

## TERMS AND CONDITIONS

### 1 Definitions

- 1.1 In this Agreement unless the contrary intention appears:
- 1.2 "ACL" means the Australian Consumer Law contained in the *Competition and Consumer Act 2001 (Cth)*.
- 1.3 "Agreement" means this Hire Agreement comprising the Purchase Order and these Terms and Conditions.
- 1.4 "Business Day" means a day that is not a Saturday, Sunday or Public Holiday at either the address of the Customer or the address of the Owner.
- 1.5 "Commencement Date" means the date of commencement of the Hire Period calculated according to clause 3.1.
- 1.6 "Cooling Off Period" has the meaning given to it in clause 2.2 of this Agreement.
- 1.7 "Customer" means the person listed as the Customer in the Purchase Order and includes the Customer's successors and permitted assigns.
- 1.8 "Equipment" means the equipment hired to the Customer as described in the Purchase Order and includes each or any replacement, altered or substitute part and all parts, components, instruments, appurtenances, accessories, and other equipment which may from time to time be incorporated or installed in or attached to the Equipment.
- 1.9 "Daily Rate" means the Rent calculated as a daily rate by dividing the sum of the Rent by the number of days comprised in each Rent payment cycle.
- 1.10 "Delivery Fee" means the fee for delivery of the Equipment to the Customer as stated in the Purchase Order.
- 1.11 "Hire Charges" means the total of the Rent and other fees and charges payable by the Customer under this Agreement.
- 1.12 "Hire Period" means the period of hire of the Equipment commencing on the Commencement Date and ending on the date this Agreement terminates.
- 1.13 "Insurable Event" means fire, theft and other commonly insurable events in relation to premises contents.
- 1.14 "Minimum Hire Period" means the minimum period of hire of the Equipment agreed by the Customer stated in the Purchase Order.
- 1.15 "Nominated Equipment Location" means the address specified by the Customer where the equipment is to be delivered as stated in the Purchase Order.
- 1.16 "Owner" means **Bulk Drinking Water Supplies WA Pty Ltd** and includes the Owner's successors and permitted assigns.
- 1.17 "Purchase Fee" means the replacement value of the Equipment in the event of failure to return or catastrophic damage or destruction of the Equipment calculated as the cost price to the Owner of acquiring replacement Equipment.
- 1.18 "Purchase Order" means, where this Agreement was purchased online, the online purchase information or checkout completed by the Customer or, where this Agreement was executed in person, the purchase order form executed by the Customer in the purchase of this Agreement.
- 1.19 "Repair Fee" means the Owner's incurred costs of any repair work plus 10%.
- 1.20 "Terms and Conditions" means these Terms and Conditions.
- 1.21 Interpretation
- 1.22 In this Agreement unless the contrary intention appears:
- 1.22.a a reference in this Agreement, to this Agreement or to another document includes any variation or replacement of any of them;
- 1.22.b a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of this Agreement;
- 1.22.c the singular includes the plural and vice versa;
- 1.22.d any reference to gender includes every other gender;
- 1.22.e the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- 1.22.f a reference to a party includes a reference to the persons, executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and permitted assignees;
- 1.22.g a reference to a clause is to a clause in this Agreement;
- 1.22.h headings and marginal notes are inserted for convenience and do not affect the interpretation of this Agreement.

### 2 COOLING OFF PERIOD

- 2.1 This clause 2 applies if this Agreement is an unsolicited consumer agreement within the meaning of Part 3-2 of the ACL, namely, this Agreement was negotiated by door-to-door sale or telemarketing sale, where the Customer did not request the visit or the telephone call.
- 2.2 The Customer may cancel this Agreement at any time on or before the date which is ten (10) Business Days after the day of the Customer's purchase of this Agreement (the "Cooling Off Period").
- 2.3 Cancellation may be made by the form provided to the Customer with this Agreement, or by email or post communication to the Owner, or via the Owner's website customer online portal, on or before 5pm on the last day of the Cooling Off Period.
- 2.4 The Customer acknowledges and agrees that the Owner will not deliver the Equipment to the Customer and will not accept payment from the Customer until the Cooling Off Period has expired.

### 3 HIRE PERIOD

- 3.1 The Hire Period commences on the day the Equipment is delivered to the Customer.
- 3.2 The Customer agrees to lease the Equipment from the Owner for the Minimum Hire Period. Any cancellation or termination of this Agreement by the Customer prior to the conclusion of the Minimum Hire Period is at the Owner's discretion and the Customer agrees that, except as otherwise agreed by the Owner, the Customer remains liable for the Delivery Fee and all Hire Charges payable for the Minimum Hire Period.
- 3.3 Following conclusion of the Minimum Hire Period, the Customer agrees to lease the Equipment from the Owner on a periodic monthly hire, which the Customer may terminate at any time by notice in writing to the Owner. This Agreement will terminate automatically on conclusion of the monthly cycle during which the Customer's termination is received.

### 4 PAYMENTS

- 4.1 The Customer must pay the Delivery Fee and any other fees and charges specified in the Purchase Order as up-front fees and charges at the time the Customer makes the Purchase Order, provided that, if the Cooling Off Period applies, the Delivery Fees and such other up-front charges shall be invoiced to the Customer on commencement of the Hire Period.
- 4.2 The Customer must pay the Rent for the Equipment **monthly** in advance commencing on the first day of the Hire Period.
- 4.3 Unless there is another supply agreement in place, the Customer must pay any other Hire Charges payable under this Agreement promptly when due and in any event **within thirty (30) days of invoice** by the Owner.
- 4.4 All outstanding payments will attract interest at rate of 10% per annum (calculated daily) until paid in full and the payment the has cleared in the bank account of the Owner.
- 4.5 All money payable by the Customer under this Agreement shall be paid at such place and in the manner as the Owner may direct in writing from time to time and shall be paid free and clear of any and all deductions, set-offs or counter-claims.
- 4.6 Where the Customer has completed a direct debit form with the Owner, the Customer must ensure that its banking details are maintained current. This Agreement is subject to the additional terms and conditions of the direct debit institution and the Customer agrees to pay any additional fee (including dishonour fees and transaction fees) charged by the direct debit institution which may be debited together with any monies due to the Owner.
- 4.7 Where the Customer has completed bank account or credit card details for the debiting of payments by the Owner under this Agreement, the Customer acknowledges and agrees that the Owner shall be entitled to debit from the same bank account or credit card any payments that may from time to time be due to the Owner under this Agreement on the due date, unless an alternative method of payment has been agreed.
- 4.8 The Customer's obligation to pay any moneys under this Agreement at the times and in the manner herein provided, and the Owner's rights in and to such moneys, shall be absolute and unconditional and shall not be affected by any defect in the Equipment or the condition, operation or fitness for use of the Equipment or any damage to or loss of the Equipment, or any lien or other encumbrance over or with respect to the Equipment or any defect in the Owner's title to the Equipment or any prohibition, interruption or other restriction of or against the Owner's use, operation or possession of the Equipment for any reason whatsoever, it being the intention of the parties that the moneys payable hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement
- 4.9 The total consideration payable by the Customer is not ascertainable as at the date of this Agreement, but may be calculated, by reference to the Delivery Fee as a one-off payment, plus the Hire Charges specified in the Purchase Order calculated for the duration of the Hire Period. The Customer acknowledges that this calculation does not take into account default, optional or unforeseen charges which may be payable should the Customer depart from the base terms of hire of the Equipment.

### 5 DELIVERY AND RETURN

- 5.1 The Owner will arrange delivery to the Customer in the **PERTH METROPOLITAN AREA**. The Equipment shall be delivered by way of courier or otherwise to the Nominated Equipment Location. The Customer must be present to receive and sign for the Equipment. Delivery outside of the Perth Metro Area shall be agreed upon separately to this agreement.
- 5.2 Instructions for installation and use of the Equipment will be supplied with delivery of the Equipment unless installation services have been agreed as part of the Purchase Order.
- 5.3 Within two (2) days after delivery of the Equipment, the Customer must:
  - 5.3.a inspect the Equipment to confirm it complies with the Equipment details & specifications as described in the Purchase Order; and
  - 5.3.b notify the Owner in writing of the detailed extent to which any of the Equipment does not comply or contains defects.
- 5.4 If the Customer does not notify the Owner accordingly, the Customer is taken to have unconditionally accepted the Equipment.
- 5.5 During the Hire Period, a replacement filter (if a replacement filter is required) it will be delivered by regular mail to the Nominated Equipment Location.
- 5.6 Unless otherwise agreed by the parties, the Customer must, on the last date of the Hire Period or earlier termination of this Agreement, make the Equipment available for collection by the Owner at the Nominated Equipment Location at such reasonable collection time (during business hours) advised by the Owner.
- 5.7 The Equipment must be returned in good order and condition as when first delivered to the Customer, except for fair wear and tear.
- 5.8 If the Customer fails to make the Equipment available for collection by the Owner when required under this Agreement, the Owner may:

- 5.8.a proceed to use all lawful means to recover possession of the Equipment including by entering upon any premises under the control of the Customer or any person in possession of the Equipment through the authority of the Customer and charge the Customer the Daily Rate for use of the Equipment until collection has been made; or
- 5.8.b in addition to or instead of sub-clause (a) of this clause, treat the Equipment as sold to the Customer and charge the Customer the Purchase Fee.
- 5.9 If it is necessary in the reasonable opinion of the Owner, the Customer will pay the Owner for the cleaning of the Equipment during or on expiry of the Hire Period, calculated as the Owner's incurred costs of cleaning plus 10%.

## 6 OWNERSHIP

- 6.1 The Customer acknowledges that the owner retains title to the equipment and that the Customer has rights to use the equipment as a mere bailee only. The hirer does not have any right to pledge the owner's credit in connection with the goods and agrees not to do so.
- 6.2 The Customer must not assign, mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, licence or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any security interest, lien or other encumbrance over, the Equipment or any part of them or any of the rights of the Customer to the Equipment or any part thereof, or any of the rights of the Customer under this Agreement, and shall keep the Equipment free from any distress, execution or other legal process without the Owner's prior written consent, which may be granted or refused on such terms and conditions as the Owner shall, in its absolute discretion, require.
- 6.3 The Customer shall ensure that the Owner and its employees, servants, agents and representatives and other persons lawfully acting under, through or on behalf of the Owner shall have access to the Equipment at all reasonable times for the purpose of inspection, maintenance or repossession of the Equipment as entitled under this Agreement.

## 7 USE OF EQUIPMENT

- 7.1 The Customer must keep the Equipment and all parts thereof under the Customer's personal control and must not allow any other person to have control or possession of the Equipment other than as permitted under this Agreement.
- 7.2 The Customer must operate and treat the Equipment with every reasonable care in accordance with the Owner's instructions and ensure the Equipment remains in good working order and condition as at the Commencement Date except for fair wear and tear.
- 7.3 The Customer must ensure that any notice required by the Owner to be displayed on the Equipment, including but not limited to ownership notices, safety stickers and signs, is not altered, removed, destroyed, damaged or defaced.
- 7.4 The Customer will comply with the provisions of all laws and regulations, including industry guidelines and standards, made and in force in relation to the use of the Equipment.
- 7.5 The Customer must take all reasonable and proper steps and care to prevent damage to the Equipment or its loss or destruction and in particular but without limiting the generality of the foregoing will not use the Equipment or permit it to be used for any unlawful purpose or under any circumstances amounting to or involving a breach of any statute order regulation or other statutory provision.

## 8 INSURANCE

- 8.1 The Customer is responsible for the insurance of the Equipment against Insurable Events as part of the Customer's contents insurance. If damage or destruction occurs to the Equipment as a result of an Insurable Event, it is agreed that:
  - 8.1.a this Agreement terminates by agreement of the parties on the date the Equipment was damaged or destroyed; and
  - 8.1.b the Customer must pay to the Owner the Purchase Fee within 30 days of invoice by the Owner.
- 8.2 The Customer is liable for the Rent and other Hire Charges payable under this Agreement until the Customer gives notice to the Owner of the damage or destruction.
- 8.3 The Customer must not permit or suffer any act or thing whereby the Owner's insurances or any of them may be prejudicially affected or invalidated or made void or voidable or the premium payable under any insurance policy may be increased.
- 8.4 Termination of this Agreement under clause 8.1 does not apply to the extent that the Insurable Event is caused or contributed to by an action of the Customer, its employees, agents, contractors or licensees and in such case damage or destruction of the Equipment will be deemed a default by the Customer of the terms of this Agreement.

## 9 MAINTENANCE AND REPAIRS

- 9.1 If any part of the Equipment breaks down or ceases to function at any time, the Customer must notify the Owner immediately of the cessation of operation. The Owner will rectify the fault as quickly as reasonably possible in the circumstances.
- 9.2 The Owner will not accept any charges for any work carried out on the Equipment which has not been authorised by the Owner and the Customer is expressly forbidden from carrying out or authorising the carrying out of any service work or repairs to the Equipment without the consent in writing of the Owner first obtained.

- 9.3 In the event that the Equipment malfunctions or breaks down the Owner may at its option deliver a replacement to the Nominated Equipment Location. Upon delivery, the Customer must provide the malfunctioning Equipment to the courier in exchange for the replacement Equipment. A pro-rata adjustment will be made to the Customer's Rent and other Hire Charges for any period of down-time.
- 9.4 If it is found that the Equipment is malfunctioning because of or has suffered damage whilst in the possession of the Customer, any repair or replacement is at the cost of the Customer and any failure to pay for repair or replacement will be regarded as a default on the part of the Customer of the terms of this Agreement. Without limiting the Owner's rights under this clause, the Owner may, on discovery of damage or destruction of the Equipment by the Customer, terminate this Agreement by notice to the Customer and charge the Customer the Purchase Fee.

## 10 RISK AND INDEMNITY

- 10.1 As and from delivery of the Equipment to the Nominated Equipment Location, the Customer shall assume all risk and liability for and in respect of the Equipment and for injuries to or death of persons and damage to property howsoever arising from the possession, use, maintenance, repair or storage of the Equipment during the Hire Period except as a result of any defect in the Equipment or any wilful or negligent act of the Owner, its employees, contractors and agents, subject to clause 10.3.
- 10.2 The Customer hereby indemnifies the Owner against all actions, claims, demands, losses, damages, cost and expenses which the Owner may sustain or incur or for which the Owner may become liable during the Hire Period or during such other time that the Customer remains in possession of the Equipment, in respect of or arising from:
- 10.2.a Loss, damage or injury from any cause to property or persons occasioned or contributed to by the Customer or any servant, agent or other person claiming through or under the Customer or arising from or in connection with the Customer's use or hiring of the Equipment; and
- 10.2.b Loss or damage occasioned to the Equipment while it is being so used by or on behalf of the Customer; except to the extent for which the Owner is liable under clause 10.1.
- 10.3 Subject to clause 11.3, but notwithstanding anything to the contrary in this Agreement:
- 10.3.a the total liability by the Owner to the Customer in respect of any breakdown or malfunction in the Equipment shall be limited to refund of any Hire Fees paid or payable for the period of down-time of the Equipment;
- 10.3.b the Customer shall not be entitled to recover from the Owner any consequential damages under this Agreement, including but not limited to any sum for delay, inconvenience or loss of any kind due to any accident, breakdown or defect in the Equipment or any other cause whatsoever.
- 10.4 The Customer agrees to pay to the Owner the full amount of any judgment recovered against the Owner by a third party and the full amount of any loss howsoever sustained by the Owner, due to a claim by a third party, arising out of or resulting from default or negligence of the Customer and any and all costs suffered by the Owner (including legal fees on a full indemnity basis) resulting from the Customer's breach of this Agreement.

## 11 RELIANCE AND WARRANTIES

- 11.1 The Customer hereby acknowledges that, in deciding to enter into this Agreement, the Customer has not relied in any way on the Owner's skill or judgement and that the Customer has satisfied itself as to the condition and suitability of the Equipment and its fitness for the Customer's purposes.
- 11.2 Subject to clause 11.3 if the Equipment is identified as second-hand goods then the Customer acknowledges:
- 11.2.a that the Equipment is second-hand; and
- 11.2.b that all conditions and warranties of fitness and suitability implied by the ACL and any other relevant statute are expressly negated.
- 11.3 Nothing in this Agreement is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other legislation which may not be excluded, restricted or modified by Agreement.

## 12 TERMINATION BY OWNER

- 12.1 The Owner may terminate this Agreement immediately on written notice to the Customer if:
- 12.1.a any instalment of the Rent or other payment of money payable under this Agreement remains unpaid for a period of five (5) days or more after its due date of payment;
- 12.1.b the Customer fails to observe or perform any other obligations, liability or other provision of this Agreement on its part to be observed or performed and such failure continues for a period of seven (7) days or more after notice in writing has been given by the Owner requiring the Customer to remedy the same;
- 12.1.c the Owner ascertains that this Agreement is unenforceable, void or voidable for any reason;
- 12.1.d the Customer, being a body corporate, becomes insolvent within the meaning of the *Corporations Act 2001* (Cth) or, being an individual, is declared bankrupt.
- 12.2 The Owner may also terminate this Agreement at any time and for any reason by no less than thirty (30) days notice to the Customer.
- 12.3 If this Agreement is terminated for any reason, the Hire Period ends on the day this Agreement ends and the Customer is obliged to make the Equipment available for collection by the Owner in accordance with the terms of this Agreement.
- 12.4 Termination is without prejudice to any rights or claims of the Owner arising before termination, including in respect of outstanding payments under this Agreement and, where the Owner has terminated this Agreement under clause 12.1, the Rent and any Hire Charges for the balance of the Minimum Hire Period (if any), which the Owner shall be entitled to collect as a liquidated debt payable on demand.

12.5 The rights of the Owner under this clause are in addition to any other rights which the Owner may have at law or in equity.

## 13 REPOSSESSION

- 13.1 The owner may retake possession of the equipment if the customer breaches any provision of this agreement, notwithstanding anything else herein contained.
- 13.2 If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession and, any reasonable costs incurred in repossessing the equipment.

## 14 GST

### Definitions

“GST”, “Input Tax Credit”, “Supply”, “Tax Invoice”, “Supplier”, “Recipient” and “Taxable Supply” have the meanings given to those expressions in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

- 14.1 Unless otherwise expressly stated, all amounts stated to be payable under this Agreement are exclusive of GST.
- 14.2 If GST is imposed on any supply made under or in accordance with this Agreement, the Recipient of a Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or before the Taxable Supply Payment of the additional amount will be made at the same time as payment for the Taxable Supply required to be made in accordance with this Agreement.
- 14.3 If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss, indemnity or outgoing (“reimbursable expense”) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
- 14.3.a the amount of the reimbursable expense net of any Input Tax Credits (if any) to which the other party is entitled in respect of any reimbursable expense; and
- 14.3.b if the other party’s recovery from the first party is a Taxable Supply, any GST payable in respect of that Supply.

## 15 PRIVACY AND INFORMATION

- 15.1 The Customer agrees to the Owner obtaining, using and disclosing personal information of the Customer for the express purposes of:
- 15.1.a accepting and processing the Customer’s Purchase Order and complying with its obligations under this Agreement;
- 15.1.b exercising the Owner’s rights under this Agreement; and
- 15.1.c contacting the Customer in connection with notifications to the Customer under this Agreement and for related purposes including product research and development, and marketing purposes.
- 15.2 The Customer may notify the Owner at any time that the Customer does not wish to receive marketing communications from the Owner.
- 15.3 The Customer agrees that the Owner may, but is not obliged to, make enquiries with third parties in connection with the verification of the Customer’s information and consideration of any credit arrangement with the Customer including by obtaining credit information from any credit reporting body.
- 15.4 The Owner will otherwise collect, maintain, store, use, disclose and ultimately destroy any personal information of the Customer in accordance with the Owner’s privacy policy and associated materials available on the Owner’s website.
- 15.5 By making a Purchase Order, the Customer acknowledges having had the opportunity to read and agrees to the terms of the Owner’s privacy policy and associated materials.

## 16 GENERAL

- 16.1 Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the parties under this Agreement.
- 16.2 If any provision of this Agreement is, or at any time becomes, prohibited by, or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable:
- 16.2.a it will be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement,
- 16.2.b the remaining provisions will, to the extent permitted by the relevant law, regulation or other condition, continue in full force and effect; and
- 16.2.c none of the terms or conditions of this Agreement, nor any act, matter or thing done under or by virtue of, or in connection with this Agreement will operate as a merger of any of the rights and remedies of the parties in or under this Agreement or otherwise. All obligations of the parties under this Agreement will survive the expiration or termination of this Agreement to the extent required for their full observance and performance.
- 16.3 Neither this Agreement or any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.
- 16.4 No failure or delay by a party to exercise any power, right or remedy under this Agreement will operate as a waiver of that power, right or remedy, nor will any single or partial exercise of any power, right or remedy under this Agreement preclude any other or future exercise of that power, right or remedy.

- 16.5 A party will only be taken to have waived any power, right or remedy under this Agreement to the extent that the power, right or remedy has been expressly waived in writing by that party, irrespective of any previous waiver of any other breach of the same or any other covenant or provision of this Agreement or any other agreement.
- 16.6 The powers, rights and remedies provided under this Agreement to the parties are not exclusive of any powers, rights and remedies provided at law or in equity unless expressly stated.

## 17 NOTICES

- 17.1 Any notice or other communication of any nature which must be given, served or made under or in connection with this Agreement:
- 17.1.a must be in writing in order to be valid;
- 17.1.b is sufficient if executed by the party giving, serving or making the same or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party;
- 17.1.c will be deemed to have been duly given, served or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent email to the email address of that person set out in this Agreement or as notified in writing by that person from time to time;
- 17.1.d will be deemed to be given, served or made:
- (i) (in the case of prepaid post) on the third day after the date of posting;
  - (ii) (in the case of email) on receipt of a transmission report confirming successful transmission, irrespective of the date or time at which the transmission is read or displayed, unless the sending party subsequently receives notification that the transmission was delayed or impaired; and
  - (iii) (in the case of delivery by hand) on delivery.

## 18 GOVERNING LAW

- 18.1 18.1 The law of Western Australia applies to this Agreement and to all matters including disputes arising under it and the parties submit to the exclusive jurisdiction of the Courts of Western Australia in the Perth CBD