

**1. Definitions**

"Owner" of Equipment is Metro Business Systems (ABN 11 985 125 428).

"Customer" refers to the person, firm, organisation, partnership, corporation or other entity hiring Equipment from the Owner, as identified in the Hire Agreement

"Equipment" means all equipment including Cash Registers, Scanners, Printers, Cash Drawers and accessories supplied to the Customer.

"Hire Agreement" means the agreement between the Owner and Customer for the hire of Equipment which includes:

- any Credit Application;
- these Standard Conditions of Hire, and
- any Hire Agreement provided to the Customer by the Owner, whether signed or not.

**2. Title to Equipment**

2.1 The Customer acknowledges that in all circumstances the Owner retains title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Customer to use the Equipment are as a bailee only.

2.2 The Customer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Owner as owner of the Equipment.

**3. Hire Period**

3.1 Subject to clause 3.3, the period of hire commences when the Customer takes possession of the Equipment or when the Owner delivers the Equipment in accordance with the Customer's instructions and the period of hire ends when the Equipment is back in the possession of the Owner (in total, the "Hire Period"). The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

3.2 The Customer is to be charged for the Hire Period and the Customer is entitled to use the Equipment for the Hire Period. Any variation to the Hire Period must be agreed by the Owner.

3.3 Should the Owner agree with the Customer that the Owner will deliver and collect the Equipment, hire charges will commence from the time the Equipment leaves the Owner's premises and continue until the Owner has collected the Equipment on the day specified by the Customer. In the event of the Equipment not being available at the time arranged for collection, the Customer will be charged a minimum \$22.00 (gst inclusive) at the Owner's absolute discretion. The Hire Period on the Hire Agreement will not be deemed notice to the Owner that the Equipment is available for collection. Where the Owner agrees to collect the Equipment the Customer remains responsible for theft, loss or damage to the Equipment until the Equipment is collected by the Owner.

**4. Hire Charges and Other Charges**

4.1 **Hire:** The Customer will pay the Owner the hire charges set out in the Hire Agreement. The Customer is not entitled to any discount or rebate if the Equipment is not used by the Customer for the entire Hire Period.

4.2 **Consumables:** The Customer will be liable for charges made for consumables provided by the Owner.

4.3 **Tax and Government Charges:** The Customer will be liable for stamp/hire duty, GST and all other applicable taxes and any other government charges imposed on the Hire Agreement or in respect of the Hire Period.

4.4 **Credit Card Payments:** The Customer acknowledges that the Owner may impose a charge for accepting payments by credit card.

4.5 **Delivery:** If the Customer requires the Owner to deliver, collect or install the Equipment, the Customer will be liable for the cost of delivery, collection or installation. The Owner will not be responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

4.6 **Late Return of Equipment:** If the Customer returns the Equipment to the Owner's premises after the end of the Hire Period, the Customer will be charged a minimum of an additional half day hire or an additional full day hire, depending upon the time of return. The Customer will remain liable to be charged for the Equipment until it is returned to the Owner.

4.7 **Payment Due Date:** The Customer is required to pay all fees, charges and costs that may become due and payable under the Hire Agreement within 7 days of the invoice date.

4.8 **Late Payment:** If a Customer does not pay the amount of the Hire Agreement invoice by the payment due date, a late payment fee of 2% per month, compounding monthly, may be imposed. In addition, without limiting clause 8.3, the Customer will be liable to indemnify the Owner for all expenses incurred by the Owner in recovering any amounts which the Customer fails to pay by the payment due date (including any legal costs).

**5. Customer's Hire Obligations**

5.1 **Possession and Use by Customer:** The Hire Agreement is personal to the Customer and the Customer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period, without limiting clause 7.

5.2 **Suitability:** The Customer agrees that before accepting the Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment. Subject to clause 8.2, the Owner gives no warranty that the Equipment is suitable for the Customer's purpose.

5.3 **Operation of Equipment:** The Customer warrants that at all times it will:

- operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- return the Equipment to the Owner in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excluded. If the Customer fails to clean the Equipment, the Owner will charge the cleaning cost to the Customer;
- accept responsibility for the safe-keeping of and insuring the Equipment during the Hire Period;

5.4 **Cleaning and Maintenance:** The Customer must:

- maintain the Equipment in good condition and in accordance with the manufacturer's and the Owner's instructions at the Customer's cost, and
- not in any way alter, modify, tamper with, damage or repair the Equipment without the Owner's written consent.

5.5 **Safekeeping:** The Customer must ensure that during the Hire Period the Equipment is stored safely and securely and is protected from theft, seizure or damage.

5.6 **Alteration and Identifying Marks:** The Customer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Equipment.

5.7 **Inspections:** The Customer consents to the Owner inspecting the Equipment from time to time during the Hire Period. Also, the Customer may arrange a joint inspection with the Owner at the end of the Hire Period.

5.8 **Safe Loading and Transport:** The Customer will ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. Customer and any transporting contractor will observe any safety directions advised by the Owner and/or manufacturer of the Equipment for its loading and safe handling.

5.9 **Location:** The Equipment will be returned to the location in which the Equipment was collected by the Customer or delivered by the Owner.

5.10 **Electrical Equipment re-testing and re-tagging:** Customer is responsible for arranging at the Customer's cost the re-testing and re-tagging of the electrical equipment by the manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. Any damage caused to the Equipment resulting from incorrect testing will be at the Customer's cost.

**6. Equipment Breakdown**

6.1 **Obligations of Customer:** In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period the Customer will:

- immediately stop using the Equipment and notify the Owner;
- take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- take all steps necessary to prevent any further damage to the Equipment, and
- not repair or attempt to repair the Equipment without the Owner's written consent.

6.2 **Obligations of the Owner:** In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Owner will:

- take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Customer;
- not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment, and
- not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising from a breakdown of Equipment, however so caused.

**7. Lost, Stolen or Damaged Equipment**

The Customer is responsible for the Equipment and its attached tools and accessories whilst on hire until the Equipment is collected by the Owner, or returned to the Owner by the Customer. If the Equipment is lost, stolen or damaged during the Hire Period the Customer will be liable for:

- any costs incurred by the Owner in repairing or the new replacement cost of the Equipment, and
- any other costs whatsoever incurred by the Owner as a result of the loss, theft or damage to the Equipment, including the continuation of hire charges when the damages were caused by the negligence or act or omission of the Customer.

**8. Indemnities and Exclusion of Liabilities**

8.1 Subject to clause 8.2 and except as expressly provided to the contrary in the Hire Agreement all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the Owner's obligations under the Hire Agreement are excluded.

8.2 Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Agreement provided that the liability of the Owner for breach of the term, condition or warranty is limited to (at the Owner's election) the repair or replacement of the Equipment or the supply of substitute Equipment (or the cost of doing so) and in no event will any liability for damages be greater than the cost of the services being supplied under the Hire Agreement.

8.3 Subject to clause 8.2, the Owner will not be under any liability to the Customer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Agreement.

8.4 The Customer is liable for and indemnifies the Owner against all liability, claims, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Owner and any environmental loss, cost, damage or expense) arising from or incurred in connection with Customer's hire and use of the Equipment or its breach of the Hire Agreement.

8.5 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. The Customer must pay on demand any amount it must pay under an indemnity in this Hire Agreement.

**9. Termination**

9.1 The Owner may terminate the Hire Agreement immediately by notice to the Customer, if:

- the Customer breaches any term of the Hire Agreement, or
- the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

9.2 The Owner may terminate the Hire Agreement for any other reason by 24 hours notice.

9.3 The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity or the survival of other terms under the Hire Agreement.

**10. Recovery of Equipment**

If the Customer is in breach of the Hire Agreement or if the Owner has terminated the Hire Agreement with the Customer pursuant to clause 9, the Owner may take all steps necessary (including legal action) to recover the Equipment, including entering the Customer's premises to do so.

**11. Miscellaneous**

11.1 **Severability:** If any part of this agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

11.2 **Governing Law and Default Recovery:** The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the exclusive jurisdiction of the courts of that State of Territory. The Customer will not object to the Owner using the jurisdiction of South Australia for the recovery of any outstanding amount.

11.3 **Security of Obligations:** As security for the obligations and liabilities of the Customer under the Hire Agreement, the Customer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real property. Without limiting the generality of the charge in this clause, the Customer agrees, on request by the Owner, to execute any documents and do all things necessary required by the Owner to register a mortgage security over any Real property. The Customer will indemnify the Owner on an indemnity basis against all costs and expenses incurred by the Owner in connection with the preparation and registration of any such mortgage documents. The Customer also consents unconditionally to the Owner lodging a caveat or caveats noting its interest in any Real property.

11.4 **Entire Agreement:** The Hire Agreement issued to the Customer, including these Standard Conditions of Hire, comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including any terms contained in any purchase order provided by the Customer) apply to the hire of the Equipment unless agreed in writing by the Owner.

11.5 **No Reliance:** The Customer acknowledges that the neither the Owner or any person acting on the Owner's behalf has made any representation or other inducement to it to enter into the Hire Agreement and that it has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained herein.

11.6 **Variation:** The Owner may at any time vary the Hire Agreement by giving the Customer 14 days written notice of its intention to do so. Any other variation of these terms and conditions must be agreed in writing by the Owner and the Customer.

**11.7 Privacy:**

(a) The Owner may collect personal information about the Customer. The Owner's Privacy Officer can be contacted on (08) 8231 2288. The Owner may use the Customer's personal information to provide services to the Customer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Customer or third parties, and for marketing and client relationship purposes. If the Customer does not provide all information required by the Owner, the Owner will not be able to hire the Equipment or provide the associated services to the Customer. The Owner may disclose the Customer's information to the Owner's service providers and contractors from time to time to help provide and market the Owner's services to the Customer. Generally the Customer has a right to access personal information the Owner holds about the Customer.

(b) The Customer consents to and authorises the Owner to use and disclose the Customer's personal information in accordance with clause 11.7(a).

11.8 **Notice to Customer:** Any document which by the Hire Agreement may be given by the Owner may be served or rendered by leaving it at or posting it to the address of the Customer as stated in the Hire Agreement or last notified by the Customer in writing to the Owner and will be deemed to have been served or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of the Owner on behalf of the Customer.

11.9 **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to the Owner upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of the owner to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

11.10 **Withdrawal of Credit Accommodation:** Any credit accommodation granted by the Owner to the Customer may be reviewed at any time without notice. Credit may be withdrawn for Customers failing to make payments or use the Equipment in accordance with these Standard Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.

11.11 **Authority of Customer:** The person signing the Hire Agreement for and on behalf of the Customer hereby covenants with the Owner that he or she has the authority of the Customer to make the Agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to the Agreement and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing the Agreement not in fact having such power and/or authority.

11.12 **Previous Editions:** This edition of the Standard Conditions of Hire replaces and supersedes all previously issued Conditions of Sale and Hire by the Owner.

11.13 **Time of the Essence:** Time is to be of the essence of all obligations of the Customer in the Hire Agreement.

11.14 **Right of Refusal to Hire:** The Owner is in no way obliged to hire any Equipment to the Customer and may refuse to hire Equipment to a Customer at its absolute discretion, including but not limited to, if the Customer fails to provide adequate identification or if in the opinion of the Owner, the Customer's safety is put at risk by providing them with such Equipment.

11.15 **Purchase of Hire Equipment:** The Owner is in no way obliged to sell any hire Equipment to the Customer. The Owner may offer a discount on the purchase price of new equipment. Considerations will be taken regarding the total hire fee paid by the Customer, to come to new equipment purchase price.