



Terms and Conditions of Hire

1. DEFINITION

In These terms and conditions

- 'Bailee'** means you to whom possession of the Equipment is entrusted by us without transferring ownership of the Equipment.
- 'Consumer'** means a person who is defined as such under the Competition and Consumer Law 2010.
- 'Customer'** means a person whose order for the purchase of goods is accepted by the Supplier. A reference to 'Supplier' includes the Supplier's associated bodies corporate (as the term is defined in the Corporations Act 2001).
- 'Equipment'** means items which you purchase or hire from us and which are listed on the front page of the hire agreement and/or delivery docket and/or invoice as well as any tools, accessories, attachments, parts, manuals, instructions, packing and transportation materials left with you, and any substitute and replacement equipment. For the purposes of this agreement the Equipment shall be deemed to be owned by us whether owned by us or not.
- 'Law'** means any Commonwealth or Australian State legislation regulations and the general law and includes, in particular, the Commonwealth Competition and Consumer Act 2010 and regulations as amended from time to time and the Commonwealth Personal Property Securities Act 2009 and regulations as amended from time to time.
- 'PPSA'** means Personal Property Securities Act 2009.
- 'Purchase Monies Securities Interest'** or **'PMSI'** has the meaning given in Section 14 of the PPSA as amended from time to time.
- 'Supplier'** shall mean REN Access Pty Ltd t/as Uphire.com.au

2. PRICES AND HIRING

- (a) Hiring charges and sales prices shall be as specified by us from time to time. We may vary them. Charges shall apply from the time we notify you of them.
- (b) You will be liable for the reasonable costs of consumables provided by us and used by you during the hire period.
- (c) You will be liable for, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on this agreement or in respect of the hire period.
- (d) You will be liable for all delivery and collection charges associated with the hire or sale shown on the front page of this hire agreement.
- (e) You will be liable for expenses incurred by us as a result of a breach by you of any of your obligations under this agreement.
- (f) Unless otherwise agreed in writing, hire charges will commence from the day of delivery or the day of completion of erection if effected by us until termination of the hire period in accordance with Clause 1 0 or 11.

3. TERMS OF PAYMENT

- (a) Unless otherwise agreed in writing by us you will pay the full amount of the purchase price or the hiring charges for the estimated period of hire in cash upon delivery or, where we erect the equipment, upon completion of the erection. If the hiring continues beyond the estimated period of hire, you will pay weekly in advance. We may render invoices to you at the commencement or completion of the hire period or periodically throughout the hire period.
- (b) The only discounts available to you shall be those agreed in writing by us. If you breach any of these conditions then any discount on any unpaid invoice is automatically revoked and the full price is payable for all hire charges from that time onwards.
- (c) If you do not pay the amounts due by the due date a late payment fee of 10% per month may be imposed. In addition you will be liable to indemnify us for all expenses and legal costs incurred by us as a result of your failure to pay an amount due to us under these terms and conditions by the due date.

4. PROPERTY

- (a) Unless sold to you, the equipment remains our property and your rights to use the equipment are as bailee only.
- (b) Neither the payment of compensation nor any other circumstances or event shall amount to or result in the transfer of property or other interest in the Equipment to you.
- (c) We may inspect the equipment at any time during the hire period. You shall admit or procure our admission to the premises where the Equipment is situated.

5. LOSS OF AND DAMAGE TO HIRED EQUIPMENT

- (a) Subject to clause 9, if the equipment is lost stolen or damaged during the hire period, and until the equipment is collected by us after the issue of an off-hire number, you will be liable:
- (i) For any costs incurred by us in repairing or replacing the Equipment;
- (ii) For any other costs whatsoever incurred by us as a result of the loss, theft or damage to the equipment.
- (b) If the equipment you hire is lost, breaks down or is damaged you must notify us immediately of the details of the loss, breakdown or damage.
- (c) If the Equipment breaks down or becomes unsafe, you must stop using it immediately and you must take all necessary steps to prevent injury to any person and all property as a result of the condition of the equipment. You MUST not repair or attempt to repair the equipment without our consent.
- (d) We undertake to take all reasonable steps to promptly repair damaged or faulty hired equipment or substitute and replace it if available but will not be liable if we elect not to repair, replace or substitute equipment.
- (e) If the faulty condition or loss of the equipment is caused other than by our negligence, or breach of any of the terms of this agreement, you will pay us for the cost of all repairs and pay hire charges until the hired Equipment is repaired or if the damage is irreparable or if the equipment is lost, you pay us the cost of replacement.

- (f) If we are required by any relevant authority, or are requested by you or we decide to salvage the equipment then you must pay us the salvage costs.

6. HIRER'S OBLIGATIONS

You must:

- (a) Pay us all hire and other charges which you are liable to pay by the due date.
- (b) At your own expense, clean, fuel, lubricate and provide daily maintenance for the Equipment and keep it in good and substantial repair and condition and not damage the paintwork.
- (c) Be responsible for all flat and/or damaged tyres.
- (d) Clean the equipment thoroughly when you finish using it and before its return to or collection by us. If we, in our absolute discretion, determine, that you have breached the obligations under clause 6, we may at your expense, clean and/or repaint the Equipment.
- (e) Not allow any other person or entity to use or have possession of the Equipment during the hire period.
- (f) Operate the Equipment safely and strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions.
- (g) Ensure persons operating or erecting the equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use it.
- (h) Display, maintain and draw attention to safety signs and instructions (as required by law), ensure that instructions are observed and signs are not removed or defaced.
- (i) Ensure that all persons operating the equipment wear suitable clothing and protective equipment as required or recommended by the manufacturer or by us.
- (j) Ensure that no persons operating the equipment are under the influence of drugs or alcohol.
- (k) Conduct a site hazard assessment prior to using the equipment at the site.
- (l) Ensure that during the Hire period, and until the Equipment is collected by us after the issue of an off-hire number, the Equipment is stored safely and securely and is protected from theft and seizure.
- (m) Where we are to erect the Equipment, before you ask us to start erection you are to ensure the site is cleared and ready for the erection of the Equipment and that the foundations upon which we are to erect the Equipment are suitable in every way to safely carry the Equipment and the load to be put on it without subsidence. You are liable to us for and must indemnify us against any loss, costs or damages that we may suffer or incur due to your failure to comply with this obligation.

Revised 29/7/2009

- (n) Regardless of who is to erect the Equipment, be fully responsible for the safekeeping of the Equipment and must comply at your own expense with all laws, ordinances and regulations that may affect the equipment while it is in your possession or being used by you including, in particular, any occupational health and safety laws.
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- (o) Where you erect the Equipment, erect it in accordance with the requirements of the law. While we, by our servants or agents may advise you on our understanding of legal requirements, we accept no responsibility to acquaint you with them. We accept no responsibility for advice that we may give you about those requirements including if that advice is given negligently. You are responsible to fully acquaint yourself with those requirements.
- (p) Give any local or other authorities and necessary notices of your intention to erect a scaffold or use any part of the Equipment and pay all fees in connection therewith. You shall obtain and keep in force any licenses or permit needed to use the Equipment and in particular, but without limiting the generality of the foregoing, if you erect the Equipment you must ensure that the erection is effected by a person with the necessary qualifications to do so.
- (q) Use the equipment in a skilful and proper manner.
- (r) Not allow any plates or marks affixed to the Equipment whether in position at the time of commencement of the hire or subsequently affixed thereto by us during the period of hiring to be damaged, obliterated, defaced or covered up.
- (s) Not erect any of the equipment or affix it to any land or buildings in such a manner as to make it legally a fixture forming part of the freehold.
- (t) Not sell, assign, mortgage, sublet, land, part with possession of all or any part of the equipment or otherwise deal with any of it, or let any other person use, dispose or otherwise deal with any of it in any way which is inconsistent with our rights of ownership and these conditions nor remove the equipment from the site where it is initially erected without our prior consent.

7. RELEASE AND INDEMNITY

- (a) Except as provided in Clause 8, you assume all risk of loss, damage or injury to person or property by reason of the condition of the Equipment or the use, management, control or operation thereof and you release us from and indemnify us against all claims, loss, damage, liability or injury sustained by us, or any of our agents or employees whether the claim is made by you, a third party or any of our employees or agents, arising in any way out of this agreement including your use of the equipment whether caused by our negligence or the negligence of our agents or employees, or otherwise.
- (b) Where the letters "NR" appear adjacent to goods itemized on the front of the hire agreement and/or delivery docket and/or invoice you acknowledge that we considered that those goods should be used with the equipment; we informed you of this, but you declined to hire them from us. Without limiting the generality of Clauses 6, 7(a) and 8(a)
- (c) We will not be liable to you or to your servants or agents for any damages, suits actions, claims and demands of every description whatsoever and however arising directly or indirectly from representations, warranties, terms and



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conditions, expressed or implied (except in so far as statutory conditions and warranties cannot be excluded by any relevant legislation), use, maintenance, transport, operation of the equipment or otherwise and whether resulting from our negligence or our servants or agents or otherwise.

8. WARRANTIES

(a) Where we are to erect the Equipment, subject to clause 6 (m) and (p), we warrant that we will erect it in accordance with the requirements of law.
(b) To the extent which any law permits, all conditions, terms and warranties which are not expressly contained in this agreement are hereby excluded our liability under any conditions and warranties implied by law shall be limited to the cost of resupplying the Equipment (and if the Equipment is for hire, for the same period as the period of hire described in this agreement) including the cost of any erection provided for in this agreement. You may not make any claim against us for the loss of profit, consequent or indirect damage or loss to any property or injury to any person arising from any breach of any implied conditions and warranties.

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9. DAMAGE WAIVER

(a) Upon payment of a damage waiver fee by you we will be responsible for the cost of repairs and/or replacement of the Equipment due to loss or damage occurring during the hire period (and until the equipment is collected by us after the issue of an off-hire number) in excess of 10% of the current full replacement value of the equipment.
(b) This clause in no way entitles you, or implies the availability of compensation from us for any liability incurred by you in relation to the Equipment.
(c) This clause will not continue to operate after the termination of this agreement unless an extension is granted in writing by us and an additional fee is paid by you.
(d) This clause will not apply to loss or damage arising from:
(i) Breach of any laws or regulations relating to the use of the Equipment;
(ii) Misuse, abuse, willful or malicious use, negligent, careless or reckless use, overloading, exceeding rated capacity, or improper servicing of Equipment;
(iii) Loss or damage by whatever cause to tools and/or accessories supplied with the Equipment including but not limited to hoses, drills, bits, leads, tyres and tubes;
(iv) Lack of lubrication or non-compliance with maintenance requirements that could reasonably be expected of you under this agreement;
(v) Disregard of instructions given to you by us or the manufacturer in respect of the proper use of the Equipment or a breach of this agreement;
(vi) Theft of the equipment;
(vii) Failure to reasonably secure the Equipment against theft;
(viii) Damage to the equipment during transit (including while on any wharf, bridge or over water);
(ix) Glass breakage or exposure to corrosive substances or erosion or earth movement;
(x) Damage to electric motors or tools caused by unsuitable leads and/or leads being too long;
(xi) Damage to Equipment paintwork;
(xii) Loss or damage due to mysterious disappearance;
(xiii) Loss or damage caused by misappropriation or wrongful conversion;
(xiv) Use of the Equipment on an off-shore oil rig or underground.
(e) You are not required to pay a damage waiver fee if you produce to us a Certificate of Currency for an appropriate policy of insurance for damage to or arising from the hire of the Equipment in an amount not less than the full new replacement cost of the Equipment.

10. TERMINATION

We may immediately terminate this agreement either verbally or in writing if you do not make all payments on the due date; do not fulfill all your obligations hereunder; become bankrupt or insolvent or enter into any Deed of Arrangement or composition with your creditors, or suffer execution to be issued against you, or being a Company if you go into liquidation. If we do terminate this agreement, you forfeit all money already paid to us; we may repossess the Equipment and for that purpose, enter any premises where the equipment may be; and we can recover from you any money you have not paid and any damages we suffer as a result of your breach of these conditions.

11. TERMINATION OF HIRE

(a) We may at any time and in our sole discretion immediately terminate the hire period either verbally or in writing whereupon you shall immediately make the Equipment available to us for collection.
(b) You may terminate the hire period by:
(i) Delivering the Equipment during normal working hour to us.
(ii) Notifying us that the Equipment is available for collection, provided that you keep the Equipment safe and secure until collection by us. When notifying us that the Equipment is ready for collection you must obtain an "off hire" number, failing which you will be taken not to have notified us that the Equipment was ready for collection.
(c) Subject only to Clause 5(e) of these conditions, if at the time of return by you or collection by us the Equipment is in an unsatisfactory state in breach of these conditions, the hire period shall be deemed to continue until the Equipment is in a state which is reasonably satisfactory to us. We will at our expense take all reasonable steps to put the equipment into a satisfactory state as soon as practicable after return or collection.
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(d) Upon termination of the hire period we may take possession of the Equipment and for this purpose you irrevocably appoint us as your agent and

authorize us to enter upon any premises where the Equipment is situated or where we have any reason to believe that the Equipment may be situated and to disconnect, dismantle and remove the Equipment whether or not it is affixed to land or premises, connected to property or equipment not owned by us, in use by you or any other person or containing property not owned by us. If the equipment contains any property not owned by us, we shall store that property for a period of 14 days from the termination of the hire period and may charge

you reasonable storage fees. If the property is not collected at the expiry of 14 days after the termination of the hire period you irrevocably appoint us your agent and authorize us to sell the property if we wish.

12. PERSONAL PROPERTY SECURITY ACT

(a) The Customer agrees that these terms and conditions creates a PMSI in the goods (and their proceeds) supplied presently and in the future by the Supplier to the Customer.
(b) The Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Customer under these terms and conditions and to ensure that the Supplier acquires a perfected security interest in the goods under the PPSA.
(c) The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the Supplier's security interest and all other costs associated with protection and enforcement of the Supplier's security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that the Supplier has with the Customer.
(d) This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
(e) Until ownership of the goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
(i) receive a notice of intention of removal of an accession (s.95);
(ii) receive a notice that the Supplier has determined to enforce its security interest in accordance with land law (s118);
(iii) receive a notice of enforcement action against liquid assets;
(iv) receive a notice of disposal of goods by the Supplier purchasing the goods (s129);
(v) receive a notice to dispose the goods (s130);
(vi) receive a statement of account following disposal of the goods (s132(2));
(vii) receive a statement of account if no disposal of the goods, six monthly (s152(4));
(viii) receive notice of any proposal by the Supplier to retain the goods (s135(2));
(ix) object to any proposal by the Supplier to either retain and dispose of the goods (s137(3));
(x) redeem the goods (s142);
(xi) reinstate the security agreement (s143); and
(xii) receive a notice of any verification statement (s157(1) and 157(3)).
(f) To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Customer.
(g) The Customer further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
(h) The Customer's right to possession of goods still owned by the Supplier under these terms and conditions shall cease if:
(i) the Customer, being an individual, commits an act of bankruptcy;
(ii) the Customer, being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Company Arrangement;
(iii) the Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or received a deregistration notice.
(iv) any cheque the Customer provides to the Supplier or any Group Company is dishonoured for payment;
(v) the Customer failing to comply with any demand for payment issued by the Supplier or any Group Company; or
(vi) the Customer breaching any of the terms and conditions contained herein and/or are in default of any other agreement between the Supplier or any other Group Company and the Customer.
(i) The Customer expressly and irrevocably agrees that the Supplier is entitled to enter any premises where the goods supplied by the Supplier are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) shall not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties.
(j) The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer, as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Supplier has on the value of the goods recovered.



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(k) Until ownership of the goods passes, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing charge statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing charge statement under the PPSA.

(l) The Customer agrees not to change the Customer name or undertake any changes to any documents that the Supplier has registered, requires to be registered or are capable of being registered without the prior written consent of the Supplier.

(m) The Customer appoints Uphire Pty Ltd as Attorney to execute any document required to register any PMSI interest in the goods that are the subject of the terms of hire herein.

(k) The laws of the state of New South Wales govern this agreement and each party submits to the exclusive jurisdiction of the Courts of the State of New South Wales.

(l) You acknowledge that we have not (nor any person acting on our behalf) made any representations or other inducements to you to enter into this agreement and that you have not entered into this agreement in reliance on any representation or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained in this agreement.

(m) An administration charge will apply to all invoices.

(n) Charges will apply for additional administration that is not part of the standard invoicing procedure.

(o) You provide your consent for us to disclose personal information about you to other entities in Uphire Pty Ltd.

For avoidance of doubt, these terms regarding the PPSA apply even where the customer is a consumer.

13. INSURANCE

You must at your expense maintain all appropriate policies and insurance in respect of the Hired Equipment including but not limited to insurance.

(a) For damage to or arising out of the hire of Equipment in an amount not less than the full new replacement of the Equipment except if you have taken the benefit of the theft and damage waiver option pursuant to clause 9, (those policies need not cover the loss or damage specified in clause 9); and

(b) For third party and public liability risks in respect of the hire or use of the Equipment by you in an amount not less than \$10 million.

14. SALE OF EQUIPMENT

If we sell either second hand or new Equipment to you, then you acknowledge that;

(a) You bear the risk for loss or damage to the Equipment from the time the Equipment leaves our premises and you are responsible for all freight and insurance costs. Until we have been paid the purchase price in full without deduction and there is no monies owing by you to us in respect of the supply of the Equipment or for any other reason whatsoever, title does not pass to you and you shall hold the Equipment as bailee for us and store the Equipment separately from your own goods.

(b) The purchase price shall be payable by you to us as if it constituted hire charges in accordance with these conditions.

(c) We may repossess the Equipment (and enter any premises where it is located to do so) if you do not pay any money owing to us when due and we may re-sell or hire the Equipment which has been repossessed.

15. MISCELLANEOUS

(a) These conditions shall replace and supersede all other terms and conditions of trading, if any, previously in force between you and us and no variation of these conditions shall bind either party unless confirmed by us in writing.

(b) This agreement comprises the entire agreement between us.

(c) No waiver by either party of a breach or non-performance of any term, condition or obligation under this agreement shall be a waiver of any subsequent breach of or failure to perform the same or any other term, condition or obligation. Any waiver must be in writing. Where a party consists of more than one person, their liabilities and the liabilities of their respective legal personal representatives shall be joint and several.

(d) Any officer, employee or agent of yours who signs this document or any receipt or other document in connection with the delivery or erection of the Equipment purportedly on your behalf may be taken by us as having the full authority to sign on your behalf and you shall not repudiate such authority. Where this agreement is signed on behalf of any corporation or alleged corporation, the person so signing warrants to us that he has full authority to do so and those persons shall be personally liable under the provisions hereof should you deny you are the hirer of the Equipment or if that corporation shall not in fact exist.

(e) If any of these conditions or part thereof become void or unenforceable for any reason then that part shall be severed from these conditions so that all parts which are not void or unenforceable shall remain in full force and effect and be unaffected by any severance of other parts.

(f) We may assign or sub-contact our rights and obligations under this agreement without notice to you.

(g) Any notice or invoice by these conditions to be served may be served by us by leaving it at or posting it to your address as stated herein or last notified in writing by you to us and shall be deemed to have been served at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by a manager, director or solicitor of ours on our behalf.

(h) Termination of the hire period shall not affect any of these conditions that are expressed or implied to operate or have effect after termination. Termination shall be without prejudice to any right or action already given to you or us in respect of any breach of these conditions by the other party.

(i) A statement in writing signed by any director, secretary or credit manager of ours of the amount due or owing by you as at the date mentioned in such statement shall be prima face evidence that such amount is due and owing without it being necessary to produce any books or vouchers to verify the same.

(j) Any credit accommodation granted may be withdrawn at any time for any reason without notice.