

## Terms and Conditions

### **1 Hire of equipment**

- 1.1 The hiring of the equipment will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.
- 1.2 The hirer is entitled to use the equipment for the hire period. Any extension of the hire period must be agreed to by Wheelchairs & Stuff.
- 1.3 The hirer agrees to return the equipment to the address of Wheelchairs & Stuff on or before the end of the hire period as outlined in the Schedule and that failure to do so can be criminal theft and may be immediately reported to the police.

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### **2 Payment for rental**

- 2.1 The hirer agrees to pay Wheelchairs & Stuff the hire fee specified in the Schedule for the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.
- 2.2 The required fees must be paid to Wheelchairs & Stuff prior to or on the commencement date of the hire period. Account customers who do not pay their account on the terms agreed will be deemed to be in default. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed rental until return is complete.
- 2.3 Wheelchairs & Stuff may agree to make equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to Wheelchairs & Stuff any charges and expenses incurred in such delivery, installation and/or collection. Wheelchairs & Stuff will use its best endeavours to deliver the equipment by the agreed time but will not be liable to the hirer for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 2.4 A cancellation fee may be charged by Wheelchairs & Stuff where equipment has been reserved by booking and the hirer cancels the booking without reasonable notice or fails to take delivery of the equipment.
- 2.5 Wheelchairs & Stuff may charge the hirer a fee for accepting payment by credit card.
- 2.6 Wheelchairs & Stuff reserves the right at any time without notice to revise the hire charges.

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### **3 Use, operation and maintenance**

- 3.1 The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 3.2 The equipment shall not be used by anyone other than the hirer without the express permission of Wheelchairs & Stuff.
- 3.3 The hirer will ensure that all persons operating or erecting the equipment are instructed in its safe and proper use and where required hold valid proof of training.
- 3.4 The hirer agrees to operate, maintain, store and transport the equipment in a proper manner and where required strictly in accordance with any instruction provided by Wheelchairs & Stuff and with due care and diligence.
- 3.5 The hirer agrees that the equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by Wheelchairs & Stuff or posted on the equipment in regard to its operation, maintenance and storage.
- 3.6 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.

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- 3.7 The hirer shall ensure the equipment is returned to Wheelchairs & Stuff clean of all foreign matter or agrees to a reasonable cleaning fee being charged by Wheelchairs & Stuff.
- 3.8 The reasonable costs of fuel or other consumables provided by Wheelchairs & Stuff and used by the hirer are to be paid to Wheelchairs & Stuff at the completion date.

### **Hirer's warranties**

- 4.1 The hirer warrants that:
- (i) the equipment will be used in accordance with the conditions outlined in the Schedule;
  - (ii) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
  - (iii) the hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
  - (iv) the equipment will not be used for any illegal purpose;
  - (v) the hirer's vehicle is suitable for towing or transporting the equipment if required;
  - (vi) the hirer will not, without prior written consent of Wheelchairs & Stuff, tamper with, repair or modify the equipment in any way, or permit another to do so;
  - (vii) the hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.
  - (viii) the hirer agrees that the equipment has been received by the hirer clean and in good working order.
  - (ix) the hirer will not in any way part with possession of the equipment, nor assign this hire contract, nor remove the equipment from the State without the prior approval of Wheelchairs & Stuff.

### **Indemnity**

- 5.1 To the full extent permitted by law the hirer releases, discharges and indemnifies Wheelchairs & Stuff from all claims and demands on Wheelchairs & Stuff arising out of or consequent on the use or misuse of the equipment during the hire period.
- 5.2 Without limiting clause 6.1 of this agreement, the hirer agrees that to the full extent permitted by law, no warranties are given by Wheelchairs & Stuff in respect of the equipment. Any liability of Wheelchairs & Stuff pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the equipment or the cost of resupplying the equipment, at the discretion of Wheelchairs & Stuff.

### **Loss, damage or breakdown of plant and equipment**

- 6.1 The hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.
- 6.2 The hirer is liable for the payment of the new list price of any equipment not returned to Wheelchairs & Stuff.
- 6.3 If there is a breakdown or failure of the equipment the hirer shall notify Wheelchairs & Stuff immediately for the appropriate action to be taken.

7	Termination	
7.1	Without prejudice to any other remedies Wheelchairs & Stuff may have against the hirer and notwithstanding the period of hire specified in the contract, the hire agreement may be terminated by Wheelchairs & Stuff as follows;	13
(i)	Upon giving the hirer two days written notice of termination at any time during the period of hire	
(ii)	Without notice if the hirer has a winding-up petition presented against it, or be wound up, or go into voluntary liquidation, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.	
(iii)	Without notice if the hirer commits a breach of any part of this hire contract in accordance with Clause 13.5.	
8	Insurance	14
8.1	Wheelchairs & Stuff may maintain current insurance policies in respect of the equipment to its full insurable value. This insurance does not cover the hirer.	
9	Liability	
9.1	The hirer will assume all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair, storage or transport of the equipment.	15
10	Disclaimer	
10.1	To the extent permitted by law Wheelchairs & Stuff disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.	
11	Title to equipment	16
11.1	The hirer acknowledges that Wheelchairs & Stuff retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer agrees that the hirer has no rights to pledge Wheelchairs & Stuff's credit in connection with the equipment.	17
11.2	The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, the equipment.	
12	Repossession and remedies on default	
12.1	Wheelchairs & Stuff may retake possession of the equipment if the hirer breaches any provision of this agreement or does not pay their account in the time agreed, notwithstanding anything else herein contained.	
12.2	If repossession takes place, Wheelchairs & Stuff shall only charge the hire fee up to and including the time of repossession.	
12.3	All costs incurred by Wheelchairs & Stuff in repossessing due to a breach are to be paid by the hirer.	
12.4	In the case of repossession due to a breach of this agreement the hirer agrees to grant Wheelchairs & Stuff permission to enter any premises where the equipment listed in the Schedule is situated to disconnect, decommission and/or remove that equipment.	
12.5	In addition to Wheelchairs & Stuff's right to retake possession Wheelchairs & Stuff is entitled in its discretion, following any breach of any provision of this agreement by the hirer, to terminate this agreement and/or sue for recovery of any damages or charges or loss	

suffered by Wheelchairs & Stuff, and/or to cancel any insurances effective in respect of the equipment hired.

#### Completion of the hire period

- 13.1 The hire period is completed when the equipment has been returned to Wheelchairs & Stuff in the same condition as when it was hired:
- (i) on or by the date and time outlined in the Schedule, or
  - (ii) will be deemed completed on the date agreed for pick-up by Wheelchairs & Stuff.
- 13.2 Where pick-up is agreed Wheelchairs & Stuff will arrange to pick-up the equipment within a reasonable period after a request to do so and will issue the hirer with a pick-up number on request.
- 13.3 The hirer agrees to maintain the responsibility for the equipment whilst it is awaiting pick-up.

#### Non-merger

- 14.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

#### Severance

- 15.1 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

#### Governing law

- 16.1 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

#### Disputes

- 17.1 Both Wheelchairs & Stuff and the hirer agree that any disputes arising from the hire and use of the equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9998 2255) before litigation is pursued.

- 18 PPS law
- 18.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law).
- 18.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 18.3 Wheelchairs & Stuff may register its security interest as a PMSI. The Hirer must do anything (such as obtaining consents and signing documents) which Wheelchairs & Stuff requires for the purposes of:
- (a) ensuring that Wheelchairs & Stuff's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling Wheelchairs & Stuff to gain first priority (or any other priority agreed to be Wheelchairs & Stuff in writing) for its security interest; and
- 18.4 Enabling Wheelchairs & Stuff to exercise rights in connection with the security interest. 19 Wheelchairs & Stuff may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 18.5 The rights of Wheelchairs & Stuff under this document are in addition to and not in substitution for Wheelchairs & Stuff's rights under other law (including PPS Law) and Wheelchairs & Stuff may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 18.6 To the extent that Chapter 4 of the PPS 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 Wheelchairs & Stuff to give notice to the Hirer); 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 Wheelchairs & Stuff to give notice to the Hirer); 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).
- 18.7 The following provisions of the PPS Law confer rights on Wheelchairs & Stuff: 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 Hirer agrees that in addition to those rights, Wheelchairs & Stuff shall, if there is default by the Hirer, 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 document and the Hirer agrees that Wheelchairs & Stuff may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 18.8 The Hirer 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.
- 18.9 Wheelchairs & Stuff and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing Wheelchairs & Stuff the benefit of section 275(6)(a) and Wheelchairs & Stuff shall not be liable to pay damages or any other compensation or be subject to injunction if Wheelchairs & Stuff breaches this sub-clause.
- Security interests and sub-hire
- 19.1 The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the equipment other than with the express written consent of Wheelchairs & Stuff.
- 19.2 The Hirer must not lease, hire, bail or give possession ('sub-hire') of the equipment to anyone else unless Wheelchairs & Stuff (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Wheelchairs & Stuff and must be expressed to be subject to the rights of Wheelchairs & Stuff under this Agreement.
- 19.3 The Hirer may not vary a sub-hire without the prior written consent of Wheelchairs & Stuff (in its absolute discretion).
- 19.4 The Hirer must ensure that Wheelchairs & Stuff is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the equipment.
- 19.5 The Hirer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Hirer to gain (subject always to the rights of Wheelchairs & Stuff) first priority (or any other priority agreed to by Wheelchairs & Stuff in writing) for the security interest; and
- (c) enabling Wheelchairs & Stuff and Hirer to exercise their respective rights in connection with the security interest.
- 19.6 Wheelchairs & Stuff may recover from the Hirer the cost of doing anything under this clause, including registration fees.