

# Standard Hire Order Terms & Conditions

## 1. HIRE OF EQUIPMENT

- 1.1 The Supplier agrees to provide the Equipment to the Government Party:
- (a) for the Hire Use; and
  - (b) for the Hire Period.

## 2. WARRANTIES

- 2.1 The Supplier represents and warrants that:
- (a) the Equipment:
    - (i) conforms with any description applied and any sample provided by the Supplier;
    - (ii) is free from defects in materials, manufacture and workmanship;
    - (iii) conforms to any applicable Australian Standards or other standards nominated in this Hire Order;
    - (iv) conforms to any technical specifications provided by the Supplier;
    - (v) is of merchantable quality; and
  - (b) delivery and collection of the Equipment will:
    - (i) be provided with due care and skill;
    - (ii) be provided in a timely and efficient manner;
    - (iii) be provided in accordance with the best practices current in the Supplier's industry; and
    - (iv) be performed by the Supplier and/or the Supplier's personnel.

## 3. PRICE AND PAYMENT

- 3.1 The Price stated on the Hire Order:
- (a) is firm and includes packing, transportation and all delivery and collection costs and charges unless otherwise stated; and
  - (b) is inclusive of GST.
- 3.2 The Government Party is not obliged to pay for the hire of the Equipment unless the Supplier has provided a Tax Invoice in respect of that payment.
- 3.3 If the Supplier is not registered for GST, then GST must not be charged on supplies made under this Hire Order.

## 4. DELIVERY

- 4.1 The Supplier must deliver the Equipment to the Delivery Location at the Delivery Time.
- 4.2 Unless otherwise agreed by the parties in writing, the Supplier is responsible for the safe packing and transportation of the Equipment to the Delivery Location.
- 4.3 The Supplier must bear all costs of preparation, safe packing and transportation in connection with the transit and delivery of the Equipment.
- 4.4 Without limiting clause 4.2, the Supplier must provide details of its proposed arrangements for the delivery and transportation of the Equipment to the Delivery Location to the Government Party within 2 days prior to the delivery of the Equipment, and must comply with any reasonable directions given by the Government Party in relation to the delivery and transportation of the Equipment to the Delivery Location.

## 5. INSPECTION AND ACCEPTANCE OF EQUIPMENT

- 5.1 The Government Party may inspect the Equipment to determine whether to accept or reject the Equipment.
- 5.2 The Government Party must accept the Equipment if it conforms with the requirements of this Hire Order.
- 5.3 The Equipment is deemed to be accepted either:
- (a) on delivery, if the Government Party notifies the Supplier that it accepts the Equipment; or
  - (b) if no notice is issued by the Government Party, then 2 days after delivery of the Equipment to the Delivery Location.
- 5.4 If the Government Party rejects the Equipment due to non-conformity with the requirements of this Hire Order, then the Government Party must notify the Supplier as soon as possible and require the Supplier at its sole cost, and at the Government Party's election to either:
- (a) resupply the Equipment and remove the non-conforming Equipment from the Delivery Location; or
  - (b) repair the Equipment.
- 5.5 Acceptance of the Equipment does not relieve the Supplier of any of its obligations under this Hire Order.

## 6. OPERATION OF EQUIPMENT

- 6.1 The Government Party will, at all times, operate the Equipment in accordance with:
- (a) any guidelines, regulations or requirements issued by the Supplier;
  - (b) all requirements and obligations in relation to work health and safety (including the *Work Health Safety Act 2012 (SA)*) or other regulations which are applicable to the Equipment or its operation; and
  - (c) the specifications or requirements of the manufacturer of the Equipment.
- 6.2 Without limiting clause 6.1, the Government Party shall ensure the Equipment is, at all times during the Hire Period, operated in a professional, proper and safe manner and so as to avoid injury or damage to the Equipment and any persons operating, using or handling the Equipment.
- 6.3 The Government Party will not use the Equipment other than for a purpose for which the Equipment was designed, manufactured or constructed.

## 7. USE

- 7.1 Subject to clause 6.3, the Government Party shall be entitled to use the Equipment during the hire period only for the Hire Use.
- 7.2 Unless otherwise agreed by the parties in writing, the Government shall ensure that the Equipment is used only at the Location for Use.
- 7.3 The Government Party shall ensure that the Equipment is not in any way damaged or destroyed as a result of its use for the Hire Use.
- 7.4 Prior to the delivery of the Equipment, the Government Party shall obtain and maintain in force any necessary licences, accreditations, permits, registrations, regulatory approvals or other documented authority (however described) required by law and necessary for the use of the Equipment and the performance of its obligations under this Hire Order.

## 8. MAINTENANCE

- 8.1 The Government Party shall:
- (a) store and use the Equipment in a responsible, competent, proper and skilful manner and comply with all reasonable instructions given by the Supplier regarding the manner in which this should be done;
  - (b) take all reasonable steps to ensure the proper protection, safe custody and security of the Equipment; and
  - (c) not make any alteration, addition or modification to any of the Equipment except as authorised by the Supplier.
- 8.2 The Government Party acknowledges and agrees that it shall be responsible for all costs and expenses arising out of or in connection with the performance of all activities necessary to comply with its obligations under clause 8.1 and otherwise under this Hire Order.

## 9. DAMAGE

- 9.1 The Government Party shall:
- (a) advise the Supplier in writing upon becoming aware of any loss of, or damage to any part of the Equipment; and
  - (b) comply with all reasonable directions given by the Supplier in response to a notice given by the Government Party under clause 9.1(a).

## 10. COLLECTION OF EQUIPMENT

- 10.1 On the last day of the Hire Period, the Supplier must arrange for, and bear all costs in connection with the preparation, packing, loading transportation and insurance for the return, and collection of the Equipment, to the Supplier from the Collection Location.
- 10.2 The Equipment shall be returned to the Supplier on the last day of the Hire Period in the same condition (including its form and functionality) as when it was provided to the Government Party.
- 10.3 Without limiting the other provisions of this clause 10, the Government Party shall provide details of its proposed requirements for the collection of the Equipment by the Supplier within 2 days prior to the collection of the Equipment, and the Supplier must comply with any reasonable directions given by the Government Party in relation to the collection and transportation of the Equipment.
- 10.4 Without limiting clause 10.2, the Government Party will, if required upon return of the Equipment, provide to the Supplier a written notice of the condition of the Equipment (including any faults identified in the Equipment by the Government Party).

## 11. PROPERTY IN EQUIPMENT

- 11.1 The Equipment shall be and remain the property of the Supplier notwithstanding any mode or degree of installing or affixing the Equipment at the Government Party's premises.

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11.2 Nothing in this Hire Order is taken to vest title to the Equipment in the Government Party.

11.3 The Government Party shall not remove the Equipment from the Location for Use or substantially alter its location without the written approval of the Supplier, which approval shall not be unreasonably withheld.

## 12. INDEMNITY

12.1 Each party ("**Indemnifying Party**") indemnifies and must keep indemnified the other party ("**Indemnified Party**") and its employees, agents and any other person employed or engaged by the party to perform this Hire Order ("**Personnel**"), from and against all costs, losses, damages, expenses (including legal expenses) or other liabilities ("**Losses**") suffered or incurred by the Indemnified Party or its Personnel arising out of or in respect of this Hire Order as a consequence of:

- (a) any negligence, wrongful act or omission or breach of duty of or by the Indemnifying Party;
- (b) any breach by the Indemnifying Party of any of the provisions of this Hire Order; or
- (c) any breach of a warranty given by the Indemnifying Party under this Hire Order.

12.2 The liability of a party ("**Party A**") for any Losses incurred by another party ("**Party B**") will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (or of its Personnel); or
- (b) any failure by Party B to comply with its obligations and responsibilities under this Hire Order,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

12.3 This clause 12 will survive termination of this Hire Order.

## 13. INSURANCE

13.1 The Government Party warrants that it is entitled to the benefits of the South Australian Government Insurance and Risk Management arrangements administered by SAICORP, the insurance division of the South Australian Government Financing Authority in respect of the operations under this Hire Order.

13.2 The Supplier must have and maintain for the Supplier's own benefit for the Hire Period, valid and enforceable insurance policies for:

- (a) public liability for an insured amount of not less than \$20,000,000;
- (b) workers' compensation as required by law; and
- (c) equipment rental and inland marine insurance for cover that a prudent operator in the Supplier's industry would consider normal and adequate when hiring and transporting equipment of the same or similar type as the Equipment for the Hire Use.

## 14. ACCESS

14.1 During the performance of the Hire Order, the Government Party shall cooperate with the Supplier by providing access to the Location for Use as reasonably necessary to enable the Supplier to:

- (a) affix plates or marks to the Equipment;
- (b) examine or test any of the Equipment; or
- (c) observe the manner in which the Equipment is being used.

## 15. TERMINATION

15.1 The Government Party may terminate this Hire Order immediately upon giving notice in writing to the Supplier if:

- (a) the Supplier is in breach of this Hire Order and has not rectified such breach within 14 days of the Government Party giving notice in writing to the Supplier requiring the rectification of such breach; or
- (b) the Supplier suffers or, in the reasonable opinion of the Government Party, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.

15.2 The Supplier may terminate this Hire Order immediately upon giving written notice to the Government Party if the Government Party is in breach of this Hire Order and has not rectified such breach within 14 days of the Supplier giving written notice to the Government Party requiring the rectification of such breach.

15.3 Any termination of this Hire Order by either party does not affect any accrued right of either party.

## 16. REVERSION OF EQUIPMENT

16.1 Upon the expiration of the Hire Period, or termination of this Hire Order, (whichever is the earliest):

- (a) the right to possession of the Equipment shall revert to the Supplier; and
- (b) the Supplier shall collect the Equipment in accordance with clause 10.

## 17. COMPLIANCE WITH LAWS

17.1 The Supplier must comply with the laws in force in the State of South Australia in performing its obligations under this Hire Order.

## 18. GOVERNING LAW AND JURISDICTION

18.1 This Hire Order is governed by the laws in the State of South Australia.

18.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Hire Order.

## 19. WORK HEALTH & SAFETY

19.1 The Supplier must comply with the *Work Health and Safety Act 2012* (SA) at all times, regardless of whether the Government Party issues direction in that regard or not.

19.2 If all or part of the work under this Hire Order is to be provided on the premises of the Government Party and under the direction of the Government Party, the Supplier must comply with the Government Party's work health and safety policies, procedures and instructions. If the Supplier becomes aware of any potentially hazardous situation on the Government Party's premises, the Supplier must immediately bring it to the Government Party's attention.

## 20. ACTING ETHICALLY

20.1 The Supplier must conduct itself in a manner that does not invite, directly or indirectly, the Government Party's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009* (SA)) to behave unethically, to prefer private interests over the Government Party's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

## 21. GENERAL

21.1 Subject to clause 21.2, this Hire Order constitutes the entire agreement in respect of the matters dealt with in this Hire Order and supersedes all prior agreements, understanding and negotiations.

21.2 If this Hire Order is issued under a formal contract (e.g. standing offer), then the terms of that contract take priority over these terms and conditions.

## 22. AGENCY SPECIFIC CONDITIONS

22.1 Any agency specific conditions that are attached to this Hire Order form part of this Hire Order.