

# HIRE AGREEMENT CONDITIONS

## 1 General

The whole of the Agreement between Quipsmart Trading Pty Ltd as trustee for Quipsmart Trading Trust, trading as Adam Hire and Scaffolding Services, ABN 73 228 652 795, and Quipsmart (under licence), ABN 95 318 504 358 ("Quipsmart") and the Customer referred to in the Hire Agreement ("Customer") are those set out in these Hire Agreement Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's hire order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By taking possession of all or a portion of the goods, equipment and/or parts and/or receiving supply of labour and/or services supplied by Quipsmart under these Terms ("Hired Goods & Services"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others. The Hired Goods & Services supplied by Quipsmart fall under the *Building and Construction Industry Security of Payment Act 2002* (Vic).

## 2 Credit Terms

- 2.1 Payment is due on or prior to thirty (30) days from the date of invoice rendered in respect of the provision and/or supply of the Hired Goods & Services unless otherwise stated in writing by Quipsmart. Quipsmart may charge liquidated damages at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) if payment is not received by the due date.
- 2.2 Quipsmart's express or implied approval for extending credit to the Customer may be revoked or withdrawn by Quipsmart at any time.
- 2.3 Quipsmart is entitled to set-off against any money owing to the Customer amounts owed to Quipsmart by the Customer on any account whatsoever.
- 2.4 Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in Clause 2.5, and then to principal.
- 2.5 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Quipsmart for enforcement of obligations and recovery of monies due from the Customer to Quipsmart.

## 3 Quotations and Pricing

- 3.1 Prices charged for Hired Goods & Services will be according to a current quotation for those Hired Goods & Services. Otherwise, they will be determined by Quipsmart by reference to its standard prices in effect at the time the Customer takes possession of the Goods, notified to the Customer, and regardless of any prices contained in the order. Quipsmart will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 3.2 Any quotation by Quipsmart shall not constitute an offer. Quotations will remain valid for fourteen (14) days from the date of the quotation.
- 3.3 Any quotation, acceptance of quotation, hire order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.
- 3.4 Unless otherwise specified by Quipsmart, the prices exclude:-
  - 3.4.1 Any statutory tax, including any GST, duty or impost levied in respect of the Hired Goods and which has not been allowed for by Quipsmart in calculating the price.
  - 3.4.2 Costs and charges in relation to insurance, packing (other than the standard packing of Quipsmart), crating or delivery (whether by road, rail, ship or air) of the Hired Goods.

## 4 Quipsmart's Obligations

Quipsmart will:

- 4.1 Allow the Customer to take and use the Hired Goods until they are due back.

- 4.2 Provide the Hired Goods to the Customer in good working order.
- 4.3 Subject to clause 7.2.3, be responsible for repairing any damage to Hired Goods caused by the ordinary use of the Hired Goods by the Customer within 3 working days of written notification (the Customer may not claim any deduction in rental or any other variation prior to such time).
- 4.4 Resupply or repair the Hired Goods if they fail to operate properly.
- 4.5 Collect the Hired Goods within 5 days of being requested to do so by the Customer and issuing to the Customer a Customer Off Hire Number.

**NOTE TO CUSTOMER: You must return the Hired Goods when due back unless you obtain a Customer Off Hire Number from Quipsmart.**

## 5 Delivery and Supply

- 5.1 Any times quoted for delivery and/or supply are estimates only and Quipsmart shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Hired Goods & Services, by reason of any delay in delivery/supply or dispatch. Quipsmart reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 5.2 Quipsmart may refuse to supply any order by the Customer for Hired Goods & Services in its absolute discretion and may make acceptance of a hire order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 5.3 The Customer is deemed to accept delivery of the Hired Goods & Services when they are either delivered to the Customer's premises or when Quipsmart notifies the Customer that the Hired Goods are available for collection.

## 6 Return of Goods by the Customer to Quipsmart

- 6.1 The Customer will:
  - 6.1.1 Deliver the Goods to Quipsmart when they are due back.
  - 6.1.2 Return the Goods to Quipsmart clean and in good repair.
- 6.2 Until the Goods are back in possession of Quipsmart, the Customer is responsible for the Goods, even after obtaining a Customer Off Hire Number.

## 7 Payments by the Customer to Quipsmart

- 7.1 Unless otherwise stated in writing by Quipsmart, the Customer will pay the Damage Waiver Fee contemplated by clause 8 at or before the time the Customer takes possession of the Hired Goods, where the hired goods are Sheds or Buildings.
- 7.2 Immediately on request by Quipsmart, the Customer will pay:-
  - 7.2.1 The new list price of any Hired Goods which is for any reason not returned to Quipsmart.

**(NOTE TO CUSTOMER: You are responsible for loss or theft of the Hired Goods)**

- 7.2.2 All costs incurred in cleaning the Hired Goods.
- 7.2.3 All costs of repairing any damage or replacement caused by the ordinary use of the Hired Goods up to the new list price of the Hired Goods except for Hired Goods covered by the Damage Waiver Fee.
- 7.2.4 The cost of repairing any damage to the Hired Goods caused by the negligence of the Customer or the Customer's agent.
- 7.2.5 Any additional hire fees.
- 7.2.6 Any costs for delivery and/or collection of the Hired Goods by Quipsmart.
- 7.2.7 All levelling, plumbing and electrical connection and disconnection costs with respect to the Hired Goods.
- 7.2.8 All costs relating to pump outs, steps, landings, tie downs, covered walkways, permits and fees, hoardings, engineering or expert certificates and transport waiting times.

- 7.2.9 The cost of fuels and consumables provided by Quipsmart and used by the Customer.
- 7.2.10 All costs of repairing or replacing tyres, including road service with respect to the Hired Goods.
- 7.3 Until full payment has been made for all Hired Goods, and any other sums in any way outstanding from the Customer to Quipsmart from time to time:-
- 7.3.1 All sums outstanding become immediately due and payable by the Customer to Quipsmart if the Customer makes default in paying any other sums due to Quipsmart, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 7.3.2 Quipsmart is irrevocably authorised to enter any premises where the Hired Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Hired Goods without liability for trespass or any resulting damage. The Customer undertakes to use its best endeavours, to act on Quipsmart's instructions and to take any action reasonably required by Quipsmart in order to recover the Goods including the execution of any documentation to other action required.

## 8 Damage Waiver Fee

- 8.1 Upon payment by the Customer of the Damage Waiver Fee (as set by Quipsmart from time to time) and subject to the following conditions, Quipsmart shall be responsible for the cost of repairs of the Hired Goods (solely applicable to where the Hired Goods are sheds or buildings) caused by accidental damage to the Hired Goods during the Hire Period, above the value of \$500 or 35% of the value of the damage or missing goods (plus GST) (whichever is the greater), which amount shall be the Customer's excess and is payable to Quipsmart on demand, such damage including damage by fire, storm, collision, but not in circumstances listed in 8.4 below.
- 8.2 This clause in no way entitles the Customer to, or implies the availability of, compensation from Quipsmart for any liability incurred by the Customer in relation to the use of the Hired Goods.
- 8.3 This clause will not continue to operate after the expiration or termination of the Hire Agreement unless an extension by Quipsmart is granted in writing and an additional fee is paid.
- 8.4 This clause will not operate while any monies due to Quipsmart are in arrears
- 8.5 This clause will not apply to loss or damage which in any way relates to or arises out of:
- 8.5.1 Burglary or theft (in part or whole);
- 8.5.2 Breach of any statutory laws or regulation in connection with the use of the Hired Goods by the Customer;
- 8.5.3 Misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Hired Goods;
- 8.5.4 Loss or damage by whatever cause to tools and/or accessories supplied with the Hired Goods including but not limited to, hoses, moils, drill bits, grease guns, electric leads, tyres and tubes, scaffold, desks;
- 8.5.5 Lack of lubrication or non-adherence to other normal maintenance regimes that could reasonably be expected of the Customer under the Hire Agreement;
- 8.5.6 Disregard for instructions given to the Customer by Quipsmart in respect of the proper use of the Hired Goods or in contradiction of the Manufacturer's Instructions if supplied with the Hired Goods at the time of hiring;
- 8.5.7 Unexplained disappearance of the Hired Goods where a prompt submission of a written police report is not provided and accepted by Quipsmart;
- 8.5.8 Damage to the Hired Goods in circumstances where no on site security is available, or where on site security is available including, but not limited to, locked yards,

building and sheds, but this security is not used by the Customer to secure the Hired Goods whilst they are left unattended;

- 8.5.9 Loading or off loading of Hired Goods from maritime vessels, transportation of Hired Goods on maritime vessels or use of Hired Goods on any wharf or bridge or over any body of water.

## 9 Cancellations and Claims

- 9.1 No cancellations or partial cancellation of a hire order by the Customer shall be accepted by Quipsmart unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by Quipsmart, will indemnify Quipsmart against all loss, including but not limited to loss of revenue from being unable to hire Goods to an alternate customer.
- 9.2 All complaints, claims, or notification of lost Hired Goods, incomplete Hired Goods, Hired Goods damaged in transit or Hired Goods that do not comply with the Customer's hire order must be submitted by the Customer to Quipsmart in writing within five (5) business days of the Customer taking possession of the Goods. Otherwise, the Customer shall be deemed to have accepted the Hired Goods and shall not refuse to pay for the Hired Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's hire order.

## 10 Notification

- The Customer must notify Quipsmart in writing within seven (7) days of:-
- 10.1 Any alteration of the name or ownership of the Customer.
- 10.2 The issue of any legal proceedings against the Customer.
- 10.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 10.4 Any change in the ownership of the business name of the Customer.
- The Customer agrees that it shall be liable to Quipsmart for all Hired Goods provided to the new owner by Quipsmart until notice of any such change is received.

## 11 Warranties

- 11.1 No warranties except those implied and that by law cannot be excluded are given by Quipsmart in respect of the Hired Goods supplied. Where it is lawful to do so, the liability of Quipsmart for a breach of a condition or warranty is limited to the repair or replacement of the Hired Goods, the supply of equivalent Hired Goods or the payment of the cost of repairing the Hired Goods, as determined by Quipsmart.
- 11.2 The Customer warrants to Quipsmart that it enters the Hire Agreement as the principal and not as an agent.

## 12 Other Obligations of the Customer

The Customer will:

- 12.1 Operate the Hired Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Quipsmart or posted on the Hired Goods.
- 12.2 Indemnify Quipsmart for all damage caused to persons and property in relation to the Hired Goods and its operation and have insurance to cover any legal liabilities incurred as a result of the use of the Hired Goods.
- 12.3 Ensure that all persons operating or erecting the Hired Goods are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to use it.
- 12.4 Comply with all occupational health and safety laws relating to the Hired Goods and their operation.
- 12.5 Safely secure all items loaded in or on the Hired Goods or in or on the Customer's vehicle/site.

- 12.6 Operate the Hired Goods with an adequate motor vehicle and/or power source.
- 12.7 Promptly (within 24 hours) notify in writing of any damage requiring repair, and will indemnify Quipsmart for any loss of rental arising from a failure to so notify.

The Customer will NOT:

- 12.8 Tamper with, damage or repair the Hired Goods.
- 12.9 Lose possession of the Hired Goods.
- 12.10 Rely upon any representation relating to the equipment or its operation other than those contained in this Agreement.
- 12.11 Exceed the recommended or legal load and capacity limits of the Hired Goods.
- 12.12 Use or carry any illegal, prohibited or dangerous substance in or on the Hired Goods.
- 12.13 Travel outside the State where the Hired Goods are hired unless Quipsmart approves the destination.

### **13 Force Majeure**

Quipsmart shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Hired Goods impossible, where all money due to Quipsmart shall be paid immediately and, unless prohibited by law, Quipsmart may elect to terminate the Agreement.

### **14 Equitable Charge**

The Customer as beneficial owner and/or registered proprietor now charges in favour of Quipsmart all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Hire Agreement if applicable) ("Land") to secure payment of accounts rendered by Quipsmart to the Customer for the provision of the Hired Goods & Services including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by Quipsmart and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

### **15 Failure to Act**

Quipsmart's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or Quipsmart's failure to exercise any right or remedy available under these Terms or at law, or Quipsmart's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of Quipsmart's right to demand timely payment of future obligations or strict compliance with the Terms.

### **16 Legal Construction**

- 16.1 These Terms shall be governed by and interpreted according to the laws of Victoria and Quipsmart and the Customer consent and submit to the jurisdiction of the Courts of Victoria.
- 16.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.