

# HIRE CONTRACT CONDITIONS

## NOTE TO CUSTOMER

You should read these Hire Contract Conditions very carefully. They contain terms and conditions which may impact you, including that;

- (a) the liability of Waterlabs to its Customers is excluded in some circumstances; and
- (b) Customers may be liable for damage to goods that are hired by them, and for damage to goods or property owned by a third party; and
- (c) Waterlabs' Privacy Policy permits Waterlabs in some circumstances and subject to compliance with the Australian Privacy Principles to provide data about a Customer, or data provided by a Customer, to a third party in a form that may enable the third party to identify the Customer.

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Waterlabs and the Customer in writing. Waterlabs agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment, Waterlabs will issue to the Customer a Hire Schedule, setting out the terms of the hire of that Equipment. Each Hire Schedule is not a separate contract but forms a part of this Hire Contract between Waterlabs and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. The Customer agrees to receive hire schedules and all associated documentation by electronic means, or by printed or other form where electronic means are not available. The Customer must check the Hire Schedule on receipt and unless the Customer notifies Waterlabs before collection of the Equipment that it disagrees with anything in the Hire Schedule, the terms of the Hire Schedule are accepted by the Customer. Waterlabs may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

**Amendment:** These Hire Contract Conditions may be changed by Waterlabs from time to time by Waterlabs giving notice of the amendment to the Customer. Notice is deemed given when Waterlabs does any of the following:

- (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer;
- (b) publishes the amended terms on its website or
- (c) displays the amended terms at premises from which Waterlabs conducts hire operations.

Changes to these Hire Contract Conditions will only apply to Hire Schedules entered into after the change has been notified to the Customer by one of the methods mentioned above.

## 1. INTERPRETATION OF WORDS IN THIS CONTRACT;

**COMMENCEMENT** – The date and time when the Customer takes possession of the Equipment.

**EQUIPMENT** – Means any kind of equipment, machinery, vehicles, tools or other items whatsoever, which may be available for hire from Waterlabs, and includes parts and accessories.

**CUSTOMER** – refers to the person, firm, organisation, partnership, corporation or other entity (including a trust) hiring the Equipment from Waterlabs Hire as identified in the Credit Application or Hire Schedule.

**EXCESSIVE CLEANING** - Means any cleaning, in addition to a basic wash and wipe, required to return the Equipment to the condition immediately prior to the hire, excluding fair wear and tear. Excessive Cleaning includes but is not limited to removal of paint stains, resins, concrete, grout and cement.

**HIRE CHARGE** – The amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.

**HIRE PERIOD** – Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if Waterlabs agrees. Waterlabs may issue an amended Hire Schedule for any extension of the Hire Period.

**HIRE SCHEDULE** – Means a document in such form as Waterlabs shall require, setting out the terms of the hire of Equipment, including the particulars of the Equipment and the Hire Period and such other information as Waterlabs may decide to include.

**WATERLABS** – The company or companies listed on the Hire Schedule.

**KILOMETRE CHARGE** – The amount shown in the Hire Schedule payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Waterlabs, travelled during the Hire Period.

**MOTOR VEHICLE** – A truck or utility but not any other equipment such as a scissor lift, trailer or skid steer loader.

**PORTABLE BUILDING** – Any relocatable, demountable, containerised, transportable building including complexes that is designed to be moveable.

**REMOTE AREA** – Any location which is more than 50 kilometres from the Waterlabs branch from where the Equipment is hired.

## 2. WATERLABS OBLIGATIONS

**Waterlabs will:**

- 2.1** Allow the Customer to take and use the Equipment for the Hire Period;
- 2.2** Provide the Equipment to the Customer clean and in good working order;
- 2.3** Collect the Equipment within five days of being requested to do so by the Customer and issuing to the Customer a customer pick up number.

**NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain a customer pick up number from Waterlabs.**

## 3. OBLIGATIONS OF THE CUSTOMER

**The Customer must:**

- 3.1** Deliver the Equipment to Waterlabs when it is due back;
- 3.2** Return the Equipment to Waterlabs in good repair;
- 3.3** Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4** Notify Waterlabs when the Equipment is available for collection;
- 3.5** Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Waterlabs or posted on the Equipment;
- 3.6** Indemnify Waterlabs for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- 3.7** Ensure that any person collecting or taking delivery of 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;
- 3.8** Ensure that all 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 fully licensed;
- 3.9** Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- 3.10** Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, or accept responsibility for items loaded and/or secured by Waterlabs and indemnify Waterlabs in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- 3.11** Operate the Equipment with an adequate motor vehicle and/or power source safely in accordance with the manufacturers operating instructions and applicable law;
- 3.12** Report and provide full details to Waterlabs of any accident or damage to the Equipment as soon as practicably possible and not more than two business days of the accident or damage occurring;
- 3.13** Sign any documentation requested by Waterlabs at such intervals as reasonably stipulated by Waterlabs, to confirm the Customer's acceptance of these Hire Contract Conditions;
- 3.14** Assist and co-operate fully and promptly with Waterlabs and/or its insurer in the investigation, settlement or defence of any claim or matter relating to a Hire Schedule on which the Customer is named;

- 3.15 Remain responsible for the care and safekeeping of the Equipment until collected by or delivered back to Waterlabs.

**The Customer must NOT;**

- 3.16 Tamper with, damage or repair the Equipment;  
3.17 Lose or part with possession of the Equipment;  
3.18 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;  
3.19 Allow any person to drive a Motor Vehicle if the person:  
(a) does not hold a suitable licence to drive that class of Motor Vehicle; or  
(b) is affected by drugs and/or alcohol.  
3.20 Exceed the recommended or legal load and capacity limits of the Equipment;  
3.21 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment;  
3.22 Exceed the recommended or legal speed limit for the Equipment.

**4 PAYMENTS BY THE CUSTOMER TO WATERLABS**

- 4.1 On or before Commencement (or as otherwise specifically agreed with Waterlabs), the Customer will pay the Hire Charge.  
4.2 Immediately on request by Waterlabs, the Customer will pay:  
(a) the new list price of any Equipment which is for whatever reason not returned to Waterlabs

**NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment.**

- (b) all costs incurred in Excessive Cleaning of the Equipment or the cleaning fee as stipulated on the Hire Schedule;  
(c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;  
(d) GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;  
(e) all costs incurred by Waterlabs in recovering possession of the Equipment;  
(f) Interest for late payment of amounts owing by the customer, at the  
(g) pre-judgement interest rate set by the Local Court of NSW from time to time;  
(h) the Kilometre Charge;  
(i) the cost of fuels and consumables provided by Waterlabs and not returned by the Customer;  
(j) any reasonable expenses and legal costs (including commission payable to a commercial agent) incurred by Waterlabs in enforcing this Contract due to the Customers default;  
(k) all costs of repairing or replacing tyres, including road service;  
(l) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract;  
(m) Loading costs when equipment hired with an hour meter is used in excess of 8 hours per day;  
(n) Hire fees for the period from the commencement of the hire until the Equipment is returned or a customer pick up number is obtained from Waterlabs; and  
(o) All non-recoverable costs incurred by Waterlabs in the provision of Equipment and/or services due to cancellation or postponement by the Customer.  
4.3 Without limiting the ability of Waterlabs to recover all amounts owing to it, the Customer authorises Waterlabs to charge any amounts owing by the Customer to any credit card or bank account details of which are provided to Waterlabs.  
4.4 Waterlabs may tokenise the Customer's credit card or bank account details to facilitate credit card or online payments.

**5 PPS LAW**

- 5.1 This clause applies to the extent that this Contract provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.  
5.2 Waterlabs may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Waterlabs requires for the purposes of  
(a) ensuring that Waterlabs' security interest is enforceable, perfected and otherwise effective under the PPS Law;  
(b) enabling Waterlabs to gain first priority (or any other priority agreed to by Waterlabs in writing) for its security interest; and  
(c) enabling Waterlabs to exercise rights in connection with the security interest.  
5.3 The rights of Waterlabs under this document are in addition to and not in substitution for Waterlabs' rights under other law (including the PPS Law) and Waterlabs may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Waterlabs security interest will attach to proceeds.  
5.4 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Waterlabs to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Waterlabs to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

- 5.5 The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Waterlabs. Customer agrees that in addition to those rights, Waterlabs shall, if there is default by Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Waterlabs may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.  
5.6 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.  
5.7 Waterlabs and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Waterlabs the benefit of section 275 (6)(a) and Waterlabs shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.  
5.8 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of Waterlabs.  
5.9 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Waterlabs (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Waterlabs and must be expressed to be subject to the rights of Waterlabs under this agreement. Customer may not vary a sub-hire without the prior written consent of Waterlabs (which may be withheld in its absolute discretion).  
5.10 Customer must ensure that Waterlabs 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.  
5.11 Customer must take all steps including registration under PPS Law as may be required to:  
(a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;  
(b) enabling the Customer to gain (subject always to the rights of Waterlabs) first priority (or any other priority agreed to by Waterlabs in writing) for the security interest; and  
(c) enabling Waterlabs and the Customer to exercise their respective rights in connection with the security interest.

**6 DAMAGE WAIVER**

- 6.1 Damage Waiver is not insurance, but is an agreement by Waterlabs that the Customer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.

**NOTE TO CUSTOMER: Damage Waiver does NOT cover the costs of recovery of the Equipment, which are always payable by the Customer.**

- 6.2 Subject to the provisions of this Section 6, Damage Waiver applies to each incident occurring in all hires, for no additional fee. The Damage Waiver Excess is the actual repair cost of the Equipment, or 20% of the current replacement cost of the Equipment as reasonably determined by Waterlabs using supplier's list prices, whichever is the lesser amount.

**DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY IN THE FOLLOWING CIRCUMSTANCES;**

- (a) where the Equipment is lost or stolen;  
(b) where the operator is not suitably licensed;  
(c) where the operator is affected by drugs and/or alcohol;  
(d) where the equipment has been willfully damaged at any time during the Hire Period;  
(e) Where the damage is caused by rolling or detachment while the Equipment is being driven or towed;  
(f) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;  
(g) where the damage is caused in any way by overloading;  
(h) where the damage is caused by flash flooding or general water damage;  
(i) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance; or  
(j) where the damage is caused to a truck pantech or truck crane.  
6.3 The Customer may pay an additional Vehicle Waiver Plus Fee (Excluding Customers driving with restricted licences) in relation to the hire of Motor Vehicles, which for each incident will;  
(a) reduce the Damage Waiver Excess in relation to Motor Vehicles and third party damage to property or goods caused by the use of the Motor Vehicle by the Customer;  
(b) cover damage to a pantech or van body above cab height; and  
(c) add a Theft Waiver component for Motor Vehicles. Theft Waiver is not insurance, but is an agreement by Waterlabs that the Customer's liability for theft or loss of the Motor Vehicle can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Waterlabs may ask the Customer to pay the Vehicle Waiver Plus Fee on the hire of Motor Vehicles, but the Customer may decide to opt out of that payment.

Credit account customers will have the Vehicle Waiver Plus applied to all relevant

hires unless the Customer has declined the Waiver on their credit application or opted out by providing notice to Waterlabs in writing.

The reduced Damage Waiver Excess and the Theft Waiver Excess apply to Motor Vehicles when the Vehicle Waiver Plus Fee is paid this will be shown on the Hire Schedule and will vary for different classes of vehicles.

- 6.4** The Customer may pay an additional Equipment Waiver Plus Fee in relation to the hire of medium and large Equipment (being such Equipment as determined by Waterlabs at the time of hire), which for each incident will;
- (a) reduce the Damage Waiver Excess in relation to Equipment; and
  - (b) add a Theft Waiver component for medium and large machinery. Theft Waiver is not insurance, but is an agreement by Waterlabs that the Customer's liability for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Waterlabs may ask the Customer to pay the Equipment Waiver Plus Fee on the hire of medium and large Equipment, but the Customer may decide to opt out of that payment.

Credit account customers will have Equipment Waiver Plus applied to all relevant hires unless the Customer has declined the Waiver on their credit application or opted out by providing notice to Waterlabs in writing.

The reduced Damage Waiver Excess and the Theft Waiver Excess which apply to medium and large Equipment when the Equipment Waiver Plus Fee is paid will be shown on the Hire Schedule and will vary for different types of machinery.

**6.5 THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT** in the following circumstances;

- (a) where the Customer has failed to keep the Equipment in a securely locked enclosed area, or in the case of a Motor Vehicle, has failed to properly secure or lock the Motor Vehicle; or
- (b) where the Customer has failed to submit to Waterlabs a Police Report on the theft within seven days of the theft allegedly occurring.

In the event of Theft Waiver applying, hire fees will be charged to the Customer until the Police Report is provided to Waterlabs.

- 6.6** Damage Waiver will NOT apply where Waterlabs determines that any applicable exclusion mentioned in this Section 6 applies, including the circumstances in clauses 6.2(a)-(j) or 6.5(a)-(b) respectively, unless the Customer is able to establish otherwise to the reasonable satisfaction of Waterlabs.
- 6.7** Equipment Waiver Plus and Vehicle Waiver Plus, including Theft Waiver, will NOT apply where Waterlabs determines that any applicable exclusion in clauses 6.2(b)-(h) or 6.5(a)-(b) applies.
- 6.8** A Damage Waiver Excess must be paid by the Customer for each and every separate incident which may occur in any Hire Period, where any Damage Waiver is applicable under this section 6.
- 6.9** A Theft Waiver Excess must be paid by the Customer for each and every separate incident which may occur in any Hire Period, where any Theft Waiver is applicable under this section 6.
- 6.10** If any damage is caused by the Customer to any property or goods whatsoever owned by a third party as a result of or during the use of a Waterlabs Motor Vehicle, and if the Customer has breached any provision of this Contract or if any of the circumstances described in clauses 6.2(a)-(j) have occurred, the Customer will be liable for the full cost of that third party property damage to the extent caused by the Customer. If the Customer has not breached this Contract and none of the circumstances described in clauses 6.2(a)-(j) have occurred, the Customer will be liable for the full cost of the third party property damage to the extent caused by the Customer, or \$1,500, whichever is the lesser amount.

**7 EXCLUSION OF WARRANTIES AND LIABILITIES.**

- 7.1** Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 7.2** Where the Australian Consumer Law applies and the Equipment is not of a kind ordinarily acquired for personal domestic or household use or consumption, Waterlabs liability in respect of any guarantee is limited to the replacement or re- pair of the Equipment, or the cost of having the Equipment repaired or replaced.
- 7.3** To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, Waterlabs makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.

**8 REMOTE HIRE**

Where the Equipment is at any time hired by the Customer to be located in a Remote Area, the following clauses will also apply, in addition to the obligation of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions;

- (a) The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by Waterlabs ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by Waterlabs staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by Waterlabs and its staff in connection with travel to and from the Remote Area;
- (b) Multiple items of Equipment on hire by a Customer on the one site will only be charged for one call out fee;
- (c) The Customer is responsible at its cost for daily maintenance and care of all items of Equipment on hire by a Customer, and including lubrication of all grease points.

- (d) The customer can only service and repair Equipment with the express permission of Waterlabs and records of all maintenance activities performed by the Customer must be provided to Waterlabs.

**9 BREACH OF HIRE CONTRACT BY CUSTOMER**

If the Customer breaches any significant provision of this Contract and does not remedy the breach within a reasonable period of time (having regard to the breach), or becomes bankrupt, insolvent or ceases business then:

**9.1 Waterlabs shall be entitled to:**

- (a) terminate this Contract; and/or
- (b) sue for recovery of all monies owing by the Customer; and/or
- (c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.

- 9.2** The Customer indemnifies Waterlabs in respect of any damages, costs or loss, to the extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

**10 DISPUTES**

- 10.1** The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Waterlabs in writing within 30 days of the hire contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.
- 10.2** If a dispute arises relating to this contract, the hiring or the use of the Equipment (except in regard to payments due to Waterlabs), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

**11 EQUIPMENT DATA**

- 11.1** Waterlabs' Equipment may contain on-board devices (each a GPS Device) which enable the Equipment to be connected to the internet and to send commands to and receive certain information from the Equipment, including geolocation data from a global positioning system and other data including but not limited to speed, battery voltage and ignition status of such Equipment.
- 11.2** By hiring any Equipment from Waterlabs, the Customer expressly consents to Waterlabs' use of the GPS Device on such Equipment during the Hire Period and to Waterlabs collecting, using and retaining information from the GPS Device in accordance with our Privacy Policy, and that Waterlabs is the owner of that data subject to your rights as set out in our Privacy Policy.

**12 PRIVACY**

Waterlabs will comply with the Australian Privacy Principles in all dealings with Customers. A copy of the Waterlabs Privacy Statement is available upon request or by visiting [www.Waterlabs.com.au/privacy-policy](http://www.Waterlabs.com.au/privacy-policy)

**13 GOVERNING LAW**

- 13.1** The hire contract containing these Hire Contract Conditions is a payment claim under the Building and Construction Industry Security of Payment Act 1999 NSW, the Building and Construction Industry Security of Payment Act 2002 VIC, the Building and Construction Industry Payments Act 2004 QLD, the Building and Construction Industry Security of Payment Act 2009 SA, the Construction Contracts Act 2004 WA, the Building and Construction Industry (Security of Payment) Act 2009 ACT, the Building and Construction Industry Security of Payment Act 2009 TAS, and/or the Construction Contracts (Security of Payments) Act 2009 NT.
- 13.2** Except where Waterlabs in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause, Waterlabs and the Customer agree that this Contract is governed by the law of the state of New South Wales, and the parties submit to the jurisdiction of the courts of that State.