

## All Rubber Terms & Conditions – Hire and Sales

### 1) Sale or Hire

- a) All Rubber TMH
- b) sells the Sale Goods; or
- c) hires the Hire Goods, to the Customer subject to these Terms and Conditions and the Invoice (collectively the Agreement)

### 2) Payment

#### a) Consideration

In consideration for the Sale or Hire, the Customer must pay All Rubber TMH the Sale or Hire Cost (as applicable), which cost must be paid in accordance with this clause.

#### b) Quotes

All quotes issued by All Rubber TMH to the Customer for the Sale or Hire are valid for a period of 14 days from the date of issue.

#### c) Timing of payments

The timing of the payments for the Sale or Hire Costs are outlined in the Invoice.

#### d) GST

- i) GST is not included in the Sale or Hire Cost or in any other costs charged by All Rubber TMH under this Agreement. Such costs should be read as “plus any applicable GST” and are subject to change to take account of any GST imposed on supplies All Rubber TMH makes.
- ii) The Customer must pay any GST applicable on the Sale or Hire Cost or other costs charged by All Rubber TMH under this Agreement at the same time as making the payments which attract that GST.
- iii) The Customer must pay any GST applicable on the Sale or Hire Cost or other costs charged by All Rubber TMH under this Agreement at the same time as making the payments which attract that GST.
- iv) If All Rubber TMH is entitled to be reimbursed or indemnified for a Loss incurred in connection with this Agreement, then the amount of the reimbursement must be reduced by an amount equal to any input tax credit to which the party being reimbursed (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

#### e) Non-payment

In the event that the Customer does not make a payment under this Agreement within 5 Business Days of the time specified in the Invoice for when that payment must be made, All Rubber TMH may terminate this Agreement in accordance with clause 12(b).

### 3) Retention of Title

- a) All Rubber TMH will retain title to:
  - i) Sale Goods until all payments due by the Customer to All Rubber TMH are paid in full; and
  - ii) Hire Goods at all times, notwithstanding that risk in the Goods may have passed to the Customer.
- b) Until All Rubber TMH receives full payment for Sale Goods, and at all times for Hire Goods, the Customer must:
  - i) hold the Goods as bailee for All Rubber TMH;
  - ii) grant All Rubber TMH, including its personnel and agents, access to any premises where the Goods are situated (and must procure any such authorisation required from any third party) for the purpose of recovering such the Goods in the event on non-payment;

- iii) ensure that the Goods are stored so that they are clearly identifiable as the property of All Rubber TMH; and
- iv) not alter or change the Goods so as to change their quality or nature.

#### 4) Risk, delivery, installation and inspection

##### a) Risk

Risk of Loss to the Goods, or part of the Goods, will pass to the Customer upon delivery or collection of the Goods, or part of the Goods, to or by the Customer.

##### b) Delivery and installation

- i) Unless specifically included in the Invoice, the Sale or Hire Cost does not include the cost of delivery or installation of the Goods.
- ii) In the event that All Rubber TMH does deliver and/or install the Goods, and that cost is not specifically included in the Invoice, the Customer must pay any Delivery and Installation Costs at the same time as the Sale or Hire Cost.

##### c) Inspection

- i) The Customer must promptly inspect any Goods collected, delivered or installed and any defect or omission must be reported to All Rubber TMH within 10 Business Days.
- ii) If the Customer fails to give such notice, the Goods will be deemed to be in accordance with the Agreement and the Customer will be bound to accept and pay for the Goods.

#### 5) Returns and cancellations

##### a) Returns

- i) With the exception of warranty claims, any Sale Goods returned by the Customer will only be accepted by All Rubber TMH at its sole discretion if they:
  - (1) are returned within 10 Business Days of their delivery or collection;
  - (2) are undamaged and in their original condition;
  - (3) are not a special design or cut piece specifically ordered by the Customer;
  - (4) have not been added to, used, modified, varied or changed by any person other than All Rubber TMH; and
  - (5) are not sold as ex-rental, ex-demo, clearance stock or goods notified to the Customer as non-returnable.
- ii) In the event of Goods being returned in accordance with clause 12(c) will apply.
- iii) Any Hire Goods returned by the Customer prior to the end of the Hire Term will be subject to clause 6(i).

##### b) Cancellation

All Rubber TMH will only agree to the cancellation of an Order on request from the Customer where:

- i) the Customer requests cancellation of the Order prior to All Rubber TMH passing the Order to its supplier; or the Customer requests cancellation of an Order which has already been passed by All Rubber TMH to its supplier and the supplier agrees to cancel the Order, and, in either event, the Customer must pay any and all costs incurred by All Rubber TMH in relation to the cancellation of the Order.

#### 6) Hire Goods Terms

This clause 6 applies to any Hire Goods:

##### a) Quiet enjoyment

During the Hire Term, and subject to the terms of this Agreement, the Customer will have the right to quietly enjoy the use, benefit and operation of the Hire Goods, for the purposes set out in the Invoice, without interference from All Rubber TMH.

##### b) Use of Hire Goods

The Customer must (and must ensure that its officers, employees, agents and subcontractors):

- i) ensure only appropriately, authorised, trained, skilled and licensed people use the Hire Goods;

- ii) comply with all laws and obtain all consents and approvals (including environmental and site approvals) relevant to the use of the Hire Goods;
- iii) comply with all manuals or other directions relevant to the use of the Hire Goods;
- iv) only use the Hire Goods for the purpose for which they were intended; and
- v) not add to, modify, alter, vary or change the Hire Goods in any way without All Rubber TMH's prior written consent.

c) **Consumables**

The Customer is responsible for providing, or paying All Rubber TMH for the cost of, all consumables necessary for the use of the Hire Goods.

d) **Excessive use premium**

- i) All Hire Goods are to be returned to All Rubber TMH in the condition in which they were originally hired, with the exception of reasonable wear and tear.
- ii) If the Hire Goods are returned in a different condition from when they were hired, outside the scope of reasonable wear and tear, then the Customer will be responsible, at All Rubber TMH's sole discretion, for the cost of:
  - (1) fixing or repairing the Hire Goods to return them to the condition in which they were hired (with the exception of reasonable wear and tear); or
  - (2) replacing the Hire Goods in the event that the Hire Goods cannot be fixed or repaired to the condition in which they were hired (with the exception of reasonable wear and tear).

e) **Equipment breakdown**

In the event that the Hire Goods break down or become unsafe to use during the Hire Term, the Customer must:

- i) immediately stop using the Hire Goods and notify All Rubber TMH;
- ii) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Hire Goods; and
- iii) not repair or attempt to repair the Hire Goods without All Rubber TMH's prior written consent.

f) **Maintenance and Repairs**

- i) The Customer must at its own expense perform all Maintenance and Repairs and must provide all Maintenance and Repair Parts during the Hire Term.
- ii) If the Customer requires All Rubber TMH to source Maintenance and Repair Parts, the Contractor must pay for such Maintenance and Repair Parts and pay All Rubber TMH a fee of 10% in addition to the cost of those Maintenance and Repair Parts

g) **Insurance**

- i) The Customer must effect and maintain for the Hire Term the following insurances in respect of the use or possession of the Hire Goods:
  - (1) public liability insurance covering an amount not less than \$10 million per single occurrence which covers the Customer's rights, interests and liabilities to third parties for all Loss arising out of any injury to or death of any person or any loss of or damage to any property (including the Hire Goods) and includes All Rubber TMH as an insured;
  - (2) workers' compensation insurance, which must comply with the laws for the time being in force in Western Australia;
  - (3) third party motor vehicle liability insurance (in the event that the Hire Goods require or involve the use of motor vehicles); and
  - (4) any other insurances required by law in respect of the use or possession of the Hire Goods.
- ii) The Customer's insurances must:
  - (1) be with a reputable insurer;
  - (2) if it relates to public liability and if this is required by All Rubber TMH, specify that All Rubber TMH is a person to whom the insurance cover extends; and
  - (3) waive any right of subrogation the insurer may have against officers, employees and agents of All Rubber TMH.

#### h) Indemnity

The Customer must indemnify All Rubber TMH against any Loss arising out of:

- i) any claim made by a third party against the All Rubber TMH or the Customer; and
- ii) loss of (including as a result of theft) or damage to any property (including to the Hire Goods or any other property of All Rubber TMH) or injury to or death of any person, arising out of or in connection with a breach of this Agreement by the Customer or the Customer's use of the Hire Goods, except to the extent that such Loss was caused or contributed to by the negligent act or omission of All Rubber TMH.

#### i) Early returns

If the Customer wants to return the Hire Goods before the end of the Hire Term, the Customer will remain liable for the Hire Costs for the remainder of the Hire Term and clause 12(c) will apply.

#### j) Late returns

If the Customer returns the Hire Goods to All Rubber TMH after the end of the Hire Term, or after the expiry of any notice period for the return of the Hire Goods to All Rubber TMH, then the Customer will be charged for the Hire Goods, on a pro rata basis at a rate equivalent to the Hire Cost, until the Hire Goods are returned to All Rubber TMH.

### 7) Site

In the event that All Rubber TMH undertakes any work on the Site, then:

- i) the Customer indemnifies All Rubber TMH for any Loss suffered by All Rubber TMH or any All Rubber TMH personnel in relation to the presence of All Rubber TMH or All Rubber TMH's personnel at the Site;
- ii) the Customer must have insurance sufficient to cover the presence of All Rubber TMH and any All Rubber TMH personnel at the Site, including public and product liability insurance; and
- iii) it is the Customer's responsibility to provide All Rubber TMH and any All Rubber TMH personnel with relevant Occupational Health and Safety information and requirements regarding the Site.

### 8) Intellectual Property

- a) The Customer acknowledges that:
  - i) there are Intellectual Property rights in the Goods;
  - ii) the Intellectual Property rights in the Goods are owned by All Rubber TMH or third parties; and
  - iii) nothing in this Agreement provides the Customer with any Intellectual Property rights in relation to the Goods.
- b) The Customer must not, and must ensure that its personnel do not, use, reproduce or disclose any Intellectual Property in the Goods without All Rubber TMH's prior written consent.
- c) The Customer indemnifies All Rubber TMH against all Loss that All Rubber TMH suffers or incurs as a result of actions by the Customer which are in breach of this clause 8.
- d) The Customer must promptly inform All Rubber TMH of all breaches, potential breaches, claims or potential claims in relation to the intellectual Property in the Goods.

### 9) Warranties

- a) Except for those implied terms or warranties that are imposed by statute that are mandatory and cannot be excluded, All Rubber TMH gives no further warranties to the Customer and all other terms, conditions, warranties, stipulations or other statements whatsoever, whether express or implied, by statute or common law, or otherwise howsoever, are expressly excluded.
- b) Notwithstanding anything else in this Agreement, where any statute implies any terms or warranty into this Agreement, and that statute avoids or prohibits provisions in a contract excluding or modifying that term or warranty (except in certain cases), that term or warranty will be deemed to be included in this Agreement, but the liability of All Rubber TMH and its affiliates respectively for breach of that term will be limited to, so far as permitted by that statute, in one or more ways (at All Rubber TMH's option) permitted by section 68A(1) of the *Trade Practices Act 1974* (Cth), section 35(1) of the *Fair Trading Act 1987* (WA) or any other similar provision contained within any other like statute.

- c) To the extent that the Goods incorporate any third-party manufacture warranty, All Rubber TMH will, wherever practicable, ensure that such warranty is passed to the Customer.

## 10) Limitation and apportionment of liability

### a) Limitation of liability

- i) All Rubber TMH is not liable for any Loss which the Customer or any other person suffers as a result of:
  - (1) any event of Force Majeure; or
  - (2) any Consequential Loss of any nature however arising (including but not limited to negligence), and, in any event, All Rubber TMH's aggregate liability arising out of or in connection with this Agreement, however arising (including negligence) is limited to an amount equal to the aggregate Sale or Hire Cost actually received by All Rubber TMH.

### b) Apportionment of liability

To the extent permitted by law, All Rubber TMH is not liable for any Loss suffered by the Customer to the extent that such Loss is attributable to fault, negligence or lack of care on the Customer's part or on the part of any person for whom the Customer is responsible.

## 11) Force Majeure

Where an event of Force Majeure prevents or delays the performance of any obligation under this Agreement (other than the obligations to pay money), that obligation is suspended for as long as the event of Force Majeure continues.

## 12) Termination

### a) Customer right to terminate

The Customer has no right to terminate this Agreement, with the exception of:

- i) its limited right to return the Sale Goods under clause 5(a)(i)); and
- ii) the return of Hire Goods under clause 6(i). b.

### b) All Rubber TMH right to terminate

All Rubber TMH may terminate this Agreement with respect to:

- i) Sale Goods in the event that any amount payable by the Customer under this Agreement is not paid within 5 Business Days of the due date; and
- ii) Hire Goods in the event that:
  - (1) the Customer breaches this Agreement and such breach is not rectified within 5 Business Days of All Rubber TMH providing notice of the breach;
  - (2) the Customer suffers an Insolvency Event; or
  - (3) any amount payable by the Customer under this Agreement is not paid within 5 Business Days of the due date, upon giving the Customer 5 Business Days notice.

### c) Effect of termination

In the event that the Customer or All Rubber TMH. exercise their right to terminate this Agreement, or if the Customer returns the Goods in accordance with clauses 5(a) or 6(i), then the Customer must, within 10 Business Days, return the relevant Goods to All Rubber TMH and:

- i) in the case of Sale Goods, the Customer must pay All Rubber TMH a restocking fee of 10% of the Sale Goods returned, plus freight costs; and
- ii) in the case of Hire Goods, All Rubber TMH will attempt to re-hire the Hire Goods, in which case the Customer will be liable for the Hire Costs payable up until the date of the commencement of the re-hire or until the end of the Hire Period, whichever is earlier.

## 13) General

### a) Notices

- i) Any notice or other communication under this Agreement, including a request, demand, claim, consent, approval or authority, must comply with the requirements of this clause.
- ii) All notices must be in legible writing and in English.
- iii) If the notice is sent to All Rubber TMH, it must be sent to the address on the Invoice, or otherwise advised to the Customer by notice. If the notice is sent to the Customer, it must be sent to the Customer's address in the Invoice, or otherwise advised to All Rubber TMH by notice.
- iv) If a notice is delivered in person, then it is regarded as being given by the sender and received by the addressee when delivered to the addressee.
- v) If a notice is delivered by post, then it is regarded as being given by the sender and received by the addressee 2 Business Days from and including the date of posting.
- vi) If a notice is delivered by facsimile transmission, then it is regarded as being given by the sender and received by the addressee, whether or not legibly received, when transmitted to the addressee.
- vii) Notwithstanding any other provision of this clause, if the delivery or receipt of any notice is on a day which is not a Business Day or is after 4.00pm (addressee's time), it is regarded as received on the following Business Day.

### b) Governing law

The laws of the state of Western Australia will apply to the Agreement and the parties consent to the non-exclusive jurisdiction of the Western Australian Courts & Tribunals.

### c) Prohibition and enforceability

- i) Any provision of, or the application of any provision of, this Agreement or any right of a party under this agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- ii) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- iii) Where a clause in this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

### d) Costs, Expenses and Disbursements

All costs, expenses or disbursements incurred by All Rubber TMH in the maintenance of the Customer's account including debt collection agency fees and legal costs arising as a result of the will be payable by the Customer upon demand by All Rubber.

### e) Variations

- i) A variation to the terms of this Agreement must be in writing and signed by the parties.
- ii) A variation to the terms of this Agreement, whether initiated by the Customer or required as a result of a change in the nature of the Sale or Hire, may result in an amendment to the Sale or Hire Cost. The Customer must pay any such additional cost in full.

### f) Waiver

No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### g) Assignment

The Customer must not assign any of its rights or obligations under this Agreement without All Rubber TMH's prior written consent.

### h) Entire agreement

This Agreement replaces all previous agreements in respect of its subject matter and contains the entire agreement between the parties and no terms and conditions in any purchase order issued by the Customer in respect of the Goods has any force or effect under this Agreement.

## 14) Definitions

The meanings of the terms used in these Terms and Conditions are set out below:

- a) **Agreement** means the agreement between All Rubber TMH and the Customer regarding the Sale or Hire, which agreement comprises of these Terms and Conditions and the Invoice.
- b) **Business Day** means any day excluding a Saturday, Sunday or public holiday in Perth, Western Australia.
- c) **Consequential Loss** means loss of profits, loss of revenue, loss of opportunity, loss of a chance and other similar losses.
- d) **Customer** means the Customer named in the Invoice.
- e) **Delivery and Installation Costs** means any costs associated with the delivery and installation of the Goods including but not limited to the cost of freight, insurance whilst in transit, personnel, preparing the Site (including moving equipment or excavation costs), the hire of tools and any other such costs.
- f) **Force Majeure** means any act outside of the reasonable control of a party, including an act of God; war, revolution or any other unlawful act against public order; a government restraint; an industrial dispute and adverse weather conditions.
- g) **Goods** means any Sale Goods or Hire Goods.
- h) **GST** means Goods and Services Tax.
- i) **Hire Goods** means goods which are hired by the Customer from All Rubber TMH.
- j) **Hire Term** means the term for which the Hire Goods will be hired by the Customer from All Rubber TMH, which term is outlined in the
- k) Invoice and may be terminated in accordance with this Agreement. k.
- l) **Insolvency Event** means any event whereby:
  - i) if the Customer is a company – a custodian, receiver, trustee, administrator or similar official is appointed to a business; a business suspends payment of its debts generally; a business is or becomes unable to pay its debts when they are due or is presumed to be insolvent under the *Corporations Act 2001* (Cth); or an application or order is made for a business' winding-up, dissolution or liquidation or a resolution is passed or any steps are taken to pass such a resolution; or
  - ii) if the Customer is a person, partnership or other entity – an act of bankruptcy.
- m) **Intellectual Property** means all intellectual and industrial property, whether registered or not, existing anywhere in the world including patents, designs, trade marks, plans, drawings, specifications, computations, files, copyright, trade secrets or confidential information.
- n) **Invoice** means the invoice to be issued by All Rubber TMH to the Customer in relation to the Sale or Hire.
- o) **Maintenance and Repairs** means that maintenance and repairs that are associated with the normal operation and use of the Hire Goods.
- p) **Maintenance and Repair Parts** means all parts necessary for the Maintenance and Repairs, including any personnel.
- q) **Loss** means any liability, loss, damage, cost or expense.
- r) **Order** means an order placed by the Customer with All Rubber TMH for the Sale or Hire. r.
- s) **Sale or Hire** means the sale or hire of the Goods under this Agreement.
- t) **Sale or Hire Cost** means the costs associated with the Sale or Hire, which costs are outlined in the Invoice.
- u) **Sale Goods** means goods which are sold by All Rubber TMH to the Customer.
- v) **Site** means any site owned, occupied, operated, used or made available by the Customer at which All Rubber TMH or its personnel are required to attend as a part of this Agreement.
- w) **Terms and Conditions** means these terms and conditions.
- x) **All Rubber TMH** means All Rubber TMH Pty Ltd (A.C.N. 141 271 178).