the Customer from time to time and includes any and all accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials, substitute and replacement Equipment, unless indicated to the contrary in these Rental Terms.

'**Location**' means the Location of the Equipment as specified in the Rental Agreement or such other location as agreed by the Dealer.

'**Off-Rent Number**' means the number provided by the Dealer to the Customer when the Customer notifies the Dealer that the rental of the Equipment has ended.

'**Rental Account Application**' means the application identified as the Rental Account Application.

'**Rental Agreement**' means the express terms identified as the Rental Agreement.

'**Rental Charges**' means the rental charges charged by the Dealer to the Customer for the rent of the Equipment and identified in the invoice provided by the Dealer to the Customer.

'**Rental Period**' means the period from the Date Out until the termination of the Rental Agreement.

'**Renter Protection**' means an amount paid by the Customer to reduce the Customer's financial liability in the event of loss or damage to the Equipment.

2 Agreement

2.1 The Dealer rents the Equipment to the Customer on the terms of the Rental Agreement, these Rental Terms and, where applicable, the Rental Account Application (collectively, '**the Agreement**'). The Agreement constitutes the entire agreement between the parties.

2.2 The Dealer may amend or replace the Agreement (including Rental Charges) by written notice to the Customer. Any and all subsequent rental of Equipment will be on the amended or replaced terms.

3 Rental Charges and Other Charges

(a) Rental Charges will be incurred from the Date Out until and including the day on which the Customer receives an Off Rent Number from the Dealer or the Rental Agreement is terminated in accordance with clause 9, whichever is the earlier unless the Off-Rent Number is issued before 8am, in which case there will be no Rental Charge for that day. If the Off-Rent Number is issued before 12pm, half the daily Rental Charge will apply.

(b) The Customer must not request an Off-Rent Number unless the Equipment is ready to be returned to, or collected by, the Dealer.

(c) Additional Rental Charges may apply if Equipment hired on a daily basis is used for more than eight hours in any day or if Equipment hired for a week is used for more than five days.

(d) The Customer must pay all amounts specified in the invoice including:

- (i) a charge for delivery and, if necessary, return of the Equipment;
- (ii) all Equipment operating costs (including fuels, oils and lubricants) incurred, and all consumables used, during the Rental Period;
- (iii) any taxes, duties (including stamp duty), levies, charges or imposts on or in connection with the Agreement.
- (iv) A sum equal to the amount of any goods and services tax (GST) payable by the Dealer on any supplies made by the Dealer under or in connection with the Agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate;
- (v) Any costs or expenses reasonably incurred by the Dealer in enforcing the Agreement, as a result of the Customer's breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out (including cleaning costs); and
- (vi) Any Renter Protection payable under clause 7.

(e) Where any amount payable under the Agreement becomes overdue, all outstanding amounts whether due to the Dealer under the terms of the Agreement or under any other Rental Agreement between the Dealer and the Customer will become immediately due and payable by the Customer to the Dealer.

(f) The Dealer may charge the Customer interest calculated on a daily basis and compounded monthly on overdue amounts from the due date of payment to the date of actual receipt of payment at an interest rate which is 4% greater than the rate published by the Commonwealth Bank of Australia or its successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment; and (ii) where the Equipment is hired in New Zealand, 2.5% greater than the published National Bank of New Zealand's commercial overdraft interest rate on finance facilities in excess of \$100,000.

(g) The Customer must pay all amounts owing under the Agreement 14 days from the date of invoice.

4 Customer obligations

(a) Except as provided in the Agreement, the Customer shall have no right, title, property or interest in the Equipment except as bailee and must not sublet, transfer, dispose of or otherwise deal with any rights or interest in the Equipment. The Customer must do everything necessary to protect the rights of the Dealer in the Equipment;

(b) Risk in the Equipment passes to the Customer on delivery of the Equipment and remains with the Customer until the Equipment is collected by or returned to the Dealer. Subject to clause 7 below, the Customer is liable to the Dealer for any and all loss or damage to, or caused by, the Equipment or its operation and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at the full new replacement cost, salvage costs and Rental Charges incurred while the Equipment is repaired or replaced.

(c) The Customer must ensure that the Equipment is:

- (i) operated by a suitably trained, licensed, experienced and (if necessary) certified operator and is operated in accordance with the Operator's Manual and the Dealer's instructions;
- (ii) returned to the Dealer in the same condition as at the Date Out (except for normal wear and tear) and returned with a full tank of fuel or the Customer will pay the Dealer the cost of filling that tank;
- (iii) used for the purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
- (iv) not removed from the Location without the Dealer's written consent;
- (v) at all times stored safely and protected from theft, loss or damage.

(d) If the Equipment breaks down or becomes unsafe to operate, the Customer shall immediately stop using the Equipment, ensure it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.

(e) The Customer must not repair or attempt to repair the Equipment without the Dealer's prior written consent.

(f) The Customer must immediately notify and provide full details to the Dealer of any loss, theft, breakdown or damage to the Equipment. Subject to clause 10, the Dealer will use reasonable endeavours to repair or replace the Equipment at the Dealer's discretion and at the Customer's expense after receiving such notification. Any equipment supplied as a replacement will be supplied for the unexpired balance of the Rental Period on the terms of the Agreement.

(g) Any person provided by the Dealer to operate the Equipment shall be under the sole direction and control of the Customer. The Customer is responsible for any and all claims, loss or damage whatsoever arising in connection with the operation of the Equipment by that person. Where an operator is provided by the Dealer, no other person shall operate the Equipment without the Dealer's prior written consent.

(h) The Customer must: (i) ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment; (ii) maintain any safety signs supplied by the Dealer and ensure they are clearly legible and brought to the attention of any person using the Equipment; (iii) ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment; (iv) ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by the Dealer or the safety and operating instructions; (v) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment; and (vi) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the Dealer's instructions and the Operator's Manual.

(i) The Customer must comply with all statutory laws and regulations and all common laws.

5 Access and inspection

The Dealer and its representatives have the right to enter the Location at any time upon giving prior reasonable notice to inspect, maintain and/or repair the Equipment or to repossess the Equipment. The Customer must assist the Dealer and its representatives in exercising its rights under this clause.

6 Privacy

The Customer agrees that the Dealer may obtain, disclose and use information:

- (a) about the Customer's credit worthiness or for the purpose of obtaining and maintaining a credit information file about the Customer or collecting overdue payments;
- (b) about the Customer for the purpose of providing services to the Customer, including sharing information with other CAT Rental Store operators.

7 Renter Protection

(a) The Renter Protection must be paid by the Customer where the full new replacement cost of the Equipment as determined by the Dealer exceeds \$200 unless the Dealer has waived this requirement in writing.

(b) For the purposes of this clause, the term Equipment does not include any tools, accessories, parts, grease, guns, hoses or similar electrical cords, welding cables, gas cylinders, pneumatic tools, light globes and other similar accessories, ground engaging tools, tracks, tyres or glass.

(c) If the Customer has acquired Renter Protection then, subject to this clause, the Customer's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft, is limited to \$200 or 10% of the repair cost of the Equipment (if repaired) or 10% of the full new replacement cost of the Equipment (if replaced), whichever is the greater.

(d) The Customer's liability will not be limited in accordance with clause 7 (c) if, in the Dealer's reasonable opinion, the loss or damage to the Equipment arises from or is caused by: (i) a breach of the Agreement; (ii) the Customer's negligent acts or omissions; (iii) improper use of the Equipment; (iv) transporting, loading or unloading (except where transported by the Dealer); (v) lack of lubrication or other normal servicing of the Equipment; (vi) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment; (vii) artificial electrical current or exposure to any corrosive substance or environment; or (viii) use or location of the Equipment in, on or over water, on bridges, vessels or structures of any kind.

(e) The Customer must promptly report any theft of the Equipment to the police and provide the Dealer with written evidence verifying that report.

8 Insurance

The Customer must at its cost take out and maintain during the term of the Agreement policies of insurance for:

- (a) indemnity cover of not less than the full new replacement cost of the Equipment; and
- (b) third party and public liability indemnity cover of not less than \$10 million.

9 Termination

(a) Subject to clause 9(b) the Rental Agreement will terminate when the Customer delivers the Equipment to the Dealer during normal working hours, or, if the Dealer agrees, when the Equipment is collected by the Dealer. The Customer irrevocably appoints the Dealer as its agent and authorises and licenses the Dealer to enter the Location and repossess the Equipment after the Customer receives an Off-Rent Number or upon termination of the Rental Agreement, whichever is the first to occur.

(b) The Dealer may terminate any Rental Agreement or the Agreement as a whole and repossess the Equipment at any time by written notice to the Customer if the Customer is in breach of the Agreement and fails to remedy that breach within 7 days of receiving notice requiring the Customer to do so or the Customer becomes insolvent or otherwise is unable to pay its debts as they fall due.

10 Liability and indemnity

(a) As far as the law permits, the Dealer excludes all warranties, conditions, rights and remedies the Customer would otherwise be entitled to by law.

(b) The Dealer's liability for loss or damage (including consequential loss or loss of profit) incurred by the Customer or a person making a claim against the Customer is excluded as far as the law permits. To the extent it cannot be excluded, it is limited as far as the law permits to the repair or replacement of the Equipment.

(c) The Dealer and its directors, employees or representatives are not liable to the Customer for negligent acts or omissions.

(d) The Customer indemnifies the Dealer against any liability, loss, damage, costs or expenses incurred or suffered by the Dealer arising directly or indirectly out of or in connection with:

- (i) any breach of the Agreement, any breach of any laws (including environment laws) or any act or omission on the part of the Customer or its officers, employees or representatives;
- (ii) any action for trespass resulting from the Dealer entering the Location in accordance with clause 9(a).

11 Miscellaneous

(a) The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.

(b) Time is of the essence of all obligations of the Customer under the Agreement.

(c) The Dealer may assign or sub contract all or any of its rights under the Agreement. The Customer must not assign or sub contract all or any of its rights under the Agreement.

(d) The Agreement is governed by, if signed in Australia, the laws of the States or Territories in which it is signed, or if signed in New Zealand, the laws of New Zealand.