



HIRE AGREEMENT TERMS AND CONDITIONS

www.raywell.com.au

All hired Equipment is hired on the following Terms and Conditions which, together with Our Quotation, form the Hire Agreement.

1. Definitions and Interpretation

1.1 In this Hire Agreement:

ACL means the Australian Consumer Law as contained in the *Competition and Consumer Act 2010* as amended.

Default Event means if You do not comply with your obligations under this Hire Agreement or an Insolvency Event occurs with respect to You.

Charges means the Hire Charge or any other charge specified in the Quotation or these Terms and Conditions.

Claims means any claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever.

Equipment means the goods specified in the Quotation and any replacement Equipment together with related goods including parts and accessories for the Equipment.

Hire Agreement means the rental agreement for the hire of the Equipment to You comprised of the Quotation and these Terms and Conditions and '**this Agreement**' means the Hire Agreement as so constituted.

Hire Charge means the rates and charges stated in the Quotation payable by You for the hiring of the Equipment.

Hire Period means the period specified in the Quotation.

Hirer means any person, company or other entity who requests to hire Equipment from Us under the Hire Agreement.

Insolvency Event means the happening of any of the following events in relation to You:

- (a) you are unable to pay all your debts as and when they become due and payable or you have failed to comply with a statutory demand as provided in section 459F in the Corporations Act, or you are deemed to be unable to pay your debts under section 585 of the Corporations Act;
- (b) a meeting is convened to place you in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for you to be wound up;
- (d) the appointment of a controller (as defined in section 9 of the Corporations Act) of any of your assets;
- (e) you propose to enter into or you enter into any form of arrangement (formal or informal) with your creditors or any of them, including a deed of company arrangement; or
- (f) you become an insolvent under administration, as defined in section 9 of the Corporations Act.

Minimum Charge means the minimum charge for the hire of the Equipment specified in the Quotation.

Owner/We/Us/Our means R J & W A Hull Contracting Pty Ltd ACN 078 978 631 trading as Raywell Contracting and its legal successors and assigns.

PMSI means a 'purchase money security interest' as defined in the PPSA.

PPSA means the *Personal Property Securities Act 2009* as amended.

Quotation means a quotation given by Us to You detailing the Equipment, Hire Period, Hire Charge, Other Charges such Quotation being subject at all times to these Terms and Conditions.

Terms and Conditions means these terms and conditions that form part of the Hire Agreement.

Unforeseen Event means an event beyond Our control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages or inability to obtain shipping space or land transportation.

Weed and Seed Equipment means equipment that You require special cleaning of prior to the Hire Period for the purpose of complying with an industry standard.

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2. Hire

- 2.1 We shall hire the Equipment to You for the Hire Period in consideration for payment of the Hire Charge on the terms and conditions set out in this Hire Agreement.
- 2.2 You agree to return the Equipment to Us at the end of the hire.
- 2.3 You must complete and sign the Quotation prior to the Equipment being delivered or collected.
- 2.4 We may decline to hire Equipment to You in Our absolute discretion.
- 2.5 Any variation to the terms of the Hire Agreement must be agreed to in writing.

3. Hire Charge

- 3.1 Unless otherwise agreed, You shall pay the greater of the Hire Charge or the Minimum Charge to Us during the Hire Period.
- 3.2 The Hire Charge is based on the number of days the Equipment is in your possession or control.
- 3.3 If the Equipment breaks down, You must notify Us immediately. If the Equipment breaks down due to no fault on your part, the Hire Charge will be suspended for such period of time the Equipment is out of service. If the Equipment is repaired, you must pay Us the Hire Charge from the date the Equipment is repaired.
- 3.4 If, due to fault on your part, the Equipment breaks down, we reserve the right to charge you the Hire Charge during the entire Hire Period but we shall endeavour to promptly carry out any necessary repairs to the Equipment.
- 3.5 A minimum 5 day Hire Period and Hire Charge applies for Weed and Seed Equipment whether or not you stand the equipment down for any reason.
- 3.6 The Hire Charge applies on weekends and public holidays whether or not the Equipment is being used.

4. Other Charges

- 4.1 In addition to the Hire Charge, You agree to pay:
 - (a) fuel charge where the Equipment is returned to Us and the tank is empty or partially full;
 - (b) tax and government charges, duties, levies, and penalties (including any environmental levy) in relation to the hire of the Equipment;
 - (c) credit card processing charges;
 - (d) charges for delivery, installation and collection of the Equipment and any required permits, approvals or licenses;
 - (e) charges for the cleaning and repair of the Equipment if You do not return it to us in a condition satisfactory to Us; and
 - (f) debt recovery costs, if any.

5. Billing and Payment

- 5.1 You agree to pay the Hire Charge and any other charges or amounts that may be applicable within 30 days from the end of the month of the invoice, unless otherwise stated on the Quotation.
- 5.2 We may submit invoices to You at the commencement or completion of the Hire Period and periodically throughout the Hire Period.
- 5.3 Payment of all invoices shall be made by the method specified in the relevant invoice in cleared funds.
- 5.4 Where any amount becomes overdue all unpaid amounts will immediately become due and payable by You to Us.
- 5.5 If any Hire Charge or other cost payable by You to Us is not paid on the due date, We may charge you interest at the annual rate of ten percent (10%) per annum calculated daily on a compound basis on the outstanding amount of the Tax Invoice and Other Charges which amount constitutes a debt owed by You to Us. Interest shall be payable on demand.
- 5.6 You shall indemnify and keep the Owner indemnified for all expenses in recovering any unpaid amounts.

6. Property

- 6.1 Ownership and title of the Equipment will at all times remain with Us.
- 6.2 In no circumstances will the Equipment be deemed a fixture.
- 6.3 Your rights to use the Equipment are as a bailee only.
- 6.4 No person will be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with Our rights or these conditions.
- 6.5 Neither payment of compensation nor any other circumstance or event will amount to, constitute or result in any transfer of title in the property or interest in the Equipment from Us.
- 6.6 You indemnify Us against all resultant losses (including any consequential losses), costs, charges, damages and expenses incurred by Us as a result of a Default Event.

7. Collection and Delivery

- 7.1 At the commencement of the Hire Period You may:
 - (a) collect the Equipment from Our offices during normal working hours; or
 - (b) request that We deliver the Equipment to You.
- 7.2 On expiry of the Hire Period You must either:
 - (a) return the Equipment to Us at a time acceptable to Us during normal working hours; or
 - (b) notify Us that the Equipment is ready for collection.
- 7.3 We are not responsible for any delays in delivery or installation due to an Unforeseen Event.

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8. Inspections

- 8.1 You acknowledge that We may inspect the Equipment at any time and You shall provide Us with all assistance and co-operation necessary to facilitate such inspection of the Equipment.
- 8.2 You indemnify, keep indemnified and shall hold Us harmless against all Claims in relation to any action for trespass in the course of reasonably exercising Our right to inspect the Equipment.

9. Your Other Obligations

- 9.1 **Suitability:** You must, before delivery or collection, examine the Equipment to satisfy yourself as to its condition, suitability and fitness for the purpose for which You require the Equipment and must immediately notify Us if the Equipment is damaged or defective. It is Your responsibility to check that the Equipment meets any applicable standard for Weed and Seed Equipment including cleaning standards your industry may require.
- 9.2 **Transportation:** If you wish to collect the Equipment from Us, You must have an appropriate towing vehicle or method of transportation and must ensure the safe loading, securing and transporting of the Equipment is in accordance with all laws, industry guidelines and manufacturer's guidelines .
- 9.3 **Operation of Equipment:** You must:
- follow all manuals, operational and safety instructions relating to the Equipment;
 - not use the Equipment when damaged or unsafe;
 - ensure the Equipment is operated by a suitably qualified, trained and experienced operator;
 - hold all licences, permits and approvals necessary to hire and use the Equipment;
 - use the Equipment in a skilful, proper, safe and prudent manner and only for the purpose and within the capacity for which it was designed;
 - display and maintain all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Equipment;
 - ensure that no persons operating the Equipment are under the influence of drugs or alcohol; and
 - only use the Equipment for a lawful purpose and in accordance with all relevant laws and statutes including all relevant health and safety regulations.
- 9.4 **Location:** You must not transport the Equipment to another property or site without Our prior written permission.
- 9.5 **Safekeeping:** You must ensure that during the Hire Period the Equipment is stored safely and securely and is protected from theft, vandalism, seizure and damage.
- 9.6 **Cleaning and Maintenance:** You must:
- perform service and maintenance routines for the Equipment as per the manufacturer's service maintenance schedule;
 - at your own expense, clean, fuel, lubricate and keep and maintain the Equipment in good condition;
 - clean the Equipment thoroughly prior to the collection or return of the Equipment to Us or on the expiry of the Hire Period whichever is the latest date. If You fail to clean the Equipment properly then you agree we may clean the Equipment at your cost; and
 - not alter, make additions to, deface or erase any identifying mark, plate, trademark writing or number on or in the Equipment or interfere with or modify the Equipment in any other manner without Our consent.
- 9.7 **Assignment:** The Hire Agreement is personal to You accordingly you must not :
- assign or sub-contract your rights and obligations of this Agreement;
 - sell or offer for sale, assign, mortgage, pledge, lend or otherwise part with possession of the Equipment; or
 - allow any other person, company or other entity to use or have possession of the Equipment.
- Any attempt to resell, assign or transfer such rights shall result in immediate termination of the Hire Agreement, without liability to Us.

10. Break Down of Equipment

- 10.1 If the Equipment breaks down or becomes unsafe to use, You shall immediately:
- notify Us;
 - stop using the Equipment;
 - take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment; and
 - take all steps necessary to prevent the Equipment from sustaining any further damage;
 - not repair or attempt to repair the Equipment without Our consent.
- 10.2 If such breakdown or failure is caused by Your negligence or misuse of the Equipment or Your breach of any term of the Hire Agreement then:
- You shall be responsible for the entire cost of any repair of the Equipment and make good any breakdown or failure; and
 - the Hire Charge shall continue to be payable by You until the Equipment is fully repaired, made good and returned to Us.
- 10.3 If such breakdown or failure is caused due to a fault or defect in the Equipment then:

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- (a) we shall endeavour to repair the Equipment or provide substitute Equipment (if available to Us) as soon as reasonably practicable in the circumstances after notification from You; and
- (b) we will abate the Hire Charge until the Equipment is repaired and made good.

11. Loss, Theft or Damage to the Equipment

- 11.1 If the Equipment is lost, stolen or damaged, You must immediately notify Us of the details. Notification shall not absolve You from your obligations under this Agreement.
- 11.2 You are at all times responsible for the Equipment and any accessory and tools during the Hire Period.
- 11.3 If the Equipment is lost, stolen or damaged during the Hire Period You will be liable for:
 - (a) any costs incurred by Us in repairing or replacing the Equipment;
 - (b) Hire Charges for the Equipment until the Equipment is repaired, replaced or returned to Us;
 - (c) Our other costs howsoever incurred as a result of the damage to, theft or loss of the Equipment;
 - (d) Any insurance excesses or deductibles we may incur where not recoverable from any other person;
 - (e) Any damage or loss We may suffer or incur as a result of you doing any act, matter or thing which has the effect of invalidating or avoiding any policy of insurance we take out or effect for the Equipment

12. Release and Indemnity

- 12.1 Risk in the Equipment passes to You when you receive the Equipment and shall remain with You until You return the Equipment to Us.
- 12.2 You are deemed to be satisfied as to the suitability, condition and fitness for purpose of the Equipment upon receipt or collection of the Equipment. Other than as required by law, We do not warrant that the Equipment is suitable for Your purpose.
- 12.3 You indemnify and keep indemnified and hold Us harmless against all Claims which We may suffer or incur in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence relating to:
 - (a) Your use of the Equipment or any part thereof or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by You or Your agents, contractors, servants, workmen, Hirers or any other person or persons using the Equipment with Your consent or approval expressed or implied; and
 - (b) any breach of the Hire Agreement by You.

13. Termination of Hire

- 13.1 We may at any time without notice terminate the Hire Agreement due to a Default Event where upon You shall immediately attend to any of the obligations remaining under the Hire Agreement and make the Equipment available to Us for collection.
- 13.2 Upon termination of the Hire Agreement, We are entitled to take possession of the Equipment and for this purpose You irrevocably appoint Us as your agent and authorise and license Us to:
 - (a) enter upon any land or premises upon which the Equipment is situated or where We have any reason to believe that the Equipment may be situated; and
 - (b) disconnect, dismantle and remove the Equipment whether or not it is affixed to the land or the premises, connected to property or equipment not owned by Us, in use by You or any other person or containing property not owned by Us.
- 13.3 You release Us from and indemnify and hold Us harmless against any Claims arising from removal and collection of the Equipment in accordance with this clause.

14. PPS Lease

- 14.1 Terms in this clause have the same meanings given to those terms in the PPSA.
- 14.2 You acknowledge and agree:
 - (a) that this Agreement is a security agreement and a PPS Lease for the purpose of the PPSA and creates a security interest in all Equipment rented to You, as security for Your obligations to Us under this Agreement;
 - (b) to indemnify Us for any costs, commissions, fees and expenses, including legal expenses, in relation to the registration, maintenance, enforcement or discharge of a security interest;
 - (c) to do all such things, sign and or provide all such documents and or provide any further information as necessary and required to enable Us to acquire a perfected security interest in all Equipment supplied by Us to you and if applicable, a Purchase Money Security Interest;
 - (d) that where We have any rights in addition to those conferred by Chapter 4 of the PPSA, those rights will continue to apply;
 - (e) not to change your name, ACN, ABN or other identifying characteristics (including address, email, contact numbers or business practice) without our prior written consent;
 - (f) to provide within 2 days of receipt of Our written request, copies of all documents granting security interest registered of your personal property and any security interest perfected by possession or control within the meaning of the PPSA;
 - (g) to the extent permitted by the PPSA, you agree to contract out of all the provisions mentioned in section 115 of the PPSA other than section 123 (1) of the PPSA which applies to this Lease; and
 - (h) to waive the right to receive notices and a verification statement in relation to registration events under s157 of the PPSA.
- 14.3 You acknowledge and agree that this Hire Agreement is regarded as a 'PPS lease' for the purposes of the PPSA in the event that the Equipment is hired for a period of greater than 1 year or indefinitely.

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- 14.4 In the event that this Agreement is deemed a PPS lease as set out in clause 14.3 then:
- the security charge is also a PMSI and has super priority under the PPSA;
 - You consent to Our perfecting the security interest under the PPSA; and
 - You agree to do anything We reasonably ask to ensure that the security interest:
 - is enforceable, perfected and otherwise effected; and
 - has priority over all other security interests.
- 14.5 If this Agreement is not deemed a PPS lease then:
- You acknowledge that nothing in this Agreement is intended as an agreement to subordinate any security interest that We have in the Equipment in favour of any person;
 - You shall not, without Our prior written consent, permit any financing statement, to be registered in respect of the Equipment;
 - You must ensure that the holder of any other security interest enters into a priority agreement regulating the priority between the security interest under this Hire Agreement and any other security interest over the Equipment in a form that is acceptable to Us.
- 15. Australian Consumer Law**
- If the hiring of the Equipment under this Hire Agreement falls under the ACL then:
- clause 16.1 of this Hire Agreement shall not apply;
 - clause 12.2 of this Hire Agreement is excluded from this Agreement;
 - any provision of this Agreement that is deemed 'unfair' within the meaning of section 24 of the ACL shall be excluded to the extent it is of being unfair;
 - irrespective of any other provision of this Agreement, all applicable 'statutory guarantees' as defined in the ACL shall be deemed included in this Agreement; and
 - You are entitled to such remedies as may be applicable under the ACL.
- 16. Limitation of Liability**
- 16.1 At no time shall We be liable to You for:
- any direct or indirect inconvenience, loss or expense caused by the breakdown, or failure of, or damage to, the Equipment; or
 - any indirect or consequential losses or loss of profit incurred due to any breakdown, or failure of, or damage to, the Equipment; or
 - any loss or expense caused by any factor beyond Our reasonable control.
- 16.2 All express or implied warranties, guarantees, representations or conditions are excluded from the Hire Agreement to the full extent permissible by law.
- 17. Recovery of Equipment**
- If You are in breach of the Hire Agreement or the Hire Agreement has been terminated, We may take all steps necessary (including legal action) to recover the Equipment without prior notice to You.
- 18. Confidentiality**
- Neither You nor the Owner will disclose the particulars contained in the Hire Agreement to unrelated third parties unless required by law.
- 19. Privacy Notice**
- Your personal information is protected by law, including the Privacy Act 1988 and is collected by US for the assessment and administration of services and payments and for our business operations. This information is required to process your request. If you chose not provide certain personal information to US, we may not be able to provide you with the services you require. Your information may be used by us or given to other parties, including debt recovery agencies, solicitors and accountants, for the purpose of debt recovery or where you have agreed or it is required or authorised by law. You can obtain more information about the way in which We will manage your personal information, including our Privacy Policy and Website Privacy Policy at: www.raywell.com.au or by requesting a copy from Us.
- 20. Miscellaneous**
- 20.1 **Authority:** The person signing this Agreement for and on behalf of the hirer agrees with the Owner that he or she has the hirer's authority to make this Agreement and has all formal agreements and consents as may be required in order for it to enter into and be bound by the terms and provisions of the Hire Agreement, on the hirer's behalf and is empowered by the hirer to bind it to this Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person signing the Hire Agreement failing to have such power and/or authority.
- 20.2 Your accrued rights and obligations and the Owner's will continue and not be affected by your termination of the Hire Agreement. Termination of the hire of the Equipment will be without prejudice to any action already given to You or Owner in respect of any breach of the Hire Agreement by the other party.
- 20.3 **No Waiver:** Failure by the Owner to insist upon strict performance of any terms contained herein, or to exercise in whole or in part any right that it may have under this Hire Agreement at law, shall not be a waiver of any rights that the Owner may have and shall not be deemed to be a waiver of any rights that the Owner may have and shall not be deemed a waiver of any subsequent breach of any term in the Hire Agreement.
- 20.4 **Governing Law:** This Hire Agreement is governed by the laws of Western Australia and the parties submit irrevocably to the non-exclusive jurisdiction of the courts of the Western Australia.

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- 20.5 **Severability:** If any term, condition, covenant or stipulation of the Hire Agreement or the application thereof to any person or circumstances is or becomes invalid or unenforceable the remaining terms, covenants, conditions and stipulations are not affected thereby and each term, covenant, condition and stipulation of the Hire Agreement is valid and enforceable to the fullest extent permitted by law.
- 20.6 **Entire Agreement:** The covenants and agreements expressed or implied in the Hire Agreement comprise the whole of the agreement between the parties and, except as expressly or otherwise provided, supersede all prior agreements and understandings, whether verbal or otherwise, between the Owner and You in relation to the hire of the Equipment.

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