

## Terms and Conditions For Hire of Trailer and/or Trailer Equipment

### Recitals:

1. Topline Trailers in the owner of the trailer and/or equipment (if any) (the "Trailer and Equipment") listed in the Schedule to this Agreement (the "Schedule").
2. The Hirer will hire the Trailer and Equipment specified in the Schedule from Topline upon the terms and conditions of this Agreement.

### Operative Part:

#### 1. Period of Hire of Trailer and Equipment

- 1.1. The hire of the Trailer and Equipment will commence from the Commencement Date stated in the Schedule and continue for the term stated in the Schedule (the "Hire Period").
- 1.2. The Hirer is entitled to use the Trailer and Equipment for the Hire Period.
- 1.3. The Hirer agrees to return the goods to Topline Trailers by delivery to the address specified in the Schedule on or before the end of the Hire Period (the "Return Date").
- 1.4. The Hirer will not be entitled to any refund of any Hire Charges if the Hirer elects to return the Trailer and Equipment prior to the end of the Hire Period.

#### 2. Payment for rental of Trailer and Equipment

- 2.1. The Hirer must pay Topline Trailers the Hire Charge specified in the Schedule for the Hire Period prior to or on Commencement Date of the Hire Period.
- 2.2. The Hire Charge includes GST, if GST is applicable.

#### 3. Use, operation and maintenance of Trailer and Equipment

- 3.1. The Hirer accepts that injury can result from inappropriate use of the Trailer and Equipment and the Hirer accepts total liability for all dangers and risks.
- 3.2. The Trailer and Equipment shall not be used by anyone other than the Hirer without the express permission from Topline Trailers.
- 3.3. The Hirer must:
  - Operate maintain and store the Trailer and Equipment strictly in accordance with any direction and/or instruction given or published by Topline Trailers, and use the Trailer and Equipment with reasonable care and only for its intended use and in accordance with any manufacturer's instructions and recommendations whether supplied by Topline Trailers or posted on the Trailer and Equipment.
  - Comply with all occupational health and safety legislation relating to the use of the Trailer and Equipment.
  - Return the Trailer and Equipment to Topline Trailers clean of soil and substance.
  - Safely secure all items loaded in or on the Trailer and indemnify Topline Trailers in respect of any injury and/or damage caused by items falling from the Trailer and/or other operation of the Trailer by or on behalf of the Hirer.
  - Operate the Trailer and Equipment with an adequate motor vehicle and/or power source.
  - Report and provide full details to Topline Trailers of any accident or damage to the Trailer and Equipment within 2 business days of the accident or damage occurring.
  - Not modify the Trailer and Equipment in any way or permit any other person to do so.

In the event that the Hirer fails to comply with any of the foregoing requirements the Hirer must pay Topline Trailers the reasonable costs of rectification on demand.

#### 4. The Hirer's warranties and acknowledgements

- 4.1. The Hirer warrants that:
  - 4.1.1 The Trailer and Equipment will only be used in accordance with the conditions outlined in the Schedule;
  - 4.1.2 The Hirer holds a valid current driver's licence, operating licence or permit valid for the type of Trailer and Equipment hired;
  - 4.1.3 The Trailer and Equipment will not be used for any illegal purpose;
  - 4.1.4 The hirer's vehicle is certified capable by its manufacturer for towing the Trailer and Equipment;
- 4.2. The Hirer acknowledges that:
  - 4.2.1 the Hirer has had ample opportunity to inspect the Trailer and Equipment, and acknowledges that the Trailer and Equipment is accurately described in the Schedule and that is free from defect, and suitable for the Hirer's purpose.
  - 4.2.2 neither Topline Trailers or any other person or entity associated with Topline Trailers has given or made any representation that the Trailer or Equipment are suitable for the Hirer's purpose.

#### 5. Completion of the Hire Period

- 5.1. The Hire Period ends only when the Trailer and Equipment has been returned to Topline Trailers in the same condition as when it was hired; and on or by the Return Date.

#### 6. Indemnity

- 6.1. To the fullest extent permitted by law the Hirer releases, discharges and indemnifies Topline Trailers from all claims and demands against Topline Trailers arising out of, or consequent of, the use or misuse of the Trailer and Equipment during the Hire Period.

#### 7. Loss, damage or malfunction of plant and Trailer and Equipment

- 7.1. The Hirer will be responsible for any loss or damage to the Trailer and Equipment irrespective of howsoever the loss or damage occurred (except fair wear and tear) during the Hire Period.
- 7.2. The Hirer must not attempt to repair the Trailer and Equipment. If there is a malfunction of the Trailer and Equipment the Hirer shall return the Trailer and Equipment to Topline Trailers as the Hirer's expense.
- 7.3. The Hirer must pay on demand:
  - All costs incurred by Topline Trailers in cleaning the Trailer and Equipment;
  - The full cost of repairing any damage to the Trailer and Equipment caused or contributed by the Hirer.

- All stamp duty, GST, all other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect to this Agreement or arising from the Hirer's use of the Trailer and Equipment
- All costs incurred by Topline Trailers in delivering and recovering possession of the Trailer and Equipment
- A late payment fee calculated at 3% per month on all amounts owing by the Hirer not paid on time;
- Any additional Hire Charges;
- Any expenses and legal costs (including commission payable to a contractor) incurred by Topline Trailers enforcing the terms of the Agreement as a consequence of the Hirer's default;
- All costs repairing or replacing tyres, including road service.
- The amount for which the Hirer is liable for the amount of any damage and/or theft waiver and/or indemnity cover.

## 8. Insurance

8.1. Topline Trailers represents that the Trailer and Equipment is currently insured to its full insurable value.

## 9. Liability of the Hirer

9.1. The Hirer accepts and assumes all risks and liabilities for and in respect of any injury to any person and all damage to property howsoever arising from the Hirer's possession, use, maintenance, and/or storage of the Trailer and Equipment and the use of thereof including but not limited to the matters specified in Clause 1 hereof.

## 10. Retaking of Possession and Breach of Agreement by the Hirer

10.1. Topline is entitled, at any and all times that the Hirer breaches or defaults under a term of this Agreement, to immediately retake possession of the Trailer and Equipment without any liability to the Hirer whatsoever. The Hirer in such circumstances hereby irrevocably authorises Topline Trailers to enter, (forcibly if necessary), any and all premises in the possession or control of the Hirer and hereby irrevocably appoints Topline Trailers agent of the Hirer to enter any other premises which the Hirer is entitled to access.

10.2. If the Hirer breaches any clause of this Agreement, or becomes bankrupt, insolvent or ceases business, Topline Trailers is entitled to:

- Terminate this Agreement; and/or
- Sue for recovery of all monies owing by the Hirer

10.3 The Hirer indemnifies Topline Trailers in respect of any damages, costs or loss resulting from a breach by the Hirer of any provision of this Agreement.

## 11. Disclaimer

11.1. To the extent permitted by law Topline Trailers disclaims all liability for and does not give any warranties to the Hirer in respect to the Trailer and Equipment.

## 12. Title to goods / PPS Law

12.1. The Hirer acknowledges that Topline Trailers retains title to and ownership of the Trailer and Equipment and that the Hirer's right to use the Trailer and Equipment are as a mere bailee only. The Hirer must not agree, or purport to hire or sub-hire or otherwise part with or attempt to part with personal possession or otherwise deal with the Trailer and Equipment.

12.2. This clause applies to the extent that the Personal Property Securities Act 2009 (Cth) ("PPS Law") applies to the Trailer and Equipment any attempt by Topline Trailers to create a first priority security interest in the Trailer (the "Security Interest") for the purposes of the PPS Law. References to the PPS Law in this Agreement include references to any amendment of that legislation.

- If Topline Trailers does not hold a PPSR registration that entitles it to a Security Interest in the Trailer, the Hire Period despite anything to the contrary is restricted to:
  - 90 days (if the Trailer and Equipment is required to be described by serial number in a PPS Law registration); or
  - In any other case, one year.
- Topline Trailers may register its Security Interest and the Hirer must do everything reasonable to:
  - Ensure that Topline Trailers Security Interest is enforceable, perfected and otherwise effective under the PPS Law;
  - Enable Topline Trailers to gain first priority in respect to its Security Interest; and
  - Enable Topline Trailers to exercise all of its rights in connection with the Security Interest.
- Topline Trailers may choose whether to exercise its rights under this Agreement or otherwise as it requires and its Security Interest will attach to all proceeds of any sale of the Trailer and Equipment.
- If Chapter 4 (enforcement of security interest) of PPS Law applies to any Security Interest under this Agreement Topline (for the purposes of section 115 ('contracting out') of the PPS Law) and to the extent that it is legally entitled to do so hereby contracts out of the following provisions of the PPS Law, namely
  - Section 95 (notice of removal of accession);
  - Section 96 (retention of accession);
  - Section 121(4) (notice of grantor);
  - Section 125 (obligation to dispose of or retain collateral);
  - Section 130 (notice of disposal)
  - Section 129(2) and 129(3) (disposal by purchase)
  - Section 132(3)(d) (account after disposal)
  - Section 132(4) (statement if account if no disposal)
  - Section 135 (notice of retention)
  - Section 142 (redemption of collateral); and
  - Section 143 (re-installment of security Agreement).
- To the extent that the following provisions of the PPS Law; namely:
  - 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)
  - Confer rights on Topline Trailers, the Hirer agrees that in addition to those rights, Topline Trailers 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 the abovementioned sections but also =, as additional and independent rights, under this document and the Hirer agrees that Topline Trailers may do so in any manner available, and in respect of dealing and/or disposal then by private or public sale, lease or licence.
- 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 PPL Law.
- (i) Topline Trailers and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law.
- (ii) The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply to this Agreement and the Trailer and Equipment. The Agreement in this sub-clause is made solely for the purpose of allowing to Topline Trailers the benefit of section 275(6)(a) and Topline Trailers shall not be liable to pay damages or other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

- h) The Hirer must not dispose of (or purport to dispose of), or create (or purport to create), or permit to be created any other or additional 'Security Interest' in the Trailer and Equipment other than with the express written consent of Topline Trailers.

**13. Non-merger**

- 13.1. The covenants, Agreement 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.

**14. Severance**

- 14.1. 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 the provisions and part provisions remaining after severance.

**15. Governing Law**

- 15.1. This Agreement is governed by the laws of Queensland. Each party submits to the non-exclusive jurisdiction of the Courts of Queensland in connection with matters concerning this Agreement.

**16. Interpretation**

- 16.1. In this Agreement unless the context otherwise requires:

A reference to the singular includes the plural and vice versa;

A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;

A reference to an individual shall include corporations and vice versa; and

If a word or expression is defined, its other grammatical forms have a corresponding meaning.

Headings are for convenience only and do not affect interpretation.