

TERMS AND CONDITIONS

This Agreement is entered into between **Harris Maintenance Contracting and Hire Pty Ltd (ACN 661 673 730) (we, us, our)** and **you or your** (as described in the HMC Customer Hire Form (**Hire Form**)), together the **Parties** and each a **Party**.

1. Acceptance, Term and Hire Period

- 1.1 You accept this Agreement by the earlier of:
 - (a) signing and returning this Agreement to us, including by email or any electronic executions platform acceptable to us; or
 - (b) making part or full payment of the Bond or the Hire Fee.
- 1.2 You agree to hire the Equipment for the Hire Period.
- 1.3 This Agreement will commence on the date this Agreement is accepted in accordance with its terms, and end on the date that the Hire Period finishes, unless otherwise terminated earlier in accordance with its terms (the **Term**).

2. Monitoring

- 2.1 You acknowledge and agree that your use of the Equipment may be subject to monitoring through cameras installed on the Equipment to ensure your compliance with the Terms of this Agreement.
- 2.2 We agree to conduct this monitoring in accordance with the relevant laws and to use any footage taken solely for the purpose set out in clause 2.1.
- 2.3 You agree that any photograph provided by you to us of the area you have agreed to use the Equipment in (**Designated Area**) under clause 8.1(a), may be reviewed against any video footage taken under clause 2.1.
- 2.4 By hiring the Equipment, you consent (and agree to obtain the consent of any other person present on the property or in the Designated Area) that we may install cameras on our Equipment and record video footage of the Equipment being used.

3. Our obligations

- 3.1 In consideration of you paying the Hire Fee and you complying with this Agreement, we agree to provide the Equipment to you for the Hire Period, and in accordance with this Agreement.
- 3.2 We will have no obligation to supply the Equipment to you until we have received the payment of the Bond in full (if applicable).

4. Variations

- 4.1 All variations, as reasonably determined by us, to this Agreement and the supply of Equipment to you must be agreed in writing between the Parties.

5. Your obligations

- 5.1 You agree to:
 - (a) comply with this Agreement, the Manual (where applicable to the Equipment), our reasonable requests or requirements (including safety procedures and policies), and all applicable laws; and
 - (b) provide all assistance, information, and all things reasonably necessary to enable us to comply with our obligations under this Agreement and at law.
- 5.2 You acknowledge and agree that if there is a discrepancy between the terms and conditions in this Agreement and the Manual, the terms and conditions of this Agreement will prevail.

6. Payment

- 6.1 You agree to pay us the Fees, Additional Costs (if applicable), and any other amount payable to us under this Agreement, in accordance with the Hire Form. You agree to pay these amounts at the times and using the payment method as set out in the invoice.
- 6.2 The Short-Notice Cancellation Fee is due and payable by you if you hire the Equipment and you terminate this Agreement within 24 hours of the Start Date. You agree that the Short-Notice Cancellation Fee is a genuine pre-estimate of loss, suffered or incurred by us, as a result of your termination of this Agreement within 24 hours of the Start Date (including but not limited to our inability to hire out the Equipment to a third party because we had reserved it for you).
- 6.3 If a Short-Notice Cancellation Fee is payable by you in terms of this Agreement, you agree to pay us the Short-Notice Cancellation Fee on or before the date stipulated in our invoice, alternatively you hereby authorise us to deduct the Short-Notice Cancellation Fee from any refund owing to you in term of this Agreement.
- 6.4 If any payment has not been made in accordance with the Hire Form, we may (at our absolute discretion) after a period of 5 Business Days, cease providing the Equipment and enter any premises where the Equipment is located, and recover or repossess the Equipment (and you agree to provide any access, items and consents required to enable us to do so), and recover, as a debt due and immediately payable from you, our additional costs of doing so (including legal fees, debt collector fees and mercantile agent fees).
- 6.5 You acknowledge that the Fees do not include any applicable tolls, fines, penalties, levies or freight and other charges (**Additional Charges**). You accept liability to pay all Additional Charges and expenses associated with the Equipment during the Hire Period.
- 6.6 You acknowledge and agree that if any applicable Additional Charges apply they may not be present in your initial invoice. You agree to pay all Additional Charges once provided with a subsequent invoice detailing such charges.

7. Bond

- 7.1 If applicable, we will hold the Bond throughout the Hire Period.
- 7.2 You acknowledge and agree that the Bond will be used as a security by us for the performance of any of your obligations, and satisfaction of any of your liabilities, under this Agreement.
- 7.3 We may, with 5 Business Days' written notice, call upon the Bond to satisfy payment of any amounts due and payable to us by you under this Agreement.
- 7.4 Subject to your compliance with this Agreement, we will refund you the balance (if any) of the Bond within a reasonable time after the expiry of the Hire Period.

8. Conditions of hire

- 8.1 You acknowledge and agree that your use of the Equipment is subject to the following conditions:
 - (a) Equipment must only be used in the Designated Area, as agreed between the Parties;
 - (b) Equipment is only to be used in residential areas and is not permitted to be used in paddocks, fields or similar rural environments;

- (c) Equipment is not to be operated by any person who is under the influence of alcohol, drugs, or any other impairing substances;
 - (d) Equipment is not to be used for more than 5 consecutive hours in one day;
 - (e) Equipment must only be operated on grass with a maximum height of 0.05 meters, and the designated area must be free of lupins and weeds; and
 - (f) any other conditions we may advise you.
- 8.2 If you fail to comply with any of the conditions set out in clause 8.1, you agree that your Bondi (where applicable) will be forfeited to us under clause 7.2.

9. Collection, delivery and return of Equipment

- 9.1 If the Parties agree that:
- (a) you are to collect the Equipment from us, you agree to collect the Equipment from the collection location and by the collection time agreed between the Parties;
 - (b) we are to deliver the Equipment to you, we agree to use our reasonable endeavours to deliver the Equipment to the delivery location by the delivery time agreed between the Parties.
- 9.2 You agree to return the Equipment to us/make the Equipment available for collection by us (as agreed between the Parties) in the Original Condition, at the return location and by the return time agreed between the Parties.
- 9.3 If the Parties agree that:
- (a) you are to return the Equipment to us at the expiry of the Hire Period, you agree that if you do not return the Equipment to the return location by the return time agreed between the Parties, we may after a grace period of **two hours** charge you the Late Fee until you have returned the Equipment to us;
 - (b) we are to collect the Equipment from you at the expiry of the Hire Period, you agree that if we arrive at the agreed location for collection and the Equipment is not immediately available for our collection, we may charge you the Late Fee until such time as the Equipment is available for collection by us.
- 9.4 You agree that the Late Fee is a genuine pre-estimate of loss, suffered or incurred by us, as a result of your delay in returning the Equipment.
- 9.5 You agree to comply with any requirements, policies or procedures which apply at the collection location and the return location (as applicable).

10. Pre-Hire Checklist and Return Checklist

- 10.1 You agree that you are solely responsible for determining whether the Equipment will be suitable and fit for your particular purposes.
- 10.2 You agree that by signing the Pre-Hire Condition Report, you agree that the Equipment has been delivered in good condition, clean, free from major damage or defect, fit for purpose and in accordance with this Agreement (**Original Condition**), unless expressly set out in the Pre-Hire Condition Report, in which case the condition set out in the Pre-Hire Condition Report will be deemed to be the Original Condition.

- 10.3 You agree to sign a Return Condition Report upon returning the Equipment to us at the expiry of the Hire Period. You agree that in the Return Condition Report you will provide full details of any new damage or defects in the Equipment that was not part of the Original Condition. You agree that by signing the Return Condition Report you are responsible for any costs associated with repairing the Equipment from any new damage or defects caused by you during the Hire Period.

11. Warranties and Representations

- 11.1 You represent, warrant and agree that:
- (a) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
 - (b) you are at least 18 years old;
 - (c) you (and any other person authorised to operate the Equipment in accordance with this Agreement) have all necessary qualifications and licences required by law in order for you to operate the Equipment;
 - (d) you will report any Accident, traffic infringement or parking infringement which occurs during the Hire Period to us as soon as possible after it occurs;
 - (e) you will not use the Equipment, or allow the Equipment to be used, in breach of any laws or the Manual; and
 - (f) you will keep the Equipment under your custody and control at all times, and you will not sublease, rent, sell, or otherwise transfer the Equipment to any other person.

12. Maintenance

- 12.1 During the Hire Period, in addition to and without limiting any other obligation under this Agreement, you agree to:
- (a) maintain the Equipment in accordance with the Manual;
 - (b) only allow our Personnel to service or repair the Equipment, unless otherwise agreed to by us;
 - (c) contact us immediately if there are any technical or mechanical issues with the Equipment;
 - (d) protect and keep the Equipment in the Original Condition (including being in good working order and condition), subject to any fair wear or tear; and
 - (e) prevent the Equipment from being subject to any loss, theft, damage, vandalism, or destruction and notify us immediately if the Equipment is stolen, lost, destroyed, damaged, or involved in an Accident.

13. Servicing and Repairs

- 13.1 You agree that you are responsible for the costs of any repair or replacement of the Equipment that is necessary as result of loss, theft, damage, vandalism, misuse, or neglect to the Equipment during the Hire Period. Where we undertake the repairs or replacement on your behalf, you agree to pay us the costs of the repairs or replacement, as a debt due and immediately payable.
- 13.2 We agree to undertake a general service check of the Equipment, as communicated by us to you, and you agree to do all things necessary to allow us to fulfil our obligations in this clause 13.2. We may, in our absolute discretion, provide you with the use of replacement equipment during any general service check.

14. Title and Risk

- 14.1 Risk in the Equipment will pass to you when you have collected the Equipment from the collection location/when the Equipment is delivered to the delivery location (as applicable and as agreed between the Parties). You agree that once you have collected the Equipment from the collection location/ the Equipment has been delivered to the delivery location (as applicable and as agreed between the Parties), you will be solely responsible for the Equipment until it is returned to us and it is in our full custody and control.
- 14.2 Title in the Equipment will at all times remain with us, and you take the Equipment as a bare bailee only.

15. Access and Security Interest

- 15.1 You agree to provide us (and our Personnel) with reasonable access to any premises where the Equipment is located, and any other premises reasonably necessary for us to supply the Equipment, free from harm or risk to health or safety:
- (a) at the times and on the dates requested by us to enable us to exercise any rights we may have under this Agreement; and/or
 - (b) to enable us to comply with our obligations under this Agreement or at law.
- 15.2 You agree to not create an encumbrance, lien, charge, or other interest on or over the Equipment.
- 15.3 You agree that we hold a general lien over the Equipment, for the satisfactory performance of your obligations under this Agreement.
- 15.4 You agree that this Agreement and your obligations under this Agreement creates a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and you must do all things to enable us to do so).

16. Australian Consumer Law

- 16.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees, and remedies relating to the hiring out of the Equipment by us to you which cannot be excluded, restricted, or modified (**Consumer Law Rights**).
- 16.2 If the Australian Consumer Law applies to you as a consumer, nothing in this Agreement excludes your Consumer Law Rights as a consumer under the Australian Consumer Law. You agree that our Liability for hiring out of the Equipment provided to an entity defined as a consumer under the Australian Consumer Law is governed solely by the Australian Consumer Law and this Agreement.
- 16.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services is provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 16.4 This clause 16 will survive the termination or expiry of this Agreement.

17. Liability

- 17.1 To the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;

- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (a) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Equipment to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us in respect of the supply of the relevant Equipment and to which the Liability relates.

- 17.2 This clause 17 will survive the termination or expiry of this Agreement.

18. Indemnity

- 18.1 Despite anything to the contrary, to the maximum extent permitted by law, you are liable for and you and agree to indemnify us and hold us harmless in respect of any Liability which we may suffer, incur or are otherwise liable for as a result of, or in connection with:
- (a) any property loss or damage, death, or personal injury, arising from or in connection with your use of the Equipment;
 - (b) any loss (including theft) of, or damage to, the Equipment when you are responsible for the risk in the Equipment in accordance with clause 14;
 - (c) any failure to return the Equipment in its Original Condition;
 - (d) all Liabilities suffered or incurred by us in repossessing or recovering the Equipment in accordance with this Agreement,
- provided that your liability under this indemnity will be reduced proportionately to the extent caused by us.
- 18.2 This clause 18 will survive the termination or expiry of this Agreement.

19. Termination

- 19.1 This Agreement will terminate immediately upon written notice by a Party (Non-Defaulting Party) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 7 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
 - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 19.2 Upon expiry or termination of this Agreement:
- (a) we will immediately cease supplying the Equipment to you;
 - (b) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;
 - (c) you are to pay for any Fees due and payable prior to termination, and all other amounts due and payable under this Agreement;
 - (d) by us pursuant to clause 19.1 you also agree to pay our additional costs, reasonably incurred, and which arise directly from such termination (including legal fees, debt collector fees and mercantile agent fees); and

- (e) you agree to grant us such rights of access, in accordance with clause 15.1, to any premises where the Equipment is located to allow us (or our Personnel) to immediately recover or repossess the Equipment.
- 19.3 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied acceptance of this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.
- 19.4 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 19.5 This clause 19 will survive the termination or expiry of this Agreement.
- 20. GST**
- 20.1 If and when applicable, GST payable on the Price will be set out in our Hire Form. You agree to pay the GST amount at the same time as you pay the Price.
- 20.2 The term "GST" has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 21. General**
- 21.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.
- 21.2 **Assignment:** Subject to clause 21.3, a Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 21.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.
- 21.4 **Confidentiality:** You agree to keep the terms of this Agreement confidential, and not disclose them to any third party unless we consent in writing or if required by law.
- 21.5 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- 21.6 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity, or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time, place, and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 21.7 **Entire agreement:** Subject to your Consumer Law Rights, this Agreement contains the entire understanding between the Parties, and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in this Agreement, and supersedes all previous discussions, communications, negotiations,

understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

- 21.8 **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.
- 21.9 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by any event or circumstance which is beyond a Party's reasonable control.
- 21.10 **Governing law:** This Agreement is governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 21.11 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 21.12 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment, or agency relationship between the Parties.

22. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Hire Form, Pre-Hire Checklist, Return Checklist, and:

Accident means any collision or contact between the Equipment and any other object, including but not limited to a vehicle, animal or person, or any incident or occurrence that results in the Equipment being damaged, lost or destroyed or any other vehicle, property, thing, animal or person being injured, killed, damaged, lost or destroyed (as applicable).

Agreement means these terms and conditions and any documents, attached to, or referred to, in it.

Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Bond has the meaning given to it in clause 7.2.

Business Days means a day on which banks are open for general banking business in Law Society of Western Australia, excluding Saturdays, Sundays, and public holidays.

Consequential Loss includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Fees under this Agreement will not constitute "Consequential Loss" for the purposes of this definition.

Consumer Law Rights has the meaning given in clause 16.1.

Disclosing Party means the party disclosing Confidential Information to the Receiving Party.

Dispute has the meaning given in clause 21.6.

End Date is the date agreed in the Hire Form.

Equipment means the equipment and any accessories the subject of this Agreement, as particularised in Hire Form.

Fees includes Delivery Fee, Hire Price, and any Additional Cost (Short-Term Cancellation Fee and Late Fee) as agreed in the Hire Form.

Hire Period means the Start Date and continues until the End Date agreed between the Parties in the Hire Form.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Late Fee has the meaning given to it in clause 9.3.

Manual means any manual, provided by us to you, as to the operation, use, restrictions, guidelines, or safety instructions for the Equipment.

Original Condition has the meaning given in clause 11.

Pre-Hire Checklist means the report detailing the condition of the Equipment before it is collected.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Return Checklist means the report detailing the condition of the Equipment once returned.

Short-Notice Cancellation Fee has the meaning given in clause 6.2.

Start Date is the date agreed in the Hire Form.

23. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to time is to local time in Western Australia; and
- (b) a reference to \$ or dollars refers to the currency of Australia from time to time.