

# TERMS AND CONDITIONS OF HIRE

## 1. Definitions

“**Agreement**” means this Goods Hire Agreement and includes any amendments made to it and any form of holding over under it.

“**Commencement Date**” means the date shown in the Schedule to this Agreement or, if no date is shown, the date on which the Goods are hired.

“**Expiry Date**” means the Expiry Date as shown in the Schedule to this Agreement or such earlier date if this Agreement is terminated.

“**Goods**” means the Goods shown on the front page of this Agreement, or as otherwise described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Owner to the Hirer, and include any and all Services, accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials, and substitute or replacement Goods.

“**Hirer**” means the Hirer shown on the front page of this Agreement and includes the Hirer’s executors, authorised representatives, transferees, assignees, liquidators, administrators, receivers, trustees and employees.

“**Owner**” means Spectrom Pty Ltd and includes its officers, employees, agents, successors and related parties.

“**PPS Act**” means the *Personal Property Securities Act 2009* (Cth)

“**Rental Period**” means the period from the Commencement Date until the Expiry Date.

“**Schedule**” means the schedule attached to this Agreement.

“**Services**” means any services provided by the Owner to the Hirer, including but not limited to any advice or recommendations touching or concerning the Goods.

## 2. Agreement

(a) The Owner agrees to rent the Goods to the Hirer for the Rental Period on the terms set out in this Agreement.

(b) If the Hirer continues to control and/or possess the Goods either without having signed a copy of this Agreement, or after the Expiry Date with the consent of the Owner:

- (i) it is taken to do so on a continuing basis pursuant to the terms and conditions of this Agreement (except for any changes which the Owner considers are necessary to make this Agreement operative); and
- (ii) either party may terminate this Agreement on 24 hours’ notice.

## 3. Hire Charges and Other Charges

(a) The Hirer will pay hire charges during the term at the rate and in the manner specified from the Commencement Date of the hire (without set off, counter claim, withholding or deductions) until;

- (i) The Goods are returned by the Hirer to the premises or the Owner, or
- (ii) The Hirer notifies the Owners’ hire controller that the Goods are ready for collection.

(b) In event of the Hirer requesting the Owner to transport the Goods to or from the Owner’s premises, the Hirer shall pay the Owner all charges and expenses incurred by the Owner in delivering, installing and/or collecting the Goods in addition to the hire charges.

(i) any costs or expenses reasonably incurred by the Owner in enforcing this Agreement as a result of the Hirer’s breach of the Agreement or in order to return the Goods to the same condition they were in at the Commencement Date (including but not limited to cleaning costs, repair costs, refuelling costs and legal costs).

(ii) Hire charges, delivery and collection charges, or other charges where applicable, are payable on strictly net cash 30 days basis unless otherwise specified.

(iii) The hiring is personal to the Hirer, and rights of the Hirer are not assignable to any person, persons or company whatsoever.

(iv) Hire rates stated are based on the following periods of hire and hours of usage:

1. A day of 8 hours of use over a continuous 24 hour period
2. A week of 48 hours use over a continuous 7 day period.

If the Hirer uses the Goods outside the periods or hours shown above, he will be liable to pay the Owner for the excess on a pro rata hourly or daily basis at the discretion of the Owner. Payment of the Price will be made by cash, cheque, bank cheque or direct credit.

(c) Receipt by the Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

(d) The Owner may charge the Hirer compound interest, calculated on a daily basis, on overdue amounts from the due date of payment to the date of actual receipt of payment at an interest rate which is the equivalent of the General Interest Charge (GIC) published by the Australian Taxation Office or its successor as at the due date of payment.

(e) The Owner may, in its sole discretion, apply any payment received from the Hirer towards any debt (including interest charged) owed by the Hirer to the Owner at any time.

## 4. Hirer Obligations

(a) Except as provided in this Agreement, the Hirer shall have no right, title, property or interest in the Goods except as bailee and must not sublet, transfer, dispose of, charge, encumber or otherwise deal or attempt to deal with any rights or interest in the Goods.

(b) The Hirer must not create, purport to create or permit to be created any ‘security interest’ (as defined in PPS Act) in the Goods other than with the express written consent of the Owner.

(c) The Hirer must do everything necessary to protect the rights of the Owner in the Goods and, for the avoidance of any doubt, will do acts necessary to:

- (i) consent to the Owner registering an interest in the Goods in the PPS Act Register;
- (ii) ensure that the Owner’s security interest is enforceable, perfected and otherwise effective under the PPS Act;
- (iii) enable the Owner to gain first priority (or any other priority agreed to be the Owner in writing) for its security interest; and
- (iv) enable the Owner to exercise rights in connection with the security interest.

(d) To the extent that Chapter 4 of the PPS Act applies to a security interest in the Goods, the following provisions of the PPS Act are “contracted out of” for the purposes of section 115 of the PPS Act:

- (i) section 95 (notice of removal of accession to the extent it requires the secured party to give notice to the grantor);
- (ii) section 96 (when a person with an interest in the whole may retain an accession);
- (iii) section 121(4) (enforcement of liquid assets—notice to grantor);
- (iv) section 125 (obligations to dispose of or retain collateral);
- (v) section 129(2) and 129(3) (disposal by purchase);
- (vi) section 130 (notice of disposal to the extent it requires the secured party to give notice to the grantor);
- (vii) section 132(3)(d) (contents of statement of account after disposal);
- (viii) section 132(4) (statement of account if no disposal);
- (ix) section 135 (notice of retention);
- (x) section 142 (redemption of collateral); and
- (xi) section 143 (reinstatement of security agreement).

(e) 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.

(f) The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Act continues to apply, and agrees that the Owner shall not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

(g) The Hirer agrees that, in addition to any and all rights conferred upon it by the PPS Act, the Owner shall, if there is default by the Hirer, have the right to seize, purchase, take possession, retain, deal with or dispose of the Goods in any manner it sees fit.

(h) Risk in the Goods passes to the Hirer upon delivery of the Goods to the Hirer, and remains with the Hirer until the Goods are collected by or returned to the Hirer.

(i) The Hirer is liable to the Owner for any and all loss or damage to the Goods, including but not limited to the cost of repairing or replacing the Goods at the full new replacement cost, salvage costs, and Rental Charges incurred while the Goods are repaired or replaced.

(j) The Hirer must immediately notify and provide full details to the Owner of any loss, theft, breakdown or damage to the Goods.

- (k) In the event of breakdown or failure of the goods, the Hirer will not have any repairs affected thereto by any person other than an employee of the Owner or such person as the Owner may nominate.
  - (l) The Hirer must not do anything in or around the Goods which may expose the Goods to damage or result in the Goods being involved or associated with any illegal purpose or activity.
  - (m) The Hirer must comply, on time, with the laws and requirements of all authorities in connection with the use of the Goods.
  - (n) Without limiting the effect of any part of this clause, loss or damage includes:
    - (i) disappearance or theft of the Goods;
    - (ii) loss or damage relating to a lack of lubricant or other normal daily checks;
    - (iii) loss or damage due to misuse, abuse or overloading of the Goods;
  - (o) The Hirer will use the Goods at its own risk and, to the fullest extent permitted by law, will indemnify, and keep indemnified, the Owner in respect of any claim of any type whatsoever that may be made against the Owner touching or concerning the Hirer's use of the Plant.
  - (p) The Hirer must:
    - (i) Keep and maintain the Goods in a clean condition, and good and substantial working order and repair.
    - (ii) Service the Goods, at his own expense, in a skilful and proper manner and supply all oil and grease necessary for service and maintenance.
    - (iii) In the event of a breakdown or failure which in the opinion of the Owner is caused by fair wear and tear the Owner will
    - (iv) At his own expense restore the goods to working order as quickly as reasonably possible; and
    - (v) Will not hold the Hirer liable to the hiring charges, calculated on an hourly basis, while the goods are unserviceable providing the Hirer notifies the Owner's hire controller within 12 hours of a failure occurring.
- 5. Hirer's Disclaimer**
- (a) The Hirer hereby disclaims any right to sue for damages or to claim restitution, arising out of any alleged misrepresentation made to him by the Owner.
  - (b) The Hirer specifically acknowledges and agrees that:
    - (i) it hires the Goods relying solely upon its own skill and judgement;
    - (ii) it has had a full and proper opportunity to inspect the Goods;
    - (iii) the Owner does not warrant that the proposed use of the Goods by the Hirer is or will remain suitable or adequate for all of the purposes of the Hirer; and
    - (iv) any warranties as to the suitability and adequacy of the Goods that may be implied by law are expressly negative to the fullest extent permitted by law.
- 6. Occupational Health and Safety**
- (a) The Hirer acknowledges and agrees that it will comply with the provisions of the Work Health and Safety Act 2011 and the Work Health and Safety Regulations 2011 and, in particular, be responsible for:
    - (i) ensuring, so far as reasonably practicable, that the Goods are used in a manner which is safe and without risks to health at all times;
    - (ii) ensuring that any person involved in the operation or use of the Goods is appropriately qualified to operate and use them.
    - (iii) without limiting the effect of any part of this clause, ensuring that any instructions or safety requirements provided by the Owner are followed at all times.
- 7. Stand Downs and Off Hires**
- (a) Unless agreed to in writing by the Owner, this clause only applies to Goods hired on weekly hire rates or where the Rental Period is in excess of one month.
  - (b) In the event that the Hirer wishes to "stand down" the Goods on any particular day, the Hirer undertakes to contact the Owner (prior to 9:00am on the relevant day on which the "stand down" is sought and request a "stand down" authorisation number.
  - (c) No credits for a "stand down" will be considered without a "stand down" authorisation number, which may be provided or refused at the Owners sole discretion.
  - (d) In the event that the Hirer wishes to "off hire" the Goods, the Hirer undertakes to contact the Owner prior to 9:00am on the relevant day on which the "off hire" is sought and request an "off hire" authorisation number.
  - (e) No credits for a "off hire" will be considered without an "off hire" authorisation number, which may be provided or refused at the Owner's sole discretion.
  - (f) For the avoidance of doubt, "stand downs" and "off hires" only apply on the date that they are advised.
- 8. Delivery of Goods / Services**
- (a) Delivery of the Goods shall be made to the Hirer's nominated address, and the Hirer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
  - (b) Delivery of the Goods to that nominated address will be deemed to be a delivery of the Goods pursuant to this Agreement even if the Hirer fails to make arrangements in accordance with sub-clause (a).
  - (c) The Owner shall not be liable for any loss or damage whatever due to any failure by it to deliver the Goods at a particular time, and any such failure shall not entitle either party to treat this contract as repudiated.
  - (d) The Hirer shall provide where necessary the access and necessary manned lifting equipment to ensure the Owner loading facilities.
- 9. Access and Inspection**
- (a) The Owner (or the Owner's agent) has the right to enter the Location at any time, upon giving prior reasonable notice, to inspect or service the Goods.
  - (b) If the Hirer fails to return the Goods to the Owner when required by this Agreement, or if the Owner has a right to re-take possession of the Goods, then the Owner (or the Owner's agent) may enter upon and into the Location (or any other premises where the Goods are situated) without notice and take possession of the Goods without being responsible in any way for any loss or damage other than that caused as a result of the Owner's negligence.
  - (c) The Hirer must assist the Owner (or the Owner's agent) in exercising its rights under this clause.
  - (d) The Hirer shall not remove the Goods from the job site without the written consent of the Owner except for the purpose of returning the Goods to the Owner's premises.
- 10. Privacy**
- (a) The Hirer agrees that the Owner may obtain, disclose and use information:
    - (i) about the Hirer's credit worthiness for the purpose of obtaining and maintaining credit information file about the Hirer and/or collecting overdue payments; and
    - (ii) about the Hirer for the purpose of providing Services to the Hirer.
- 11. Insurance**
- (a) The Hirer must, at its cost, take out and maintain for the whole of the Rental Period of this Agreement:
    - (i) comprehensive insurance against loss or damage to the Goods whatsoever and agrees it is liable to the Owner for any and all loss or damage to the Goods including but not limited to the cost of repairing or replacing the Goods at the full new replacement cost, salvage cost, and rental charges incurred while the Goods are repaired or replaced.
    - (ii) third party and public liability indemnity cover of not less than \$10 million.
  - (b) The Hirer must not do anything which may void or otherwise limit the affect of any policy of insurance touching or concerning the Goods, or which may increase any insurance premium payable in connection with the Goods.
  - (c) Whenever reasonably required by Owner, the Hirer must provide the Owner with evidence of the insurance which is required to be maintained pursuant to the terms of this Agreement.
- 12. Termination**
- (a) In the event that:

- (i) the Hirer is in breach of the Agreement and fails to remedy that breach within 7 days of receiving a notice from the Owner requiring the Hirer to do so;
- (ii) without prejudice to the Owner's other remedies at law, all amounts owing to the Owner under this Agreement shall, whether or not due for payment, immediately become payable; and the Owner may terminate this Agreement and immediately take repossession of the Goods.

**13. Consequences of Default and Termination**

The Hirer must indemnify the Owner against any liability, loss, damage, costs or expenses incurred or suffered by Owner arising directly or indirectly out of or in connection with a breach of this Agreement by the Hirer (including but not limited to the payment of the legal costs on a Solicitor/Client basis). Whether caused by negligence by the Hirer, his servants or agents, or by the negligence of any other person whatsoever, or arising out of the condition of the Goods or the use of which they are put or otherwise whatsoever.

**14. Liability and Indemnity**

- (a) As far as the law permits, the Owner excludes all warranties, conditions, rights and remedies the Hirer would otherwise be entitled to by law.
- (b) As far as the law permits, the Owner and its directors, employees or representatives are not liable to the Hirer for negligent acts or omissions.
- (c) These limitations and indemnities continue after the Agreement expires or terminates.

**15. Assignment**

- (a) The Owner may assign or subcontract all or any of its rights under the Agreement.
- (b) The Hirer must not assign, sub-let, hire, bail or give possession or control of the Goods to anyone else unless the Owner (in its absolute discretion) first consents in writing.
- (c) 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 the Owner
- (d) The Hirer must not lease, hire, bail or give possession ('Sub-hire') of the equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this Agreement
- (e) The Hirer must not vary a sub-hire without the prior written consent of the Owner
- (f) The Hirer must ensure that the Owner 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.
- (g) The Hirer must take all steps including registration under the PPS law as may be required to:
  - (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under PPS law .
  - (ii) enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed by the Owner in writing) for the security interest; and
  - (iii) enabling the Owner and Hirer to exercise their respective rights in connection with the security interest.
  - (iv) The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.

**16. Miscellaneous**

- (a) Time is of the essence of all obligations of the Hirer under the Agreement.
- (b) The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.
- (c) This Agreement is governed by, and must be construed according to, the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and all courts which have jurisdiction to hear appeals from those courts.
- (d) If any term of this Agreement becomes invalid or unenforceable then the remaining terms of the Agreement will not be affected and will be valid and enforceable to the fullest extent permitted by law.
- (e) This Agreement constitutes the entire agreement between the parties, and terminates and supersedes any prior oral or written agreements between them.
- (f) The Owner may amend or replace the whole or any part of the Agreement (including the Rental Charges) by providing one month's written notice to the Hirer. The hire of the Goods after that date will be on the amended or replaced terms.
- (g) Where a Party comprises two or more persons an Agreement or obligation binding that Party binds those persons jointly and severally;
- (h) The parties agree and acknowledge that this Agreement is intended to be legally binding, that they have freely entered into this Agreement after having the opportunity to carefully consider its contents and to obtain advice on the matters in this Agreement, and that this Agreement terminates and supersedes any prior, oral or written agreements between the parties and constitutes an entire understanding between them.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_