

# Hire/Rental Terms & Conditions

Land Operations Pty Ltd ATF Javelt Trust t/as Bost Group

ABN: 27 939 353 340

ACN: 128 360 609

## 1. INTERPRETATION

“BOST” means Land Operations Pty Ltd ACN 128 360 609 trading as Bost Group, its officers, directors, employees, contractors and agents.

“Agreement” means the Hire\Rental Agreement, any associated quote or invoice and these terms and Conditions made on the date shown on the Hire\Rental Agreement signed by you in respect to the equipment hire and is made up of that Hire\Rental Agreement and these terms and condition.

“You” means the person or body corporate (hirer) with whom the Agreement is made and your directors, agents, employees, contractors, apprentices or associated persons.

“Rental Period” means the period commencing on the date shown on the Agreement and ending on the later of either the date of return specified on the Agreement or the date you actually return the equipment to BOST.

“Equipment” means the equipment or equipments described in the Agreement (or any substitute equipment) and includes any parts, components and accessories supplied to You pursuant to these Terms and Conditions and form the Collateral for the purposes of the PPS Act.

## 2. RENTAL CHARGE AND DEPOSIT

**2.1** You will pay BOST the daily rental charge, service fee (including any stamp duty, fees, penalties, fines or costs imposed by BOST or any authority) or any other amount specified in the Agreement for the Rental Period.

If BOST agrees in writing and at BOST’s sole discretion, the rental charge may abate for a limited time due to inclement weather or other natural disaster.

**2.2** You must pay the cost of delivery of the Equipment if required.

**2.3** If required by BOST, You will provide a security deposit specified in the Agreement by cash or credit card to BOST. The deposit is refundable after return of the equipment subject to any deductions authorised by these Terms and

Conditions.

**2.4** If You fail to pay any moneys owing to BOST within 7 days of invoice or otherwise as described in the Agreement, such overdue moneys shall accrue interest from day to day at a rate equal to 10% per annum on such moneys after 30 days from the date of invoice, until all moneys are paid in full.

## 3. USE, MAINTENANCE, SECURITY AND SAFETY

You must during the Rental Period:-

- (a) maintain the Equipment to the manufacturers recommended specifications;
- (b) keep the Equipment under your personal control at all times and not remove the Equipment from the Site Address described in the Agreement without BOST’s written consent, other than to return the Equipment to BOST;
- (c) not have any repairs carried out to the Equipment unless expressly authorised by BOST;
- (d) not alter, deface, remove or erase any identifying marks, safety information or notices on the Equipment;
- (e) not allow the Equipment to be used for any illegal purpose;
- (f) not use the Equipment when it is damaged or unsafe ;
- (g) not use the Equipment in contravention of any law;
- (h) at your own expense ensure the delivery site is prepared so as to satisfy the electrical, environmental or other physical requirements to permit safe delivery of the Equipment;
- (i) ensure persons operating or erecting the Equipment are suitably instructed or trained in its safe and proper use and where necessary hold a certificate of competency and are licensed to use the Equipment;
- (j) display and maintain all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed and obeyed by those using the Equipment;
- (k) ensure all persons using or erecting the Equipment wear suitable clothing and protective equipment as required by any statutory law or regulation;
- (l) return the Equipment in the same condition (subject to fair wear and tear) it was when collected by You;
- (m) permit BOST’s inspection of the Equipment at any time during the Rental Period;
- (n) replace at the your cost all consumables including (but not limited to) jaw plates, cheek plates, blow bars, impact plates and side wear tiles during the rental period and

upon termination of the rental period if required, at the sole discretion of BOST; and

(o) Maintain public liability insurance for the use of the Equipment to a minimum of \$10m.

## 4. DAMAGE & LOSS

**4.1** Where the Equipment is stolen, suffers damage, or is involved in an accident you will:-

- (i) immediately notify BOST and will act in accordance with the instructions given by BOST;
- (ii) immediately cease use of the damaged equipment;
- (iii) immediately report any theft or accident to the Police and record the relevant details of any second or third parties involved in any accident and provide BOST with a copy of any police report immediately upon BOST's request;
- (iv) not make any offer, promise of payment, settlement or admission of liability to any party;
- (v) permit BOST or its insurer to bring, defend, enforce or settle any legal proceedings in your name.

**4.2** You are liable for:-

- (i) the loss of, and all damage to the Equipment ;
- (ii) all damage to the property of any person which is caused or contributed by You or which arises from the use of the Equipment by you or any other person You allow to use the Equipment;
- (iii) damage to the Equipment arising from:-
  - misuse, abuse, overloading or use in contravention of these terms;
  - use in violation of any statutory law or regulation
  - graffiti;
  - damage by exposure to any corrosive or caustic substance;
  - theft;
  - loss or damage caused by Your negligence or breach of any of these terms.

You will be liable for any cost to replace or repair damage caused to the Equipment in addition to any hire charges for the remainder of the unexpired rental period together with all repair costs, replacement parts and costs for the cancellation or postponement of the hire of the Equipment as a result of its unavailability. You agree to pay to BOST interest on all outstanding charges at a rate of 10% per annum. You agree that such interest is a genuine pre-estimate of BOST's costs.

**4.3** You authorise BOST to deduct and retain from the deposit any amount you are liable to pay BOST under the Agreement in respect of rental charges, cost of recovering and repairing any damage whatsoever (including incidental

costs) to the equipment or to third party property caused by you pursuant to these Terms and Conditions.

**4.4** Where you are required to pay BOST an amount pursuant to clause 4.2, the amount You must pay for the full replacement or any damage or repair that may be reasonably determined at the absolute discretion of BOST and includes:-

- (a) the cost of repairs to the Equipment or the replacement value of the Equipment at the time of the loss or damage;
- (b) appraisal fees;
- (c) towing, storage and recovery costs;
- (d) a reasonable administrative fee reflecting the cost of making arrangements for repairs and removal and other administrative activities; and
- (e) a per day loss of use fee based on the estimated downtime of the Equipment.

**4.7** You must always pay:

- (a) the cost of repairing any damage caused deliberately or recklessly by:-

- (i) You; or
- (ii) any other operator or installer of the Equipment;

- (b) the cost of repairing any damage to the Equipment or to third party property caused by You using, or permitting the equipment to be used, in any way prohibited by the Rental Agreement, or in breach of any applicable law.

## 5. CONDITION OF EQUIPMENT

**5.1** You acknowledge having examined the equipment at the commencement of the rental period and satisfied yourself as to the suitability, condition and fitness for the purpose of use of the equipment. BOST gives no warranty that the Equipment is suitable for your purposes.

## 6. LIMITATION AND EXCLUSION

**6.1** In so far as is possible all warranties whether by statute or common law in relation to BOST's supply\hire of Equipment are expressly negated and do not apply. BOST is not liable to the You, and You release BOST, from any breach of contract or duty of care.

**6.2** To the extent permitted by law, the absolute limit of BOST's liability under any condition or warranty that cannot be legally excluded is limited to the re-supply of equivalent Equipment for the Rental Period. You acknowledge that

BOST is not responsible for, and You release BOST from, any direct, indirect or consequential loss or expense suffered by You or any third party, howsoever caused from the hire and use of the Equipment.

**6.3** By signing the Agreement You acknowledge that use of the Equipment is an activity which has obvious risks of injury or harm to You. You acknowledge and accept such risks.

**6.4** You release and discharge BOST (including its officers, directors, employees or agents) from any claim You have or may have in the future against BOST which arises from the hiring or relating to the incidental use of the Equipment including breach of statute, common law or negligence. You will exclude BOST from any dispute or claim, action or Court proceeding, further you agree to indemnify BOST from and against all liability and losses (including costs on a full indemnity basis) which may be incurred by BOST as a result of any such dispute, action or Court proceedings including any claim made by a third party.

**6.5** You have a continuing obligation for any indemnity contained in this Agreement which will continue beyond the term of the Agreement where it is relevant to any claim the cause of action for which arose as a result of your hiring or relating to the incidental use of a equipment and its associated equipment

## 7. TERMINATION

BOST may immediately terminate the Agreement and re-take possession of the equipment without notice if BOST reasonably suspects:-

- (i) you have breached a term of the Agreement;
- (ii) damage to the equipment or injury to persons or property has or is likely to occur;
- (iii) the equipment may be used for an unlawful purpose.

You must pay BOST all costs payable pursuant to the Agreement up to the date of termination of the Agreement by BOST.

## 8. TITLE TO EQUIPMENT

You acknowledge that in all circumstances BOST retains title to the Equipment and at no circumstances will it be deemed to be a fixture. Your rights to the equipment are as a hirer only. You are not entitled to offer, sell, assign, mortgage, sub-hire or otherwise deal with the Equipment

inconsistent with the rights of BOST.

## 9. RISK AND OWNERSHIP

**9.1** The risk of loss or damage to Equipment shall pass to You at the time that the Equipment are delivered to You.

**9.2** Title to Equipment shall remain with BOST, and You acknowledge and agree that you rights to use the equipment are as a bailee only.

**9.3** You shall indemnify BOST against any claim arising out of the possession or use of the Equipment by You.

**9.4** To the extent permitted by law, if :-

(a) there is a default under these Terms and Conditions of Rental or

(b) an Insolvency Event occurs, then BOST may, at any time without notice to You, and without prejudice to any other rights that it may have against You:

(i) terminate the bailment referred to above; and

(ii) enter upon any premises of You (including any Outlet) where BOST reasonably believes Equipment may be stored and retake possession of the Equipment without liability for trespass or any resulting damage.

**9.5** BOST has, to secure any security interest constituted or contemplated by these terms and condition at any time, a PMSI in each of the Equipment supplied to You from time to time and BOST's Security Interest shall extend to the Proceeds (including any Account) and Accessions. To the extent that the PPS Act provides that BOST does not have a PMSI in the Equipment and any Proceeds arising in respect of the Equipment, You agree that BOST continues to hold a Security Interest in the Equipment. The Security Interest will continue until BOST provides You with a final release.

**9.6** You agrees to execute any documents, provide all relevant information and full cooperation to BOST to ensure that BOST has a Security Interest in the Equipment and the Proceeds, and if applicable, a PMSI.

**9.7** You hereby authorise BOST as Your authorised representative to request any information under section 275 of the PPS Act from any Secured Party in relation to any Security Interest.

**9.8** You must not, without BOST's written consent, file, lodge or serve a Financing Change Statement or an Amendment Demand.

You must not register or permit to be registered a financing statement in respect of a security interest contemplated or constricted under these terms and conditions without the Supplier prior written consent.

**9.9** You must do or cause to be done anything which BOST considers necessary or desirable to perfect and protect any Security Interest provided for by these Terms and Conditions of Trading.

**9.10** You acknowledge that BOST may register one or more Financing Statements (or Financing Change Statements) in relation to any Security Interest provided for by these Terms and Conditions . If permitted by the PPS Act, You waive your right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such Financing Statement or any related Financing Change Statement.

**9.11** To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by BOST of any Security Interest provided for by these Terms and Conditions, BOST and You agree with each other that the following provisions of the PPS Act do not apply:

(a) to the extent that section 115(1) of the PPS Act allows them to be excluded: sections 95, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143 and any other provision of the PPS Act notified to You by BOST after the date of these Terms and Conditions ; and

(b) BOST need not give any notice (including notice of a verification statement) required under any provision of the PPS Act.

If section 115(1) of the PPS Act does not allow section 125 of the PPS Act to be excluded, You agrees that at any time after any Security Interest provided for by these Terms and Conditions has become enforceable, BOST may delay taking action to retain, the whole or part of the Collateral to the extent permitted by law.

Collateral, Secured Party, Security Interest, Account, Accession, Personal Property, Possession, Proceeds, Secured Party, Security Interest all have the same meaning as that term is defined in the PPS Act.

PMSI means a purchase money security interest as that term is defined in the PPS Act.

PPS Act means the Personal Property Securities Act 2009.

Privacy Act means the Privacy Act 1988 (Cth) including the National Privacy Principles, as amended.

Product or Goods means the Equipment and goods supplied under these terms.

Insolvency Event means any of the following events:

(a) an application is made or an order is made, proceedings are commenced or other steps are taken for the

receivership, winding up, dissolution, official management or administration of You;

(b) You enters into an arrangement, compromise or composition or assignment for the benefit of its creditors or any class of its creditors;

(c) a receiver, a receiver and manager, liquidation, provisional liquidator, administrator, trustee in bankruptcy or similar officer is appointed to You or any of its property or a distress, attachment or other form of execution is levied or enforced or if a mortgagee or chargee enters or takes possession of any of Your property.

## 10. LAW

This Agreement is governed by the laws of New South Wales, Australia . Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

## 11. AGREEMENT

In relation to the subject matter of this Agreement, this Agreement is the whole agreement between the parties and the Agreement supersedes all oral and written communications by or on behalf of any of the parties.