

## Brandis Hire Pty Ltd – Terms and Conditions of Hire

### It is agreed:

#### 1. Definitions and interpretation

##### 1.1 Definitions

Unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them.

**Account Customer** means a Customer who is specified as an Account Customer in the Hire Schedule with a valid account.

**Agreement** means these terms and conditions, including the Hire Schedule.

**Bond** means the bond specified in the Hire Schedule.

**Brandis** means Brandis Hire Pty Ltd ABN 43 612 478 672 of 3/42 Cessna Drive, Caboolture QLD 4510 and associated offices.

**Cash Customer** means a Customer who is not an Account Customer.

**Claims** has the meaning given to it in clause 4.3 and 4.4.

**Consequential Loss** means indirect, economic, special or consequential loss or damage, loss of revenue, loss of time, loss of goodwill, loss of anticipated savings, loss of opportunity, loss of business reputation or future reputation, loss of production and loss of profit.

**Customer** means the customer identified in the Hire Schedule.

**Date for Return** means the scheduled date for return as identified in the Hire Schedule, or the date on which the Agreement is terminated earlier under this Agreement, or such other date agreed by the parties under this Agreement.

**Delivery** means the transfer of possession of the Equipment to the Customer under this Agreement at the Facility Location or Delivery Location, as applicable.

**Delivery Location** means the delivery location specified in the Hire Schedule.

**Delivery Time** means, as specified in the Hire Schedule, either:

- (a) the time and date that the Customer takes delivery of the Equipment from Brandis at the Facility Location; or
- (b) the time and date that Brandis is required to deliver the Equipment to the Customer at the Delivery Location.

**Equipment** the equipment described in the Hire Schedule which Brandis hires to the Customer in accordance with this Agreement.

**Event of Default** has the meaning given to it in clause 6.3.

**Facility Location** means the facility location specified in the Hire Schedule.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of GST.

**Hire Commencement Time** means the time and date when:

- (c) For orders with shipping to the customer that has been organised and paid for by Brandis Hire, the time the Customer takes delivery or possession of the Equipment from an agreed collection or delivery location; or
- (d) For orders with shipping to the customer that has been organised and paid for by the customer, the time Brandis Hire dispatches the Equipment from its facility to be delivered to the Customer at the Delivery Location,
- (e) For orders when the customer collects from a Brandis Hire facility, the time the customer or customer representative collects the equipment from the Brandis Hire facility,

or in special circumstances such time and date as otherwise agreed in writing between the parties.

**Hire Fee** means the hire fee specified in the Hire Schedule, calculated in accordance with the relevant daily rate, multiplied by the actual number of 24 hour periods (or part thereof) the equipment is on hire based on the **Hire Commencement Time** and the **Hire Finish Time**

**Hire Finish Time** means the time and date when:

- (f) For orders with shipping from the customer back to Brandis Hire that has been organised and paid for by Brandis Hire, the time the Customer dispatches the equipment with the relevant freight service and the equipment is handed over to the freight provider; or
- (g) For orders with shipping from the customer back to Brandis Hire that has been organised and paid for by the customer, the time the equipment is delivered to the relevant Brandis Hire facility,
- (h) For orders when the customer returns to a Brandis Hire facility, the time the customer or customer representative returns the equipment to the relevant Brandis Hire facility,

or in special circumstances such time and date as otherwise agreed in writing between the parties.

**Hire Location** means the location specified in the Hire Schedule where the Customer will use the Equipment.

**Hire Period** means the period for which the Customer hires the Equipment under this Agreement commencing on the Hire Commencement Time and expiring on the Hire Finish Time.

**Long Term Hire** means a hire agreement offered on a fixed term for 3, 6, 12 months or other fixed period as agreed in writing.

**Personnel** means a party's officers, employees and agents.

**PPS Law** means the *Personal Property Securities Act 2009* (Cth).

**Repair or Replacement Costs** means any costs or expenses incurred by Brandis to:

- (a) repair any Equipment damaged during the Hire Period; or
- (b) replace any Equipment lost or stolen during the Hire Period.
- (c) Shipping of equipment for assessment and repair.

**Shipping Fees** means the Shipping Fees specified in the Hire Schedule.

**Special Conditions** means the Special Conditions specified in the Hire Schedule.

## 2. Hire, Delivery and return

- 2.1 (a) Brandis will hire the Equipment to the Customer for the Hire Period, and the Customer will hire the Equipment on the terms and conditions of this Agreement.
- (b) Brandis will retain ownership of and title to the Equipment at all times during the Hire Period.
- 2.2 (a) Brandis shall use its best endeavours to ensure the Equipment is ready and available at the Facility Location or Delivery Location, as applicable, at the Delivery Time, and shall only be liable for any delay in delivery of the Equipment that is directly caused by Brandis or its Personnel.
- (b) The Customer must take delivery and possession of the Equipment at the Facility Location or the Delivery Location, as applicable and at the Delivery Time. Delivery shall be acknowledged by written notice between the parties, and in the absence of such notice should be deemed to have occurred at the Hire Commencement Time.
- (c) Brandis may charge the Customer for Shipping Fees in connection with delivery and pick up of the Equipment from the Delivery Location. Shipping Fees must be paid in accordance with clause 3.
- (d) From such time as the Hire Period commences, the Customer will become solely responsible for all risks of loss of, or damage to, the Equipment until the latter of, as applicable:
  - (i) such time as the Customer has returned the Equipment to Brandis at the Facility Location; or
  - (ii) such time as Brandis has taken delivery of the Equipment from the Customer at the Delivery Location and subsequently returned the Equipment to the relevant Brandis facility.
- (e) If at any time during the Hire Period the Equipment is damaged, lost or stolen, the Customer must promptly report such damaged, lost or stolen Equipment to Brandis. The Customer will be liable for Repair or Replacement Costs in accordance with clause 4.3.
- 2.3 (a) The Customer must return the Equipment to Brandis at the Facility Location or Delivery Location, as applicable on the Date for Return and shall notify Brandis if, and as

soon as it is apparent that, the Customer may be unable to return the Equipment on the Date for Return.

- (b) The Customer may request an extension to the Date for Return, in advance of the Date for Return. Brandis may approve or refuse the extension in its absolute discretion. If Brandis approves the extension and:
  - (i) the Customer is an Account Customer, any additional fees and charges will be added to the order and invoiced to the Customer; or
  - (ii) the Customer is a Cash Customer, any additional fees and charges must be paid by the Customer before the extended term commences, and the Date for Return will be extended by Brandis accordingly.
- (c) If the Customer fails to return the Equipment by the Date for Return (as adjusted in accordance with clause 2.3(b) (if applicable)), the Customer will be liable for liquidated damages at the rate specified in the Hire Schedule.
- (d) Each party acknowledges that the liquidated damages amount, if any, specified in the Hire Schedule is a genuine and realistic pre-estimate of the loss and damage that Brandis will suffer as a result of a delay.
- 3. **Payment of Hire Fee, Bond and Shipping Fees**
  - (a) The Customer must pay Brandis the Hire Fee in accordance with the terms of this Agreement.
  - (b) If the Customer is a Cash Customer, the Customer must pay the Hire Fee and the Bond to Brandis no later than the Hire Commencement Time, and in any case before the Customer takes delivery of the Equipment.
  - (c) If the Customer is an Account Customer, Brandis will issue an invoice for the Hire Fee and the Bond to the Customer on completion of the Hire Period, unless the Hire Period is for a period of one month or greater, in which case Brandis will issue an invoice on the last day of each calendar month and also on completion of the Hire Period.
  - (d) Upon return of the Equipment and at the completion of the Hire Period:
    - (i) if the Customer is a Cash Customer, the Customer must pay Brandis the Shipping Fees and any additional reasonable costs or charges (including any liquidated damages incurred in accordance with clause 2.3(c)); or
    - (ii) if the Customer is an Account Customer, Brandis will invoice the Customer for the Shipping Fees and any additional reasonable costs or charges (including any liquidated damages incurred in accordance with clause 2.3(c)).
  - (e) Any invoice issued to an Account Customer by Brandis must be paid within 14 days of the date the invoice was issued unless otherwise agreed in writing.

- (f) Once the Equipment has been returned to relevant Brandis facility, upon payment by the Customer of all monies due and payable under this Agreement, and following inspection of the Equipment by Brandis, provided Brandis is satisfied that no damage, except for ordinary and reasonable wear and tear, has occurred to the Equipment, Brandis will refund the Bond to the Customer. If on inspection Brandis determines that the Equipment has been damaged, Brandis shall be entitled to retain such part of the Bond necessary to repair or replace the damaged Equipment.
- (g) If the Customer fails to pay any monies owing to Brandis under this Agreement (including liquidated damages), Brandis shall be entitled to retain all or part of the Bond on account of such monies.

**4. Customer's obligations**

- 4.1 (a) The Customer must ensure that:
- (i) the Equipment is operated, maintained, stored and transported: (A) in good operating order and condition; (B) in strict accordance with the manufacturer's and/or Brandis' recommended operation and maintenance manuals and procedures; (C) in accordance with good industry practice; and (D) in accordance with all applicable laws;
  - (ii) all persons operating the Equipment are: (A) instructed in its safe and proper use; (B) where required hold valid proof of training or are fully licenced to use the Equipment; and (C) are not affected by drugs and/or alcohol;
  - (iii) the Equipment is only used for its intended purpose;
  - (iv) it complies with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations;
  - (v) it exercises such reasonable care that an experienced and prudent operator of similar equipment to the Equipment would exercise when using or operating the Equipment; and
  - (vi) any damage to the Equipment is repaired and made good in accordance with good industry practice, unless otherwise directed by Brandis.
  - (vii) At any time where equipment is shipped from the customer to Brandis, all equipment and accessories are appropriately packed, secured to pallets (as appropriate), appropriately wrapped, and labelled with return shipping labels to ensure items remain together and adequately protected whilst in transit.
- (b) When using or operating the Equipment, the Customer must exercise such reasonable care that an experienced

- and prudent operator of similar equipment to the Equipment would exercise.
- (c) If, for any reason, the Equipment is returned to Brandis in a condition other than as delivered to the Customer, except for ordinary and reasonable wear and tear, the Customer must pay to Brandis, on demand, Brandis' reasonable costs and/or expenses for correction of such condition.
- (d) Brandis is not liable (either on a direct basis, or for Consequential Loss) and accepts no responsibility for:
  - (i) the failure of any Equipment;
  - (ii) the failure of any Equipment to perform to the standard specified in any performance figures produced by the manufacturer or Brandis; or
  - (iii) any cost and/or expense whatsoever relating to the maintenance and operation of the Equipment while in the possession and/or control of the Customer,
 except to the extent that such failure, cost or expense is directly caused or contributed to by the negligent, fraudulent or unlawful act, error or omission of Brandis or its Personnel, or any material breach of this Agreement by Brandis.

4.2 The Customer warrants that:

- (a) the Equipment will be used in accordance with any conditions outlined in the Hire Schedule;
- (b) the particulars in the Hire Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
- (c) the Customer holds a valid licence or permit which is required to use or operate the type of Equipment hired;
- (d) the Equipment will not be used for any illegal purpose;
- (e) the Customer's vehicle is suitable for towing the Equipment, if required;
- (f) the Customer will not, without prior written consent of Brandis, tamper with, repair or modify the Equipment in any way, or permit another to do so;
- (g) in taking delivery of the Equipment, the Customer agrees that the Equipment complies with its description, is of merchantable quality and is fit for the Customer's purpose;
- (h) the Customer agrees that the Equipment has been received by the Customer clean and in good working order; and
- (i) the Customer will not in any way part with possession of the Equipment, nor assign this Agreement, nor remove the Equipment from the State or Territory of the Hire Location without the prior approval of Brandis.

4.3 If any Equipment is damaged, lost or stolen during the Hire Period, Brandis may, in its absolute discretion:

- (a) direct the Customer to:

- (i) repair the Equipment such that the Equipment is in same condition as when the Equipment was Delivered to the Customer; or
- (ii) replace the Equipment with new equipment of the same make, model and specifications that is satisfactory to Brandis; or
- (b) invoice the Customer for the Repair or Replacement Costs of the Equipment.
- 4.4 If any Equipment is damaged or lost during return shipping because of poor packing, failure to attach shipping labels or similar customer inaction, Brandis may, in its absolute discretion:
- (a) direct the Customer to:
- (i) repair the Equipment such that the Equipment is in same condition as when the Equipment was Delivered to the Customer; or
- (ii) replace the Equipment with new equipment of the same make, model and specifications that is satisfactory to Brandis; or
- (b) invoice the Customer for the Repair or Replacement Costs of the Equipment.
- 4.5 The Customer agrees to indemnify and keep indemnified Brandis:
- (a) from and against all claims, demands, losses, damage, damages, penalties, fines, liabilities, taxes, costs and legal and other expenses (collectively the **Claims**) suffered or incurred by Brandis, including all Claims by third parties, in respect of:
- (i) loss of, or damage to, property (whether real or personal, and including the Equipment); and
- (ii) any personal injury to, or the death of any person;
- (b) for any loss or damage, howsoever caused, to the Equipment during the Hire Period; and
- (c) for any liquidated damages pursuant to this Agreement and any other loss, damage or damages suffered or incurred by Brandis due to the failure by the Customer to return the Equipment by the Date for Return (as may validly be extended pursuant to this Agreement), except to the extent that any such Claim, loss or damage is caused or contributed to by the negligent, fraudulent or unlawful act, error or omission of Brandis or its Personnel, or a material breach of this Agreement by Brandis.
- 4.6 The Customer must not sub-hire the Equipment or assign any rights under this Agreement to any other party without the prior written approval of Brandis.
- 5. Exclusion of liability**
- 5.1 Notwithstanding anything contained in this Agreement, Brandis has no liability (either on a direct basis or for Consequential Loss) for any Claims, suffered or incurred by the Customer, including all Claims by third parties, as a result of, or in any way connected with the hire, operation or use of the Equipment by the Customer, except to the extent such Claims are caused or contributed to by the negligent, fraudulent or unlawful act, error or omission of Brandis or its Personnel, or any material breach of this Agreement by Brandis.
- 5.2 Without limiting clause 4.5 of this Agreement, the Customer agrees that to the full extent permitted by law, including the Australian Consumer Law, other than as expressly set out in this Agreement no warranties are given by Brandis in respect of the Equipment. Any liability of Brandis pursuant to any warranty which cannot be excluded by law, including under the Australian Consumer Law, is limited to:
- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 5.3 Notwithstanding clauses 5.1 and 5.2, the maximum aggregate liability of Brandis under this Agreement (including in respect of any Claims, whether arising in tort (including negligence or otherwise), contract, under statute or otherwise) is limited to an amount equal to the Hire Fees actually paid to Brandis by the Customer under this Agreement.
- 5.4 Subject to clauses 5.1, 5.2 and 5.3, to the extent permitted by law, Brandis and its Personnel will not be liable to the Customer or any other person, whether under the law of contract, in tort (including in negligence), for breach of statutory duty or otherwise for any Consequential Loss.
- 6. Delays to Hire Commencement Time, Cancellation and Termination**
- 6.1 (a) The Customer may delay the hire commencement time, terminate this Agreement during the Hire Period by notice to Brandis, or return the Equipment earlier than the Date for Return.
- (b) For all **Long Term Hires**, the hire period and associated pricing will be locked in for the for the 3, 6, 12 month or other fixed period term as agreed upon acceptance of the order. Should any **Long Term Hire** period be shortened for any reason, the Customer agrees that the hire rates will be adjusted in accordance with the applicable and/or published daily rates for the actual hire duration and the customer will be required to pay an adjustment to the Hire Fee paid (**Adjustment**)
- (c) If the Customer is a Cash Customer or an Account Customer and terminates the Agreement under clause 6.1(a) , the Customer agrees that the daily hire rates will be adjusted in accordance with the applicable and/or published daily rates for the actual hire duration and the customer will be required to pay an adjustment to the Hire Fee paid (**Adjustment**).
- (d) The Adjustment Payable by the Customer will be equal to the actual Hire Fee paid to Brandis plus the amount



- the Customer would be liable to pay for the number of days the Equipment was actually hired calculated at the applicable day rate.
- (e) The Customer must pay the adjustment to Brandis in accordance with payment terms as outlined under clause 3.
- (f) If the Customer terminates the Agreement under clause 6.1(a), clauses 3(d) and 3(e) shall still apply upon return of the Equipment.
- (g) If a customer places an order and at any time thereafter cancels the agreement before commencement of the hire period, or delays the Hire Commencement Time, the following fees shall apply:
- (i) If cancellation notice or delay notice is received after the client has issued a Purchase order or other written acceptance of an order, a minimum 1 day hire fee shall apply.
- (ii) If cancellation notice or delay notice is received less than 48 hours prior to the nominated date for customer collection, or dispatch on shipping to the customer, a minimum 1 day hire fee shall apply.
- (iii) If cancellation notice or delay notice is received whilst equipment is in transit to a customer (either on third party shipping or via delivery/dropoff) a minimum 1 day hire fee shall apply plus the recovery of the associated forward and return shipping costs.
- (iv) In special circumstances, Brandis may at its absolute discretion, waive the hire fees under clause 6.1 (g) i and 6.1 (g) ii and 6.1 (g) iii as assessed by Brandis on a case by case basis.
- 6.2 In respect of any hiring, Brandis reserves the right to cancel the Agreement at any time prior to the commencement of the Hire Period. Such cancellation shall be on the basis that at its election Brandis may assist the Customer to locate substitute Equipment, but whether it does so or not Brandis shall not be liable to the Customer for any loss or damages whatsoever in the event of such cancellation.
- 6.3 The Customer commits an Event of Default if:
- (a) the Customer fails to perform or comply with any material obligations under this Agreement and, in the case of a failure that is capable of remedy, that failure is not remedied to the reasonable satisfaction of Brandis within 7 days of the date of notice from Brandis requiring the Customer to do so; or
- (b) the Customer becomes insolvent, is unable to pay its indebtedness as it falls due, goes into receivership or liquidation, or commits any other act of insolvency or bankruptcy, and upon termination, the Customer must immediately return the Equipment to Brandis and any monies owing under this Agreement will immediately become due and payable.
- 6.4 If the Customer commits an Event of Default, Brandis may, in its absolute discretion:
- (a) terminate this Agreement immediately, by giving written notice to the Customer;
- (b) sue for recovery of any damages or charges or loss suffered by Brandis;
- (c) cancel any insurances effective in respect of the Equipment hired; and/or
- (d) retake possession of the Equipment.
- 6.5 The Customer must pay all reasonable costs incurred by Brandis in repossessing Equipment due to an Event of Default.
- 6.6 In the case of repossession due to an Event of Default, the Customer agrees to grant Brandis permission to enter any premises where the Equipment is situated to disconnect, decommission and/or remove that Equipment.
- 7. PPS Law**
- 7.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the PPS Law.
- 7.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 7.3 Brandis may register its security interest as a PMSI (as that term is defined in the PPS Law). The Customer must do anything (such as obtaining consents and signing documents) which Brandis requires for the purposes of:
- (a) ensuring that Brandis' security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling Brandis to gain first priority (or any other priority agreed to by Brandis in writing) for its security interest; and
- (c) enabling Brandis to exercise rights in connection with the security interest.
- 7.4 Brandis may recover from the Customer the reasonable costs of doing anything under this clause, including but not limited to registration fees.
- 7.5 The rights of Brandis under this Agreement are in addition to and not in substitution for Brandis' rights under other law (including PPS Law) and Brandis may choose whether to exercise rights under this Agreement, and/or under other law, as it sees fit.
- 7.6 To the extent that Chapter 4 of the PPS Law applies to the security interest under this Agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Brandis to give notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Brandis to give notice to the Customer); section 129(2) and 129(3);



section 132(3)( d) (contents of statement of account after disposal); section 132( 4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

- 7.7 The following provisions of the PPS Law confer rights on Brandis: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The Customer agrees that in addition to those rights, Brandis shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this Agreement and the Customer agrees that Brandis may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 7.8 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 7.9 Brandis and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. This sub-clause is made solely for the purposes of allowing Brandis the benefit of section 275(6)(a) and Brandis shall not be liable to pay damages or any other compensation or be subject to injunction if Brandis breaches this sub-clause.

## 8. GST

- 8.1 Words used in this clause that are defined in the GST Law have the meaning given in that legislation.
- 8.2 Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST.
- 8.3 (a) If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under this agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

## 9. Disputes

- 9.1 Both Brandis and the Customer agree that any disputes arising from the hire and use of the Equipment (except in regard to payment of the Hire Fee) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited before litigation is pursued.

## 10. General

- 10.1 This Agreement will be subject to and construed and interpreted in accordance with the laws of Queensland and will be subject to the non-exclusive jurisdiction of the Courts of Queensland.
- 10.2 Brandis will comply with the *Privacy Act 1988* (Cth) in all dealings with the Customer. Brandis' privacy policy is available at [www.brandishire.com.au](http://www.brandishire.com.au).
- 10.3 All notices given in connection with this Agreement shall be given in English and in writing and may be given by personal delivery, certified mail, facsimile or any other customary means of communication addressed to the party's address as specified in this Agreement. Notices given pursuant to this Agreement shall be effective on the date on which received by the addressee.
- 10.4 The Customer may not assign, transfer, novate or subcontract this Agreement or any rights or obligations under this Agreement, without the prior written consent of Brandis.
- 10.5 The rights and obligations of the parties set out in clause 3, 4.5 and 5 survive the expiry or termination of this Agreement.
- 10.6 (a) This Agreement constitutes the entire agreement and understanding between the parties in relation to its subject matter and supersedes any previous written or oral agreements or understandings between the parties in relation to the subject matter of this Agreement.
- (b) This Agreement supersedes all conditions issued by Brandis and all terms and conditions issued by the Customer.
- (c) The Special Conditions shall be deemed to be incorporated into this Agreement and shall prevail in the event of any inconsistency with these terms and conditions.
- 10.7 Each party must pay its own costs arising out of the negotiation, preparation and execution of this Agreement.