

CONDITIONS OF HIRE

1. DEFINITIONS

In this Agreement:

- 1.1 “**Agreement**” or “**Terms**” means this Agreement as amended or varied from time to time.
- 1.2 “**equipment**” means goods (as that term is defined under the PPSA) supplied by the OWNER to the HIRER (and where the context so permits includes Services).
- 1.3 “**final date**” is the day of return to the OWNER’S depot and is the date on which the hire will cease.
- 1.4 “**HIRER**” means the Customer named above and any person, company or representatives and permitted assigns and any entry entitled by law to administer the HIRER’S affairs who hires any equipment from the OWNER.
- 1.5 “**hire period**” means the period commencing on the start date and ending on the final date.
- 1.6 “**OWNER**” means Cassaform Pty Ltd (A.C.N 159 196 522) (ATF Cassaform Trust A.B.N 84 377 535 770) and its related entities (as that term is defined under the Corporations Act 2001) and its successors and assigns.
- 1.7 “**PPSA**” means the *Personal Property Securities Act 2009 (Cth)* and its regulations as amended from time to time.
- 1.8 “**PPS security interest**” means a security interest under the PPSA.
- 1.9 “**reasonable enforcement expenses**” means that term as defined under the PPSA, together with all costs (including legal costs on a solicitor-own client basis), charges, expenses or outgoings incurred or paid by the OWNER in relation to any dishonored cheque fees, collection costs or any action taken by the OWNER for the recovery of any amounts owing by the HIRER or the OWNER.
- 1.10 “**rent**” is the current price list rate at the Start Date of the hire period for the hired equipment unless otherwise agreed in writing.
- 1.11 “**services**” means all services supplied by the OWNER to the HIRER and includes any advice or recommendations, intellectual or intangible property under the PPSA (and where the context so permits includes any supply of equipment).
- 1.12 “**start date**” is the day of dispatch or collection of equipment from the OWNER’S depot and is the date upon which the hire period will commence.
- 1.13 “**supplied**” means the sale, licensing, hiring out, consigning out, leasing out and/ or providing bailment of equipment by the OWNER to or at the request of the HIRER.

2. **HIRE PERIOD** The hire period commences on the start date and ends on the final date subject to a minimum hire period of four (4) weeks unless otherwise agreed in writing.

3. **PRICE REVISION** Prices charged at the time of delivery are those applicable at the time of delivery. If the OWNER’S standard hire prices for any of the equipment are revised after the start date, the OWNER may give the HIRER not less than four (4) weeks’ notice of the revised price which shall thereafter be the price at which the HIRER hires the equipment.

4. **TERMS OF PAYMENT** unless otherwise agreed in writing.

4.1 Payment shall be strictly net thirty (30) days (“**due date**”).

4.2 The OWNER may charge interest on any amount outstanding on the due date at the rate prescribed by the Penalty Interest Rates Act (Vic) from the due date until the date of payment in full, calculated daily.

4.3 All payments made by the HIRER to the OWNER may be allocated in any manner the OWNER determines, but in default will apply same:

- (a) Firstly, as to payment of any unsecured amount owing to the OWNER;
- (b) Secondly, as to any reasonable enforcement expenses, and
- (c) Thirdly, as to any secured balance owing to the OWNER.

4.4 If the HIRER defaults in payment of any account on the due date all moneys which would become owing by the HIRER to the OWNER at a later date for supply of goods and/or services shall be immediately due and payable without the requirement of any notice to the HIRER.

- (a) The OWNER reserves the right to require the HIRER to provide further security as a condition precedent to the continuation of supply and further reserves the right to alter the terms of payment at any time without notice and substitute cash with order or cash on delivery or any other terms.
- (b) The OWNER may, at its option, cease to perform any further work or supply any further goods if the HIRER fails to make any payment on the due date.
- (c) An accounting fee of 20% per annum will be charged on any outstanding monthly balance.

5. **STAMP DUTY AND STATUTORY CHARGES.** The HIRER is responsible to reimburse the OWNER for all stamp duty and statutory charges, and applicable to rental charges covered by this agreement.

6. **TRANSPORTATION** The standard hire prices of the equipment do not include costs of transportation for delivery or return nor costs associated loading and unloading, escorts and the HIRER must arrange for transport and unloading at its own cost.

7. **RECEIPT OF EQUIPMENT.** The HIRER’S representative’s acknowledgment of receipt of the equipment by signing the delivery docket shall be conclusive evidence of the receipt of the equipment listed therein in good order and condition. If delivery takes place in accordance with the HIRER’S instructions and no representative of the HIRER’S is available to take delivery, delivery of the equipment detailed in the delivery docket will be deemed to have taken place even in the absence of the HIRER’S representative’s signature, and a certificate from the OWNER shall be conclusive evidence of the time, date and location of such delivery, and the start date of the HIRER’S hire.

8 **SPECIFIED TIME FOR DELIVERY** No liability whatsoever shall be accepted for failure to deliver on time or at all. Delay in delivery in part or in full shall not entitle the HIRER to any damages or claims whatsoever against the OWNER resulting from such failure to deliver.

9. **END OF TERM AND RETURN** Upon expiration of the hire of any equipment for whatever reason the HIRER shall deliver the equipment to and offload it at the OWNER’S depot in good repair ordinary wear and tear excepted. No returns will be accepted on weekend’s public holidays or after 3 p.m. Monday to Friday unless prior arrangements have been made in writing. If for any reason whatsoever the HIRER fails to sign a return docket the HIRER shall be deemed to have irrevocably accepted the opinion of the OWNER’S agent as to the items listed therein and to the condition of the equipment and to have accepted liability for any damage to the equipment identified on the return docket.

A.C.N 159 196 522
A.B.N 84 377 535 770

10. EQUIPMENT RETURNS CHECK On return of any equipment to the OWNER'S Depot such equipment will be inspected by the OWNER and the HIRER hereby agrees that this inspection will be prima facie evidence of the identity of the equipment returned and its condition.

11. DAMAGE OR LOSS OF EQUIPMENT On identification of any damage incurred during the hire period the HIRER acknowledges responsibility for any damage recorded on the return docket on the final date or within (7) days from the final date, notice of which damage shall be given to the HIRER within (7) days of the final date. The HIRER acknowledges responsibility for the damage and loss of the equipment and shall be responsible or repair of such damage or loss of equipment whichever is deemed necessary by the OWNER, in the OWNER'S sole discretion, at the OWNER'S standard sale price as if new at the date of invoice. Rental will continue to accrue until the cost of damaged or lost equipment is reimbursed to the OWNER.

12. CLEANING: The rental equipment must be returned to the OWNER cleaned of concrete and oils. The HIRER shall at its own expense clean the equipment in a proper and workmanlike manner. Should the HIRER fail to clean the equipment to the satisfaction of the OWNER, then the HIRER agrees to reimburse the OWNER \$9.25 per square meter plus GST of panel form face and \$60 per hour plus GST on rental accessories and components for cleaning and maintenance. Furthermore the HIRER reserves the right to seek compensation for further damages beyond repair.

13. PATENTS: The HIRER hereby acknowledges that ALL Equipment are patented or the subject of patents applied for and it shall not copy or attempt to copy the equipment.

14. USE AND OPERATION: The HIRER shall cause the equipment to be used in a proper manner for the purpose for which it was designed and only in accordance with any specifications, approvals and instructions given by the OWNER. The HIRER hereby agrees that the OWNER will not be liable for any damage loss or injury caused or contributed to in any manner whatsoever by the unauthorised use of the equipment or use that is not in accordance with the OWNER'S specifications, approvals or instructions.

15. INSTALLATION: The HIRER acknowledges and agrees that where it is deemed necessary the OWNER may engage the services of a specialised third party to install the equipment at the OWNER'S nominated site for use by the HIRER and the HIRER acknowledges and agrees that the OWNER will not be liable for any delay by that third party in installing the said equipment or for any loss or damage caused by that third party in the installation of the equipment and the HIRER acknowledges and agrees that it shall have no claim or right of action against the OWNER in this regard. If the HIRER chooses to engage a third party to install the equipment, then the HIRER shall bear the costs of that third party and acknowledges and agrees that the OWNER shall be not liable for any loss or damage suffered including loss suffered as a result of any delay in the installation, and the HIRER shall have no claim against the OWNER in any manner whatsoever.

16. SAFETY: The HIRER hereby releases the OWNER from any liability incurred during the erection, use and all subsequent movement of the equipment during the hire period. The HIRER shall ensure that all safety checks, obligations and tests are carried out weekly, or as directed by the OWNER, on the equipment in respect of the erection, dismantling, location, use and fixing of the equipment during the hire period. The HIRER'S engineer shall approve and be responsible for the installation and use of the equipment till returned to the OWNER'S depot. The HIRER hereby agrees that the OWNER shall not be liable for any damage caused directly or indirectly from the use, and installation of the equipment.

17. TRAINING: The HIRER acknowledges and agrees that it is the HIRER'S responsibility to ensure that all operators of the equipment are properly and adequately trained in the use of the equipment, and agree that they shall at all times comply with the OWNERS' instructions in relation to the use, installation and safety of the equipment.

18. CHANGES AND ALTERATIONS: The HIRER shall not alter, modify or tamper with the equipment in anyway whatsoever. Any such alteration shall be considered damage to the equipment. The OWNER expressly excludes any liability for any damage howsoever caused in relation to any equipment that is modified or altered without the OWNER'S express written consent.

19. GOOD ORDER AND REPAIR: The HIRER shall during the hire period maintain the equipment in good order and repair.

20. TRANSFER OF GOODS: The equipment may be used at the location specified on the delivery docket and no part thereof shall without the written consent of the OWNER be transferred to any other site or location. The HIRER shall not sell, assign, mortgage, pledge, lease or license, or otherwise deal or part with possession of the said equipment or any part of the same.

21. TITLE: The equipment shall at all times remain the property of the OWNER. The HIRER shall have no interest therein except as Bailee. The HIRER will not attempt to deal with the equipment or any part thereof or with any interest therein or in this Agreement. The HIRER hereby indemnifies the OWNER against all losses, costs, charges, damages and expenses incurred by the OWNER which are caused or contributed to in any manner whatsoever by the HIRER'S breach of any of the HIRER'S obligation under this agreement.

22. PPSA

22.1. Where the HIRER has previously entered into an agreement with the OWNER for the supply of equipment (**Existing Agreement**):

- Upon any order being made by the HIRER for the supply of equipment after the first provision of this document to the HIRER these Terms shall apply to such supply and any subsequent supply of equipment.
- Any order made by the HIRER shall not constitute a new security agreement as between the parties, but only further performance of these Terms unless expressly excluded in writing signed by the OWNER.
- These Terms will not act as a merger of their rights but that the terms contained under such Existing Agreement will be amended by the terms contained herein to the extent of any inconsistency.

22.2 If any equipment is sold, or intended to be sold, by the OWNER to the HIRER, no ownership in such equipment shall pass to the HIRER until such equipment has been paid for in full.

22.3 The HIRER:

- and the OWNER agree and acknowledge that by virtue of this Agreement: and the hire or bailment of the equipment, a PPS lease Security Interest is granted by the HIRER to the OWNER under the PPSA in the equipment, and
- agrees to do anything that the OWNER reasonably requires to ensure that the OWNER has at all times a continuously perfected security interests over all of the equipment for the purposes of the PPSA.

A.C.N 159 196 522
A.B.N 84 377 535 770

22.4 The HIRER agrees to reimburse the OWNER for all costs and/or expenses incurred or payable by the OWNER in relation to maintaining or releasing any financing statement or financing change statement under this Agreement.

22.5 The HIRER will not (except with the written consent of the OWNER) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to the OWNER (if any) or otherwise, and whether to a provider of new value or otherwise.

22.6 The HIRER will not (as against any person who is a "related entity" of the HIRER for the purposes of the *Corporations Act 2001*) without the prior written consent of the OWNER, before or until all money payable to the OWNER in connection with this Agreement is paid in full:

- (a) exercise a right of contribution or indemnity;
- (b) claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security the OWNER holds in connection with this Agreement;
- (c) try to reduce its liability to the OWNER through set off or counterclaim; or
- (d) prove in competition with the OWNER if the HIRER is unable to pay the HIRER's debts when due; or
- (e) seek to perfect or attach in favour of the HIRER or another (either jointly or severally) a security interest in any of the equipment which would rank in priority to the entitlements of the OWNER.

22.7 The HIRER waives the right to receive a copy of any verification statement confirming registration of a financing statement or financing change statement relating to the security interests under these Terms.

22.8 Where the HIRER is capable from time to time of granting a security interest in all present and after acquired property (no exceptions) (as those terms are defined in the PPSA), the HIRER hereby grants a security interest to the OWNER in such all present and after acquired property (no exceptions) to better secure the obligations owed to the OWNER.

22.9 The HIRER agrees that the HIRER and the OWNER contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to this Agreement.

22.10 The HIRER and the OWNER acknowledge that the HIRER may from time to time be (depending on the length of the hire period) the grantor and the OWNER the holder of a Purchase Money Security Interest (PMSI) in the equipment by virtue of this Agreement and/ or the PPSA.

22.11 The HIRER and the OWNER agree that the terms of this Agreement may be altered unilaterally by the OWNER giving 30 days written notice to the HIRER. Clerical errors are subject to correction without notification.

22.12 The HIRER hereby consents and appoints the OWNER to be an interested person and the HIRER's authorised representative for the purposes of section 275(9) PPSA.

22.13 The HIRER adopts these terms by taking or continuing possession of any equipment subsequent to receiving a copy of these terms.

22.14 The HIRER must ensure that the OWNER is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the equipment.

22.15 To assure performance of its obligations under this document, the HIRER hereby grants the OWNER an irrevocable power of attorney to do anything the OWNER considers the HIRER should do under this document.

22.16 The OWNER may recover from the HIRER the cost of doing anything under this Clause 22, including PPSA registration fees.

23 BREACH OF CONDITIONS If the HIRER shall make default in punctual payment of any money payable hereunder or fail to observe and perform any of the terms and conditions hereof or become bankrupt, insolvent or enter into any Deed or Agreement or Composition with his creditors or suffer execution to be issued against it, appoint an administrator, or go into voluntary or compulsory liquidation, this Agreement shall forthwith be determined and all monies paid in advance shall be immediately forfeited to the OWNER and the HIRER hereby expressly authorises the OWNER to enter onto the site where the Equipment is located for the purpose of retaking possession of the said equipment and for that purpose to enter into or upon any premises where the equipment is stored or erected for the purpose of removal of same. The termination of the hire Agreement pursuant to this clause shall not affect the right of the OWNER to recover from the HIRER any monies payable hereunder or any other damages for breach of the conditions.

24. INSURANCE All equipment hired by the HIRER shall be at the HIRER'S risk from the start date. The HIRER shall insure the equipment for the replacement value and that appropriate public liability insurance is obtained.

25. INDEMNITY The OWNER shall not be responsible for the delay in completion of the job in relation to which the equipment is hired or failure to so complete resulting from any act of default beyond the OWNERS' control, including but not without limiting the generality of the foregoing: civil commotions, industrial disputes, strikes, lock-outs, epidemics, inclement weather, war, fire, accidents or government intervention.

26. AFFIXING SIGNS: The OWNER shall be entitled to affix to the equipment on hire during the period of hire a sign/signs exhibiting the OWNERS' name, address and any other details that it thinks fit, and the HIRER shall not damage, remove, interfere or obscure such sign/signs, and the HIRER hereby grants to the OWNER the right to enter the premises where the equipment is being stored or used to take photographs on site for promotional purposes.

27. ENTRY TO SITE: The OWNER shall be allowed at any reasonable time to enter the HIRER'S premises or the location of the equipment from time to time, for the purpose of inspecting the equipment on site.

28. COMPETITION AND CONSUMER ACT If this agreement and the within hire constitute a supply of goods or services to a consumer as defined in the Competition and Consumer Act 2010 (**the "Act"**) nothing herein shall exclude, restrict or modify any condition, warranty, right or remedy which pursuant to the Act applies to this Agreement or within hire or is conferred on the HIRER provided that to the extent that the Act permits the OWNER to limit the liability for a breach of a condition or warranty implied by the Act then the OWNER'S liability for same, including all consequential loss which the HIRER may sustain or incur, shall be limited to:

(a) In the case of goods deemed under the Act to be supplied to a consumer hereunder, the replacement of such goods or the supply of equivalent goods or payment of the cost of replacing such goods or acquiring equivalent goods or the repair of such goods or payment of the cost of having such goods repaired.

(b) In the case of services deemed under the Act to be supplied to a consumer hereunder the supplying of such services again or the payment of the cost of having the services supplied again as the case may require.

A.C.N 159 196 522
A.B.N 84 377 535 770

29. **LIABILITY** The OWNER shall not be liable for any direct or indirect or consequential losses or expenses suffered or incurred by the HIRER howsoever caused, including any loss or damage incurred by the HIRER as a result or in connection with defective or faulty equipment that is manufactured or sourced overseas, and acknowledges and agrees that it shall have no right, claim or action against the OWNER in this regard.

30. **CHARGE ON PROPERTY** The HIRER hereby charges (and if more than one HIRER, then each of them jointly and severally charge) with payment of any monies owing at any time to the Owner, all estates and interests in freehold and leasehold land which the HIRER(s) has or may acquire and hereby further covenants and agrees to execute such further documents or instruments as may be necessary to enable the registration of such charge at the relevant Land Titles Office.

31. REPRESENTATIONS

(a) Subject to the previous clause all conditions, representations and warranties express or implied whether arising by virtue of statute or otherwise as to the condition, suitability, quality fitness or safety of the equipment are to the maximum extent permitted by law expressly negated and excluded. And it is agreed that the OWNER gives no condition, warranty or undertaking and the HIRER acknowledges that the OWNER has made no representation in relation to the condition, suitability, quality, fitness or safety of the equipment.

(b) The OWNER shall not be liable for any representation, promise or statement made or allegedly made by or on behalf of the OWNER in relation to the equipment or its usage other than as expressly set out herein.

32. **WAIVER** No waiver or indulgence given by the OWNER to the HIRER shall be of any force or effect unless in writing and shall be strictly construed and shall not except according to its express terms constitute an estoppels' against the OWNER.

33. **PROPER LAW** This agreement shall be governed by the laws of the State of Victoria and the applicable laws of the Commonwealth of Australia. The parties submit to the exclusive jurisdiction of the courts of Victoria and all Courts exercising appellate jurisdiction there from.

34. **DRAWING AND DESIGNS:** The HIRER agrees that any drawings, designs or calculations by the OWNER in relation to the proposed use of the equipment were performed without any obligation by, or any liability accruing to the OWNER and to the maximum extent permitted by law the HIRER releases the OWNER from any liability in relation thereto. The HIRER agrees that as between the OWNER and the HIRER the selection of the equipment was based solely upon the decision of the HIRER.

35. DEFAULT IN PAYMENT

(a) In the event that the HIRER defaults in any payment to the OWNER on any account whatsoever or commits any act of bankruptcy, appoints an Administrator or Small Business Restructuring Practitioner, or enters into voluntary liquidation, or a petition to wind up the HIRER is presented in any Court of Competent jurisdiction, the OWNER may, in its sole discretion and without prejudice to another rights or remedies available to it, terminate this HIRE Agreement, or suspend delivery of goods hereunder and where the equipment remains on site at the HIRERS' site or premises, retake possession of them.

(b) The HIRER hereby agrees that a certificate signed by a director or authorised officer of the OWNER shall be prima facie evidence of the amount due and owing by the HIRER to the OWNER as at the date of the certificate.

36. **SEVEREABILITY** If any part of this agreement is for any reason unenforceable that provision or part shall be struck out and the remaining provisions and parts shall apply as if that part or provision never formed part of this agreement.

37. **MAINTENANCE** The day to day maintenance, safety checking and the use of the equipment is the responsibility of the HIRER until returned to the OWNERS' depot. If a representative of the OWNER is requested by the HIRER to inspect, maintain or relocate the equipment such request will be deemed as a service call and the cost of such will be redeemable by the OWNER at the OWNERS current advertised rates.

38. **ACCEPTANCE** The delivery and use of the equipment shall be deemed to be an acceptance of all the Terms and Conditions of Hire and Sale.

39. **GENERAL.** The parties hereby agrees:

(a) Any notice by the OWNER to the HIRER will be sufficiently served if served personally or by facsimile transmission or if posted by prepaid post to the HIRER to be served at the registered office of such party or its last known place of business and will be deemed to have been received within 2 days of the date of posting if served by post and immediately upon transmission if served by facsimile transmission.

(b) That in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon the HIRER, the HIRER's successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the PPSA and will be deemed so given or served.

(c) That the benefit of this Agreement and the security interests created hereunder may be assigned by the OWNER, but not by the HIRER.

(d) The HIRER shall not sub-hire or part with possession of the equipment without the prior written consent of the OWNER.

40. CREDIT CONTRACT

(a) That by these Terms, the OWNER provides credit to the HIRER in relation to all moneys payable from time to time for equipment supplied to the HIRER, and these terms shall govern all transactions between the parties as a single Security Agreement for the purposes of the PPSA.

(b) The OWNER may at any time and without reason or notice cease the provision of credit under these Terms.