



## Terms and Conditions for Hire Agreements

### 1. DEFINITIONS

In this document, unless the context indicates a contrary intention:

**Additional Costs** means the fees for any additional goods and services specified in the Equipment Hire Schedule.

**Agreement** means the agreement comprising the Equipment Hire Schedule, these Terms and Conditions and any Credit Application completed by the Client.

**Business Day** means a day which is not a Sunday, Saturday, public holiday or bank holiday in the State where the Hired Item is hired.

**Client** means the party specified as the client in the Equipment Hire Schedule.

**Condition Report** means a report on the general condition of a Hired Item, including its state of wear and tear, cleanliness, and the readings on its measurement equipment.

**Condition Report Period** means 12 weeks, unless a different period is specified as the condition report period in the Equipment Hire Schedule in which case it will be the period specified in the Equipment Hire Schedule.

**Defined Wear Items** means tyres, tracks, wheels, buckets, cutting edges, adaptors, teeth, side cutters, breaker moil, blades, mouldboards, wheel guards and undercarriage, and any other parts or accessories of a nature that are similarly susceptible to wear.

**Equipment Hire Schedule** means the equipment hire schedule that is attached to these Terms and Conditions.

**Extras** means articles offered by the Owner that can be installed in the Hired Item at the request of the Client as specified in the Equipment Hire Schedule.

**GST** means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest,

penalties, fines or other charges to the extent they relate to a supply under this Agreement.

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (and any related tax imposition act).

**Guarantor** means any party who guarantees the performance of the Client's obligations under this Agreement.

**Hour Meter** means the equipment in the Hired Item which is used to measure the amount of use.

**Hire Charge** means any amount owing for hire period as per any Invoice.

**Hired Item** means the item or items specified in the Equipment Hire Schedule, including any replacements of those items, and any Extras.

**Hire Period** means the time period, as described under clause 3 of these Terms and Conditions, for which the hire is applicable.

**Hire Rate** means the rate of hire specified in Equipment Hire Schedule.

**Hire Site** means the designated location specified in the Equipment Hire Schedule.

**Insurance** means a policy of insurance as described under Clause 10, and specified in the Equipment Hire Schedule.

**Invoice** means a statement of fees and charges issued from time to time by the Owner to the Client for the amounts payable under this Agreement.

**Minimum End Date** means the estimated last date of the Hire Period as stated in the Equipment Hire Schedule.

**Minimum Use** means the minimum use that a Hired Item is deemed to be used each Minimum Use Period.

**Minimum Use Period** is calculated in accordance with clause 8 and means weekly, unless a different period is specified in the Equipment Hire Schedule as the minimum use period in which case it will be the period specified in the Equipment Hire Schedule.



**Notice** means a notification under clause 21.6.

**Other Property** means all present and after acquired rights and interest in land and any other property, rights and interests that is not Personal Property.

**Owner** means Southern Air Mobile Refrigeration ABN 19 688 157 108.

**Parties** mean the parties to this Agreement.

**Payment Period** means 30 days from the date specified on an invoice, or such longer period as the Owner has, in its discretion, specified to the Hirer in writing.

**Personal Property** means all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) and all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the party has rights.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and any associated or amending legislation or regulations.

**Security Holder** means any third party to whom the Owner has granted a Security Interest, charge or mortgage in the Hired Item or this Agreement.

**Security Interest** has the same meaning that is given in the PPSA.

**Service Information** means any information pertaining to the condition of the Hired Item that has been developed by the Hirer. This includes oil sampling information, track and/or other condition monitoring inspections and reports, daily checklists and downtime logs and other information that may be used from time to time.

**Terms and Conditions** means these terms and conditions.

**Unit Hire Rate for Weekly Utilisation** is defined in the Equipment Hire Schedule and is the Hire Rate that is applicable for the hours worked by the Hired Item. The hours worked is the greater of the Minimum Use or actual hours worked.

## 2. INTERPRETATION

In this Agreement, unless the context indicates a contrary intention:

- 2.1. words denoting the singular number include the plural and vice versa;
- 2.2. words denoting individuals include corporations and vice versa;
- 2.3. a reference to any party to this Agreement includes their executors, administrators, successors and permitted assigns including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- 2.4. this Agreement will, if the Client comprises more than one person, bind such persons jointly and severally;
- 2.5. headings are for convenience only, and do not affect interpretation;
- 2.6. references to clause and sub-clauses are references to clauses and sub-clauses in this Agreement;
- 2.7. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 2.8. the word "includes" in any form is not a word of limitation;
- 2.9. a reference to this Agreement includes any subsequent variation of this Agreement;
- 2.10. time is of the essence.

## 3. HIRE PERIOD

- 3.1. The Owner agrees to hire the Hired Item to the Client on the terms and conditions set out in the Agreement for the duration specified in the Equipment Hire Schedule, and any extension that may be agreed between the Owner and the Client, or as may be extended by operation of these Terms and Conditions.
- 3.2. The Hire Period will commence from the time being the earlier of:
  - a) when the Hired Item leaves the Owner's premises to be transported to the Hire Site, or
  - b) the Commencement Date, if any, set out in the Equipment Hire Schedule as being the date for commencement of the hire.
- 3.3. The Hire Period will cease either:
  - a) On the Minimum End Date; or



- b) the hire is terminated by either party in accordance with clause 11 hereof.
- 3.4. The Hire Period will include any time (up to a maximum of 30 weeks) that the Hired Item is inoperative due to loss or damage caused by the negligence or wrongful act or omission of the Client. However, if the Hired Item is irreparable, the Hire Period will cease when the Owner receives reimbursement equal to the insured value of the Hired Item.
- 3.5. Notwithstanding anything in this Agreement, if the Owner is unable to gain access to the Hired Item upon or after termination due to an act or omission of the Client, the Hire Period will continue at the Hire Rate until the Owner is provided with access to the Hired Item.
- 3.6. For the purposes of calculating the Hire Charge during the period to which an Invoice relates, the minimum charge will be that shown in the Equipment Hire Schedule. In the event of a hire ceasing part way through an invoice period where the Client is not in default of these Terms and Conditions, the minimum charge will be calculated on a pro rata basis.
- 3.7. The Client may extend the Hire Period in writing by way of a variation notice if agreed to by the Owner. The Hire Period can only be shortened or terminated in accordance with clause 11 or by written agreement between the parties.
- 4. DELIVERY AND REMOVAL OF HIRED ITEM**
- 4.1. Unless otherwise agreed between the Owner and the Client,
- 4.2. The Client will collect the Hired Item from the site nominated by the Owner at the Commencement of the Hire Period and return the Hired Item to:
- a) the collection site of the Owner; or
  - b) a site nominated by the Owner (provided the costs of demobilisation to the site nominated by the Owner are equal to or less than the costs of demobilisation to the Owner), at the end of the Hire Period.
- 4.3. If the Client requires the Owner to deliver or remove the Hired Item the Client must do all that is practicable to facilitate the delivery or removal, including ensuring that:
- a) the Hired Item is in an appropriate state and position for removal; and
  - b) the Owner has the requisite authorisation to enter the land.
- 4.4. If the Client requires the Owner to make delivery of the Hired Item specified in the Equipment Hire Schedule:
- a) the Client will ensure the Owner has the requisite authorisation to enter the relevant site; and
  - b) the Owner will use its best endeavours to have the Hired Item delivered on time, but the Owner will not be liable to the Client for late delivery, non-delivery or any loss or damage occasioned to the Client for such late or non-delivery.
- 5. FEES AND CHARGES**
- 5.1. The Owner will issue an Invoice to the Client after the completion of the Hire Period and at least monthly during the Hire Period.
- 5.2. The Hire Charge for the Hired Item is specified in the Equipment Hire Schedule.
- 5.3. The Client must pay to the Owner, within the Payment Period, the following amounts as stated on any Invoice:
- a) the Hire Charge; and
  - b) the Additional Costs; and
  - c) the cost of repairing any damage to the Hired Item, fair wear and tear (other than Defined Wear Items) excepted, which will include the cost of any parts and labour supplied by the Owner; and
  - d) the value of degradation in Defined Wear Items at the end of the Hire Period, which are not reinstated to the same condition and standard as those originally supplied with the Hired Item; and
  - e) the cost of replacing a Hired Item which is beyond repair due to an act or omission by the Client; and
  - f) the fee specified in the Equipment Hire Schedule for any Extras chosen by the Client if the Extras are lost, stolen or damaged; and
  - g) any other amounts that become owing by the Client under this Agreement; and
  - h) any costs and expenses incurred in the exercise or attempted exercise by the Owner of the Owner's rights under this Agreement,

- including collection agency fees and legal fees (calculated on a solicitor and own client basis);
- i) any interest on all amounts that may become due by the Client to the Owner under this Agreement, which are not paid by the end of the Payment Period, and such interest will accrue and be payable at the rate of 10 per cent per annum, calculated on daily balances and compounded monthly from the due date for payment until paid; and
  - j) all government charges and taxes relating to this Agreement or the payments to be made under it, including stamp duty, financial institutions duty and GST.
- 5.4. The Client must not withhold, or make deduction from, any payment under this Agreement due to;
- a) impaired operation or complete failure of the goods except to the extent it is caused by the negligence of the Owner;
  - b) an alleged set-off or counter claim by the Client;
  - c) any tax; or
  - d) any other reason.
- 5.5. For the avoidance of doubt, the Client is responsible for payment of the Hire Charge for both the Hire Period and any additional period until the Hired Item is in possession of the Owner or an alternative arrangement is agreed by the Owner.
- 6. WARRANTIES BY THE CLIENT**
- 6.1. The Client warrants that:
- a) the person signing this Agreement is properly authorised to bind the Client to this Agreement, and the person signing this Agreement separately warrants that they are duly authorised to bind the Client to this Agreement; and
  - b) if the Client is not a natural person, it has the power to enter into this Agreement and that the power has been exercised properly; and
  - c) if the Client is a trustee:
    - (i) the Client has been properly appointed as trustee of the trust; and
    - (ii) the Client has the power to enter into this Agreement under the relevant trust deed, and that the power has been exercised properly; and
- (iii) this Agreement is binding on the Client personally and in its capacity as trustee of the trust; and
  - (iv) the Client has the right to be indemnified out of the trust assets, in priority to the beneficiaries, for all liabilities that the Client incurs under this Agreement;
- d) this Agreement represents all the terms and conditions between the Parties, and that it has not entered into this Agreement in reliance on, or as a result of, any promise, representation, statement, conduct or inducement of any kind relating to any matter in connection this Agreement, whether explicit or implied, from the Owner; and
  - e) it is a mere bailee of the Hired Item, that the Hired Item always remains the property of the Owner and that any replacement parts, accessories or attachments to the Hired Item are or become the property of the Owner; and
  - f) to the extent permitted by law, the Client shall have no right or claim or cause of action against the Owner on account of any claim asserted or judgment obtained against the Client by any third party for any alleged breach of any condition or warranty contained in the Agreement or otherwise implied by law.
- 7. UNDERTAKINGS BY THE CLIENT**
- 7.1. The Client undertakes that it will:
- a) only use the Hired Item in accordance with this Agreement;
  - b) if specified in the Equipment Hire Schedule, service the Hired Item at minimum periods according to manufacturer specifications or to specific guidelines supplied by the Owner;
  - c) not deal with the title of the Hired Item, on-hire the Hired Item, or otherwise deal with the Hired Item in a manner inconsistent with the Client's position as bailee of the Hired Item, unless the Client obtains written consent from the Owner;
  - d) not part in any way with possession of the Hired Item, nor remove the Hired Item from the Hire Site, without the prior written consent of the Owner;

- e) advise the Owner of the precise location of the Hired Item, and promptly grant access to it, at the request of the Owner; and
- f) service and maintain the Hired Item to a standard of good repair and condition, fair wear and tear (other than Defined Wear Items) excepted, subject to any specific conditions as to service and maintenance set out in the Equipment Hire;
- g) supply at its own cost anything necessary for the operation, service and maintenance of the Hired Item consistent with manufacturer specifications, including fuel, oil, grease, parts, and tyres, unless the Equipment Hire Schedule specifies otherwise;
- h) provide for mobilisation and demobilisation of the Hired Item to and from the Hire Site, commissioning and decommissioning of the Hired Item at the hire Site at its cost, unless stated otherwise in the Equipment Hire Schedule;
- i) allow the Owner access to all Service Information gathered by the Hirer on the Hired Item. The Client agrees that the Owner has the right to this information, whether held by the Hirer or third parties on behalf of the Hirer;
- j) if the Hired Item is required to be registered or licensed by law, compensate the Owner for any cost, fees or charges associated with such registration or licensing, and then do all that is necessary to maintain the registration or licence for the Hire Period;
- k) immediately give Notice to the Owner if the Hired Item is lost, damaged or destroyed;
- l) accept full responsibility for the safe keeping of the Hired Item for the duration of the Hire Period and until the Hired Item is returned to the Owner's premises or other location nominated by the Owner; and
- m) if the Client is a trustee of a trust:
  - (i) comply with its duties as trustee;
  - (ii) not do anything that may result in the loss of its right of indemnity from the trust assets;
  - (iii) not re-settle, set aside or distribute any of the assets of the trust without the Owner's consent, so far as the trust deed allows; and
- (iv) ensure that any new trustee (if one is appointed despite the provisions above) is bound by this Agreement or any variation of this Agreement,
- n) comply with all the laws and regulations applicable to the use and operation of the Hired Item;
- o) not make any warranty to a third party about the performance of the Owner's obligations under this Agreement, or make an undertaking to a third party which requires that the Owner perform its obligations under this Agreement;
- p) at the end of the Hire Period:
  - (i) have the Hired Item in good working order and repair, fair wear and tear (other than Defined Wear Items) excepted or bear the costs for the Owner to repair the Hired Item to the original supplied condition, fair wear and tear (other than Defined Wear Items) excepted;
  - (ii) clean the Hired Item, refuel and refill lubricants, oils and coolant for services, reinstate all Defined Wear Items, to the same condition and standard as those originally supplied; and
  - (iii) pay to the Owner the amount charged by the Owner as being the Owner's bona fide and reasonable estimate of the value of the degradation of the Defined Wear Items, and in the event of dispute as to that amount, then the amount shall be determined by an independent party (nominated by the Owner) carrying out a business that includes the preparation of Condition Reports; and
  - (iv) promptly return the Hired Item to the Owner, or have it ready for removal by the Owner, with all accompanying materials or documents,
- q) be liable for all loss or damage to, or caused by, the Hired Item from the commencement of the Hire Period until the Hired Item is in the possession of the Owner at the conclusion of the Hire Period, fair wear and tear (other than Defined Wear Items) excepted.



## 8. LIABILITY AND INDEMNITY

- 8.1. The Client indemnifies the Owner against any liability or loss arising from, and any costs charges and expenses incurred in connection with:
- loss of or damage to or by the Hired Item during the Hire Period, including property damage, injury or death caused directly or indirectly by the Hired Item and specific consequential losses that the Owner has made the Client aware of;
  - any act or omission of the Client during the Hire Period, except to the extent caused by the negligence of the Owner; and
  - any breach of this Agreement including a delay in payment of money under this Agreement.
- 8.2. The Owner shall not be liable to the Client in contract, tort or otherwise for any loss or damage of whatsoever kind howsoever occasioned at any time, except to the extent caused by its own negligence.
- 8.3. The Client shall be responsible for any loss, damage, liability or cost caused by or to the Hired Item during the Hire Period, or caused by any act or omission of the Client during the Hire Period, except to the extent caused by the negligence of the Owner.
- 8.4. If the Owner receives an amount from the Client under clause 8.1, and subsequently receives an amount from the insurer for the same incident, the Owner shall reimburse the Client for the amount paid by the Client, less any money owing by the Client under this Agreement.
- 8.5. In a future hire transaction which is:
- subsequent to this Agreement but prior to any other written agreement being entered into between the Client and the Owner in respect of the future hire transaction; and
  - orally agreed between the Owner and the Client (in this clause referred to as the "**oral agreement**"), the Client hereby acknowledges that from the date that goods and/or services relating to the oral agreement are received by the Client, the Client shall be bound by these Terms and Conditions together with such other fair and equitable conditions that differ from these Terms and as may be necessary to account for the different goods and/or services provided under the oral agreement.
- 8.6. In the event that the circumstances under clause 8.5 occur, the Client and the Owner agree to promptly execute a written agreement reflecting the terms of the relevant agreement.

## 9. DAMAGE WAIVER FEE

- 9.1 The Client may elect to pay a fee for loss, theft or damage of the Hire Item ("**Damage Waiver Fee**") or obtain Insurance for the Hire Item.
- 9.2 Subject to this clause 9.1, where the Client elects to pay the Damage Waiver Fee, the Owner agrees to limit the Client's liability for loss, theft or damage to the Hire Item during the Hire Period if:
- The Client submits to the Owner within 5 Business Days:
    - a written Police report of the loss or damage to the Hire Item (unless the Owner provides written confirmation that such report is not required); and
    - any other written or photographic evidence requested by the Owner (which may include sworn statements and statutory declarations), and
  - The Client pays to the Owner the Damage Waiver excess which is the greater of:
    - \$750 per item of Hire Item (or the actual cost of replacement or repair if less than \$750); or
    - the amount equal to 100% of the cost of the repairs (if the Hire Item can be repaired); or
    - the amount equal to 100% of the new replacement cost of the Hire Item (if the Hire Item is lost, stolen or damaged beyond repair).
- 9.3 The Damage Waiver Fee will be automatically added to the Hire Charges and will appear on the invoice issued to the Client.
- 9.4 Even if the Client pays the Damage Waiver Fee, the Client is liable for and indemnifies the Owner for all loss and damage to the Hire Item if:
- the Client has paid the Damage Waiver Fee after the loss or damage occurred;
  - the Owner reasonably believes that the Client failed to take reasonable precautions to protect and secure the Hire Item;
  - The loss or damage is:

- (i) to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
  - (ii) glass, including breakage;
  - (iii) caused by vandalism, including graffiti on the Hire Item;
  - (iv) to Hire Item's paintwork; or
  - (v) due to wrongful conversion of the Hire Item or any components of the Hire Item,
- d) The loss or damage was caused, or contributed to, by:
- (i) a breach of this Agreement or an act or omission of the Client;
  - (ii) the use of the Hire Item in violation of any laws or regulations or contrary to the Owner's or the manufacturer's instructions;
  - (iii) a lack of, or faulty lubrication or general servicing of the Hire Item;
  - (iv) the misuse, abuser, the overloading of or incorrect loading of the Hire Item or any of its components;
  - (v) the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
  - (vi) an exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc; or
  - (vii) the transport of the Hire Item, except where transported by the Owner.

## 10. INSURANCE

- 10.1 If the Client elects not to pay the Damage Waiver Fee, it must take out and maintain the Insurance, which must cover loss or damage to the Hire Item during the Hire Period for not less than the full new replacement cost of the Hire Item.
- 10.2 Evidence in the form of a certificate of currency for the policy and any renewal must be given to the Owner at its request and in any event no later than 7 days after the expiry date of the previous Certificate of Currency (where applicable).

## 11. STATUTORY GUARANTEES

- 11.1 Clauses 11.2 and 11.3 only apply if the Client is deemed a "Consumer" for the purposes of section 3 of the Australian Consumer Law ("ACL").
- 11.2 The Owner's Hire Item comes with guarantees that cannot be excluded under the ACL. The Client is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Client is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11.3 To the extent The Owner's Equipment is not of a kind ordinarily acquired for personal, domestic or household use or consumption, The Owner may limit its liability to repair or replacement of the Equipment or the payment of the cost of repairing or replacing the Equipment, or supplying services again or payment of the cost of supplying services again, in accordance with section 64A of the Australian Consumer Law.

## 12. GST

- 12.1 Any reference in this clause to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined in the GST Law.
- 12.2 Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply ("**GST Exclusive Consideration**") except as provided under this clause.
- 12.3 Any amount referred to in this Agreement (other than an amount referred to in clause 12.8, which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 12.4 To the extent that GST is payable in respect of any supply made by a party ("**GST Supplier**") under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable)



- multiplied by the rate at which GST is imposed in respect of the supply.
- 12.5 The recipient must pay the additional amount payable under clause 12.4 above to the GST Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- 12.6 The GST Supplier must issue to the recipient, before the time of payment of the consideration for the supply, an invoice that constitutes a tax invoice under the GST Law, that will, where applicable, enable the recipient to claim any tax credits for the GST in respect of supplies to which the invoice relates, or at such other time as the parties agree.
- 12.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement, the GST Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under (v) above, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 12.8 If one of the parties to this Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 12.4 above.
- 13. CONDITION REPORT**
- 13.1 Before the Hire Period commences, or subsequently if the Parties agree, the Owner may provide a Condition Report to the Client within 14 days of receipt, it will be conclusive evidence of the matters that it contains.
- 13.2 The Owner may make a Condition Report on the Hired Item at the end of the Hire Period, and give it to the Client. If the Condition Report is not disputed by the Client within 14 days of receipt, it will be conclusive evidence of the matters that it contains.
- 13.3 If the Hire Period exceeds the Condition Report Period the Owner may make a Condition Report on the Hired Item at the end of each Condition Report Period. The Client must obtain the consent of all parties necessary to allow access to the Hire Item for the purposes of making a Condition Report.
- 13.4 In calculating the amount to charge the Client for any alteration in the condition of the Hired Item during the Hire Period, the Owner must:
- have reference to any Condition Report made under clauses 13.1, 13.2 and 13.3; and
  - in the absence of a Condition Report under clauses 13.1 and 13.2, fairly determine the alteration in the condition of the Hired Item. Such determination will be final, and beyond challenge by the Client.
- 13.5 The Hirer will rectify any defects outlined in a Condition Report made in accordance with clause 13.3 (within such reasonable time as the Owner may specify in writing, or in default of any time being specified then 28 days) or the Owner will invoice the expected cost of rectifying any defects shown in the interim Condition Report to the Client during the Hire Period.
- 13.6 If the rectification costs that are actually incurred by the Owner at the conclusion of the Hire Period differ from the amounts invoiced under clause 13.5 and paid by the Client, the Client shall pay to the Owner on demand any deficiency and the Owner shall reimburse the Client for any excess as the case may be.
- 13.7 If a Condition Report, or determination in accordance with clause 13.4(b), is disputed by the Client within the requisite timeframes and the parties cannot reach an agreement, an additional Condition Report must be completed by an independent party (nominated by the Owner) carrying out a business that includes the preparation of Condition Reports within 14 days.
- 13.8 The Client must pay for the costs of any Condition Report conducted and such a Condition Report will be conclusive evidence of the matters that it contains.



#### 14. GUARANTEES BY DIRECTORS AND OTHER SECURITY

- 14.1 If the Client is a company, the director(s) who sign any of the constituent parts of this Agreement (and if more than one, jointly and severally) guarantee to the Owner the due payment and performance of the obligations of the Client under the Agreement and indemnify the Owner for any loss suffered as a result of the Client's breach of the Agreement.
- 14.2 To better secure the obligations the Client to the Owner under this Agreement, the Client (and any directors bound to guarantee the obligations of the Client under (a) above) (herein called the "Chargor") hereby grants a Security Interest in their Personal Property and charges their Other Property by way of fixed charge in favour of the Owner with the due payment of all amounts that may become payable to the Owner under this Agreement.

#### 15 SECURITY OVER HIRED ITEM

- 15.1 Notwithstanding anything stated in clause 14.1 of this Agreement, the Client acknowledges and agrees, including for the benefit of any Security Holder as follows:
- a) the Owner may charge or mortgage or grant a Security Interest in (a "Security") its interest in this Agreement and/or the Hired Item in favour of a Security Holder without the Client's consent. The exercise of any rights by the Security Holder under a Security will not constitute a breach or default under this Agreement or otherwise entitle the Client to terminate, rescind or revoke this Agreement;
  - b) the Security Holder has a Security, including a purchase money security interest (as defined in the PPSA) in this Agreement and/or the Hired Item;
  - c) by entering into this Agreement, the Owner will be in breach of the Security, unless the Client agrees to the terms set out in this clause;
  - d) the exercise of any rights by the Security Holder under the agreement between the Security Holder and the Owner will not constitute a breach or default under this

- Agreement or otherwise entitle the Client to terminate, rescind or revoke this Agreement;
- e) the Client's rights in respect of Hired Item are expressly subject and subordinated to the rights of the Security Holder (whether arising under the Security, at law or otherwise);
  - f) if a Security becomes enforceable:
    - (i) the Owner may by notice to the Client terminate this Agreement and upon such notice the Client's right to possess and use the Hired Item automatically ceases and the Client must surrender possession and control of the Hired Item to the Security Holder or the Owner, notwithstanding that the Client may not be in breach or default of its obligations under this Agreement;
    - (ii) the Security Holder may enter any premises where any Hired Item is located to exercise any rights of the Owner or the Security Holder under any Security, this Agreement or at law including, if the need arises, the right to remove the Hired Item from the relevant premises;
    - (iii) the Client agrees to obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the Hired Item is located to enable the Security Holder and Owner to remove the Hired Item from the relevant premises.
  - g) if a repudiation, termination or event of default occurs under the agreement between the Security Holder and the Owner:
    - (i) the Security Holder may by notice to the Client terminate this Agreement (in accordance with the terms of this Agreement) and upon such notice the Client's right to possess and use the Hired Item automatically ceases and the Client must surrender possession and control of the Hired Item to the Security Holder, notwithstanding that the Client may not be in breach or default of its obligations under this Agreement;
    - (ii) the Security Holder may enter any premises where the Hired Item is located to exercise its rights under the agreement between the Security Holder and the

- Owner and the Owner's rights under this Agreement, including, if the need arises, the right to remove the Hired Item from the relevant premises; and
- (iii) the Client will obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the Hired Item is located to enable the Security Holder to inspect or take possession of the Hire Item.
- 15.2 If the Client does not comply with the provisions of this clause, the Security Holder may otherwise exercise enforcement rights under section 120 of the PPSA and take any other action under the PPSA it considers appropriate.
- 15.3 Nothing in this Agreement will in any way limit, reduce, vary or otherwise qualify the rights of a Security Holder under or in connection with any Security, any other document connected with any Security or any Hired Item and the Security Holder will be entitled to exercise all of its rights under or in respect of the Security to the same extent as if this Agreement had not been entered into
- 16. PPSA**
- 16.1 The Client acknowledges, for the benefit of the Owner, any of the Owner's related entities who may have rights in the Hired Item and any applicable Security Holder, that this Agreement constitutes a security agreement for the purposes of the PPSA and that the Client grants a Security Interest in favour of the Owner over:
- a) the Hired Item and all equipment previously supplied by the Owner to the Client (if any);
  - b) this Agreement and the Client's rights and obligations under this Agreement;
  - c) any proceeds (as defined in the PPSA) that arise from dealings with the Hired Item;
  - d) any further equipment or Hired Items that will be supplied in the future by the Owner to the Client; and
  - e) all of the personal property, both present and future, held by the Client which is charged in the Owner's favour.
- 16.2 The Client acknowledges that it has received value as at the commencement of the Hire Period and
- that the Security Interest has attached to the Hired Item upon obtaining possession of the Hired Item.
- 16.3 The Client has not agreed to postpone the time for attachment of the Security Interests arising under this Agreement.
- 16.4 The Client and Guarantor undertake:
- a) not to, without the prior written consent of the Owner, sell, lease, dispose of, create a Security Interest in, mortgage or part with possession of the Hired Item or any interest in the Hired Item (or purport or attempt to purport to do such a thing) or permit any lien over the Hired Item;
  - b) at the Owner's request, to promptly execute all documents and do anything required to register the Owner's Security Interest in the Hired Item;
  - c) not to change its name, address or contact details without providing the Owner with prior written notice;
  - d) not to issue a change demand without the prior written consent of the Owner;
  - e) to provide all original documents that relate to this Agreement (including the original thereof) to the Owner for the purpose of perfecting any Security Interest granted in favour of the Owner; and
  - f) without limiting any other right the Owner may have under this Agreement or by law, immediately to return the Hired Item if requested to do so by the Owner following any breach of this Agreement by the Client, including failure to pay amounts owing to the Owner or reimburse the Owner for the costs associated with repossessing the Hired Item plus.
- 16.5 The Client and the Owner must keep confidential the terms of this Agreement and any information which either of them may provide to each other, except where consented to by both parties and where such disclosure is required by law. The disclosure obligations contained in the PPSA do not override the restrictions on non-disclosure contained in this clause, to the extent permitted by law.
- 16.6 The Client must not:



- a) grant any further Security Interests in the Hired Item without the Owner's written consent;
  - b) lease, rent or hire the Hired Item out to any other party; and
  - c) allow another party to act as bailee or allow any other party to create any further Security Interest in the Hired Item.
- 16.7 The Owner is entitled to register a Security Interest over the proceeds of the Hired Item, which may include insurance policies obtained in accordance with this Agreement and any associated guarantees or indemnities.
- 16.8 Sections 95, 96, 117, 118, , 121(4), 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142, 143 of the PPSA do not apply to the obligations owed between the Owner and Client or Guarantor in accordance with this Agreement or any ancillary document based on this Agreement.
- 16.9 So far is permitted by law, the Client waives its rights:
- a) to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Hired Item;
  - b) to receive any notice required under the PPSA, including a notice that the Owner intends to sell the Hired Item or to retain the Hired Item on enforcement of the Security Interest granted to the Owner; and
  - c) where any other personal property or modifications become an accession (as defined in the PPSA) to the Hired Item, to claim for any damage to goods when the Owner removes the accession, to receive notice of removal of the accession or to apply to the court for an order concerning the removal of the accession.
- 18. TERMINATION**
- 18.1 Without prejudice to any other remedies the Owner may have against the Client, this Agreement may be terminated by the Owner:
- a) upon giving the Client twenty-eight (28) Days Notice of termination at any time during the Hire Period;
  - b) without Notice, if the Client engages in conduct which would enable a court to make an order against it for winding-up (if a company) or grant a creditor's petition (if an individual), or be wound-up, or go into voluntary administration, or if a liquidator or receiver or administrator of its assets or any of them is appointed, or if any court order or process is made against it in relation to any of its assets;
  - c) without Notice if the Client shall commit any material breach of this Agreement including failure to pay; or
  - d) without Notice if the Insurance over the Hired Item is allowed to lapse by the Client, or is cancelled by the insurer or the Client.
- 18.2 (b) If this Agreement is terminated by the Owner in accordance with clause 18.1(c), the Owner may, in its absolute discretion, issue an invoice for a Hire Charge calculated at the rate of Minimum Use for a period of 13 weeks, which represents the genuine loss of bargain, rental and business due to the Client's breach of this Agreement and such an invoice is payable within 30 days by the Client.
- 18.3 Without prejudice to any other remedies the Client may have against the Owner, this Agreement may be terminated by the Client:
- a) upon giving the Owner ninety (90) Days Notice of termination for convenience at any time during the Period of Hire, at which time the balance of minimum weekly hire for the Hire Period shall be applicable and payable as a final invoice;
  - b) without Notice, if the Owner engages in conduct which would enable a court to make an order against it for winding-up (if a company) or grant a creditor's petition (if an individual), or be wound-up, or go into voluntary administration, or if a liquidator or receiver or administrator of its assets or any of them is appointed, or if any court order or process is made against it in relation to any of its assets; or
  - c) without Notice if the Insurance over the Hired Item is allowed to lapse by the Owner.
- 18.4 Upon termination the Owner shall be entitled without Notice to take possession of the Hired Item. The Client is responsible for all costs incurred by the Owner in taking possession of the Hired Item in accordance with this clause.
- 18.5 The Hire Charge and any additional amounts that may be invoiced to the Client under this



Agreement continue to be payable to the Owner during the requisite notice period in clauses 18.1(a) and 18.3(a).

## 19. DISPUTE RESOLUTION

19.1 In the event that there is a dispute between the parties to this Agreement or the Client wishes to make a Claim, the Client must notify the Owner in writing of the reasons for the dispute or details of the Claim (including reference to any invoice) within 7 Business Days from the date the Claim or dispute arose (or date of invoice).

19.2 The Client acknowledges and agrees that failure to comply with the time frame for notification of any Claim or dispute will mean the Client is barred from raising any Claims or dispute with the Owner after that time period has passed.

19.3 Within 14 Business Days of notification of any dispute or Claim, representatives of both parties shall meet to endeavour to resolve the Claim or dispute.

19.4 If the Claim or dispute cannot be resolved, the chief executive officers of each party shall confer within 14 days of any meeting referred to in clause 19.4 to endeavour to resolve the Claim or dispute.

19.5 If the parties fail to resolve the Claim or dispute pursuant to this clause, and prior to commencing proceedings, the Claim or dispute must first be referred to arbitration and subject to the Institute of Arbitrators and Mediators Australia for the Conduct of Commercial Arbitration.

## 20. PRIVACY

20.1 The Owner may collect personal information about a Client and The Owner will treat this information in accordance with the National Privacy Principles.

20.2 The information may be used to provide services to the Client, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Client or third parties and for marketing and client relationship purposes.

20.3 If the Client does not provide all personal information required by the Owner, the Owner may not be able to hire the Hire Item or provide the associated services to the Client.

20.4 The Owner may disclose the Client's information to the Owner's service providers and contractors from time to time to help provide and market the Owner's services to the Client. Generally the Client has a right to access personal information The Owner holds about the Client.

20.5 The Client consents to and authorises the Owner to use and disclose the Client's personal information to any credit provider or credit reporting agency and to The Owner's service providers, contractors and affiliated companies from time to time to help The Owner's services to the Client.

## 21. ANCILLARY PROVISIONS

21.1 **Severability:** If any part of this Agreement becomes void or unenforceable for any reason then that part will be severed in respect only with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

21.2 **Governing Law and Jurisdiction:** This Agreement is governed by the laws of Western Australia and each party submits to the non-exclusive jurisdiction of that jurisdiction.

21.3 **Entire Agreement:** This Agreement comprises the entire agreement between the parties. No additional terms and conditions proposed by the Client apply to the hire of the Hire Item unless agreed in writing by the Owner.

21.4 **No Reliance:** The Client acknowledges that the Owner or any person on The Owner's behalf has not made any representation or inducement to the Client to enter into this Agreement and the Client has not relied on any representations or inducements except for those representations or inducements contained in this Agreement.

21.5 **Variation:** The Owner may at any time vary these Terms and Conditions of Hire which will come into effect 14 days after notice is given to the Client where possible by email or otherwise by notice through The Owner's website. Any other variation of this Agreement must be agreed in writing by the Owner and the Client.

21.6 **Notice:** Any notice, demand, termination procedure or other communication relating to this Agreement must be given by either:  
a) being personally served on a Party;



- b) being left at the Party's current address; or
- c) being sent to a Party's current address by pre-paid ordinary mail;
- d) facsimile to the Party's current number for service.

- 21.7 **Further Acts:** The Parties will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by any other party to carry out and effect the intent and purpose of this Agreement and to protect the Owner's rights in the Hired Item.
- 21.8 **Waiver:** Failure of the Owner to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of the Owner's rights or powers arising pursuant to this Agreement.
- 21.9 **Replacement Hired Item:** The terms and conditions listed in this Agreement shall apply equally and fully to any replacement or substituted Hired Item supplied during the Hire Period.
- 21.10 **Counterparts:** This Agreement may be executed in any number of counterparts, all of which taken together constitute one and the same document.

This Agreement may be executed by either of the Parties by duly executing a counterpart and forwarding a copy of the signed counterpart to the other party or the solicitors for the other party by facsimile transmission and this Agreement shall be deemed to have been executed by that party upon receipt of a transmission confirmation by the sender. The Client accepts the terms of this Agreement on delivery and/or commissioning of the Hired Item, whether the Agreement is signed or not.

- 21.11 **Assignment of Rights:** Subject to clause 14 hereof, the Client accepts that this agreement can be assigned by the Owner with written notice to the Client.
- 21.12 **Application of Hire Charge:** The Owner may, in its absolute discretion and at any time without demand or notice, apply any sum paid by the Client to any outstanding invoice, debt or other amount which remains payable by the Client to the Owner, whether under this Agreement or any other agreement.



## Equipment Hire Schedule

Item 1	Additional Costs	
Item 2	Agreement	
Item 3	Client	
Item 4	Condition Report Period	
Item 5	Extras	
Item 6	Hired Item	
Item 7	Hire Rate	
Item 8	Hire Site	
Item 9	Insurance	Elders Insurance Geographe Policy EKA 960926BPK in accordance with Clause 10.
Item 10	Minimum End Date	
Item 11	Minimum Use Period	
Item 12	Unit Hire Rate Weekly Utilisation	
Item 13	Hire Period	
Item 14	Commencement Date	
Item 15	Hire Charge	
Item 16	Special Conditions	



Executed as a Deed

Dated \_\_\_\_\_ day of \_\_\_\_\_ 2014

**EXECUTED BY** )  
 Southern Air Mobile Refrigeration )  
**(ABN 19 688 157 108)** )  
 )  
 in accordance with the Corporations Act:

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Director/Secretary

\_\_\_\_\_  
 Director/Secretary

**EXECUTED BY** )  
 )  
**(ACN )** )  
 in accordance with the Corporations Act: )

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Director/Secretary

\_\_\_\_\_  
 Director/Secretary



SIGNED by \_\_\_\_\_ )

in the presence of \_\_\_\_\_ )

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Full name of Witness**

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation

SIGNED by \_\_\_\_\_ )

in the presence of \_\_\_\_\_ )

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Full name of Witness**

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation