

TAC002 – CONDITIONS OF HIRE

DATED: 23-06-2020

REV NO. 003

1. BASIS OF CONTRACT

- 1.1 All quotations made by KAISHAN AUSTRALIA PTY LTD (KA), ABN: 58 114 574 515 and all rentals of Equipment by the Customer are accepted subject to these general terms and conditions.
- 1.2 No further terms and conditions not included in these terms and conditions of trade will be deemed to form part of the agreement between KA and the Customer unless those further terms and conditions are agreed by the parties in writing.

2. STATUS OF ORDERS

- 2.1 Orders for rentals of Equipment:
 - 2.1.1 may be accepted by KA within 30 days of the date of quotation; and
 - 2.1.2 are not binding on KA until accepted in writing by an authorised officer of KA.
- 2.2 Any terms in a written quotation by KA to the Customer:
 - 2.2.1 are part of these terms and conditions; and
 - 2.2.2 if there is any inconsistency the quotation will prevail.

3. TERM

- 3.1 Subject to clause 3.2, the term of the rental ("Term") commences on the date on which the Equipment leaves KA's depot and will terminate on the date the Equipment is returned to KA's depot or as otherwise agreed.
- 3.2 The minimum Term will be one week.

4. RENT

- 4.1 The Rent is ex-works at the date of quotation.
- 4.2 The Rent is exclusive of:
 - 4.2.1 government charges, including but not limited to levies, taxes, GST, duties and excise;
 - 4.2.2 damage waiver;
 - 4.2.3 delivery, crantage to both load and unload at KA Depots and transport charges;
 - 4.2.4 fuel and oil, other than fuel and oil used in normal servicing of the equipment;
 - 4.2.5 an environmental levy per month for each piece of Equipment;
 - 4.2.6 costs incurred by KA caused by changes, errors or omissions in the specifications provided by the Customer at KA's standard rates.
- 4.3 KA may increase the Rent:
 - 4.3.1 if the cost to KA of providing the Equipment has increased;
 - 4.3.2 if the Equipment is used in excess of the periods in Clause 4.4; and
 - 4.3.3 on 5 days notice in writing to the Customer.
- 4.4 Rent is calculated as follows:
 - 4.5.1 a 8 hour working day for daily Rent; and
 - 4.5.2 a 5 day week with 40 working hours per week for weekly Rent.

5. PAYMENT

- 5.1 Rent for the Term must be paid monthly in advance.
- 5.2 For an approved credit account Customer, Rent must be paid within 30 days of the end of each month during the Term.
- 5.3 Any legal costs incurred by KA in the collection of the customers unpaid debts are to be born by the customer and must be paid within 30 days of the end of each month.

6. ACKNOWLEDGEMENTS BY CUSTOMER

The Customer acknowledges that:

- 6.1 it has examined the Equipment and is satisfied that the Equipment is in good working order at the date of delivery and fit for the Customer's purpose;
- 6.2 it has not relied on any representations or statements made by or on behalf of KA in relation to the Equipment; and
- 6.3 has received written and/or verbal instructions on the safe operation of the Equipment.

7. EQUIPMENT

- 7.1 The Equipment:
 - 7.1.1 is and remains the property of KA;
 - 7.1.2 is in good working order and condition for normal full load working at the date of delivery.
- 7.2 Subject to any applicable law, KA does not give any warranties in relation to the Equipment.
- 7.3 Documents and recommendations in relation to the Equipment including but not limited to:
 - 7.3.1 performance;
 - 7.3.2 dimensional information;
 - 7.3.3 operational costs; and
 - 7.3.4 application,
 prepared by KA or its suppliers are guidelines only.

8. DAMAGE TO THE EQUIPMENT

- 8.1 The Customer will be liable for any loss or damage to the Equipment during the Term caused by a breach of these terms and conditions or any negligent act or omission except for fair wear and tear.
- 8.2 The Customer must pay the costs of rectifying or replacing the Equipment at replacement cost to the KA standard in the circumstances set out in Clause 8.1 to KA on demand.

9. MAINTENANCE, OPERATION AND USE OF THE EQUIPMENT

- 9.1 The Customer must:
 - 9.1.1 maintain the Equipment in good working order and condition;
 - 9.1.2 use and operate the Equipment in accordance with the manufacturer's guidelines and recommendations; and
 - 9.1.3 carry out daily checks of batteries, battery fluid, oil, coolant and water levels, belts and trailer tyres.
- 9.2 The Customer must use fuel, lubricating oils, coolant and battery fluid approved by KA to operate the Equipment during the Term.
- 9.3 The Customer is responsible for the acts and omissions of any operator of the Equipment during the Term.
- 9.4 The Customer must comply with any acts, regulations, ordinances and by-laws enacted by any government or semi-government authority in relation to the use and operation of the Equipment including but not limited to pollution, contamination and disposal of waste.
- 9.5 The Customer acknowledges and agrees:
 - 9.5.1 that it must comply with all occupational health and safety ("OHS") legislation and requirements in relation to the use and operation of the Equipment;
 - 9.5.2 that it has management and control of the Equipment for the purposes of OHS; and
 - 9.5.3 it must give written notice to KA as soon as possible after the Customer becomes aware of any potential (or actual) OHS issue in relation to the use and operation of the Equipment;

10. INSPECTION OF EQUIPMENT

- 10.1 KA may at any time without notice enter any premises to inspect the Equipment.

11. SERVICE AND REPAIR OF EQUIPMENT

- 11.1 Subject to the rest of this Clause 11 and Clause 8, KA will at its cost, repair the Equipment.
- 11.2 If the Equipment requires repairs:
 - 11.2.1 for minor faults, rectification will be effected at the Customer's premises if possible; and
 - 11.2.2 for major breakdowns, KA will replace the Equipment with similar equipment if possible.
- 11.3 The Customer must:
 - 11.3.1 Service the equipment at their cost in accordance with the equipment manufacturers requirements.
 - 11.3.2 where applicable, give written notice ("Customer's Notice") to KA immediately after the Equipment has operated for 250 hours after:
 - a) the date of the immediately preceding service; and
 - b) the Commencement Date of the Term,
 whichever is the later; and
 - 11.3.3 give written notice to KA immediately after the Equipment is moved to different premises.
- 11.4 KA will:
 - 11.4.1 give written notice ("KA's Notice") to the Customer that it will arrange servicing of the Equipment; and
 - 11.4.2 service the Equipment within 1 week of KA's Notice.
- 11.5 If:
 - 11.5.1 the Customer does not comply with Clauses 11.3.1 and / or 11.3.2; or
 - 11.5.2 KA is unable to access the Equipment to carry out the Service during normal business hours within the period set out in Clause 11.4.2,
 - 11.5.3 then the Customer must pay to KA on demand:
 - 11.5.4 compensation for any wear, tear and damage to the Equipment caused by the failure to service;
 - 11.5.5 overtime costs incurred by KA or its authorised service agents;
 - 11.5.6 the costs of the next service; and
 - 11.5.7 the costs of repairs to the Equipment caused by the failure to service.
- 11.6 If the Customer does not comply with Clause 11.3.3, and:
 - 11.6.1 KA's service technician attends the premises; and

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11.6.2 the Equipment has been moved to another premises, the Customer must pay the costs of KA for the service call on demand.

12. THEFT OF EQUIPMENT

12.1 The Customer must give notice ("Notice") in writing to KA and a copy of the police report as soon as reasonably possible if the Equipment is stolen.

12.2 The Notice must set out:

12.2.1 full details of the theft; and

12.2.2 the date and time on which the Customer advised the police.

12.3 The Customer must continue to pay the Rent until the Notice is received by KA.

13. CLEANING OF EQUIPMENT

13.1 The Customer must, at its cost, clean the Equipment in a thorough and proper manner at the end of the Term of hire and to the standard required by KA.

13.2 The Customer must pay the cost of cleaning of the Equipment to KA on demand if the Customer does not comply with Clause 13.1.

14. DELIVERY OF EQUIPMENT

Subject to clause 4.2.3, the Equipment will be delivered and collected at any location within Australia

15. RETURN OF EQUIPMENT

If the Customer does not return the Equipment and without affecting KA's rights under Clause 23, the Customer must pay to KA on demand:

15.1 the replacement cost, as determined by KA, of the Equipment; and

15.2 the Rent until the replacement cost is paid.

16. LOADING AND UNLOADING OF EQUIPMENT

Subject to clause 4.2.3, the Customer must, at its cost,:

16.1 unload the Equipment at delivery; and

16.2 load the Equipment for return to KA.

17. VARIATION OF EQUIPMENT

17.1 KA may if the Equipments performance is not materially affected:

17.1.1 alter the specifications of the Equipment; and / or

17.1.2 alter the Equipment.

18. NON DELIVERY OF EQUIPMENT

18.1 Representations by KA as to the date and / or time for delivery are not guaranteed. All representations are made in good faith, in the light of conditions and circumstances that are known to KA at the time.

18.2 KA and its directors, officers, employees and associated companies are not liable for:

18.2.1 late deliveries or non-deliveries; and

18.2.2 any loss, including consequential, damage, delay, including liquidated damages, incurred by the Customers or its customers arising from late or non-delivery of the Equipment or service whether such loss or damage is due to negligence or wilful act, misconduct or default of KA or any third party and whether or not the same occurs in the course of the performance by KA of any contract or in circumstances which would constitute a fundamental breach of any contract or a breach of any fundamental term of these terms and conditions.

18.3 KA may at any time before delivery terminate the rental if, KA is prevented from making deliveries of the Equipment at the specified delivery date.

18.4 If KA terminates the rental in accordance with clause 18.3:

18.4.1 the Customer is not released from liability for payment for prior rentals;

18.4.2 KA may recover all payments and expenses for delivery prior to the date of termination; and

18.4.3 KA is not liable to the Customer in any way for the termination.

19. INSURANCE OF EQUIPMENT

19.1 Unless the Customer provides an acceptable and current certificate of currency confirming that it has taken out full replacement insurance cover for loss or damage to the Equipment prior to the delivery of the Equipment;

19.1.1 damage waiver will apply to all rentals of the Equipment;

19.1.2 the Customer must pay a premium to KA for theft and damage waiver cover on demand; and

19.1.3 subject to clause 19.2 and 19.3 KA waives its right to make any claim against the Customer for loss of damage or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft in excess of an amount equal to:

a) 20% of the list replacement price of the Equipment; and

b) \$500,
whichever is greater.

19.2 In relation to theft the Customer must comply with Clause 12.

19.3 The waiver set out in clause 19.1.3 will not apply to the loss or damage to the Equipment caused by:

19.3.1 overloading, exceeding rated capacity, misuse or abuse or improper servicing of the Equipment;

19.3.2 lack of lubrication, coolant or battery fluid;

19.3.3 disappearance of the Equipment;

19.3.4 misappropriation or wrongful conversion of the Equipment;

19.3.5 use or operation of the Equipment other than in accordance with these terms and conditions;

19.3.6 tools or accessories including but not limited to house, points, drills, bits, grease guns, tools and electric leads;

19.3.7 tyres, batteries and other similar accessories; and

19.3.8 transport, location, loading or unloading on over or adjoining water including but not limited to wharves, bridges, barges and vessels of all kinds.

20. FORCE MAJEURE

20.1 The Customer will not be entitled to give notice to KA to terminate the Rental or to terminate an order if the KA does not perform any of its obligations due to Force Majeure.

20.2 Force Majeure includes but is not limited to:

20.2.1 breakdown of plant or machinery;

20.2.2 war or terrorist attack;

20.2.3 strike or other industrial dispute;

20.2.4 government interference;

20.2.5 transport delay;

20.2.6 act of God including flood;

20.2.7 accident;

20.2.8 non-delivery or shortage of supplies; and

20.2.9 any other cause not under the control of KA.

21. GUARANTEE AND INDEMNITY BY DIRECTORS AND SHAREHOLDERS OF CUSTOMER

If required, the Customer must arrange for its directors and shareholders to enter into a guarantee and indemnity in the form required by KA.

22. KA 'LIABILITY'

expressly disclaims any and all liability in relation to the supply, operation and use of the Equipment:

22.1 for any loss, injury or damage whatsoever including consequential, indirect, special punitive or any similar damages;

22.2 whether arising under breach of warranty, contract, negligence, tort, strict liability or otherwise; howsoever caused.

23. INDEMNITY BY CUSTOMER

The Customer indemnifies KA for and against all actions, claims, liabilities, suits, obligations, costs and expenses including but not limited to legal costs in relation to:

23.1 the operation and use of the Equipment;

23.2 the location of the Equipment; and

23.3 a breach of these terms and conditions by the Customer.

24. TERMINATION ON DEFAULT

24.1 If:

24.1.1 the Rent is not paid within 7 days after the date appointed for payment (whether or not formerly demanded by notice); or

24.1.2 the Customer is in default of these terms and conditions for 7 days; or

24.1.3 any assignment is made of the property of the Customer for the benefit of the Customer's creditors; or

24.1.4 the Customer being a company:

a) enters into liquidation other than for the purpose of amalgamation or reconstruction; or

b) is wound up or dissolved; or

c) enters into a scheme of arrangement with creditors; or

d) is placed under official management; or

e) a receiver and/or manager of any of its assets is appointed; or

f) an administrator is appointed, the Customer will be in default of these terms and conditions and KA may at any time without any notice or demand and despite any prior waiver or failure to take action by KA in respect of any previous breach by the Customer:

i. terminate the rental; and

ii. repossess the Equipment.

24.2 The Customer must pay to KA interest at 1.5% per calendar month on amounts due which are overdue.

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- 24.3 Interest is to be calculated from the due date until payment in full and may be recovered in the same way as arrears of Rent.
- 25. CANCELLATION OF ORDER FOR RENTAL OF EQUIPMENT**
- 25.1 Notwithstanding any other provision of these terms and conditions, if the Customer cancels any order for rental of Equipment under these Rental Terms and Conditions (either before or after commencement of the Term), then:
- 25.1.1 all amounts then owing by the Customer to KA and all costs, liabilities and expenses incurred by KA until the date of cancellation in relation to the rental of the Equipment (including, for the avoidance of doubt, freight, installation and dismantling of the Equipment, the full amount (as per the quotation) for equipment that KA has hired from another party for the purposes of fulfilling the order, and the cost incurred by KA in purpose-building or modifying equipment specifically for the order) will become immediately payable and recoverable as a liquidated debt; and
- 25.1.2 KA will be entitled to recover from the Customer liquidated damages calculated by reference to the rates specified in clause 25.2 to account for the amounts which would otherwise have become payable by the Customer to KA in respect of the rental of Equipment had the order not been cancelled. The Customer acknowledges that the liquidated damages specified in this clause 25 are a realistic and genuine pre-estimate of the loss and damage KA will suffer as a result of the cancellation by the Customer of an order for rental of Equipment ('Estimated Loss').
- 25.2 Subject to clause 25.3, if the order is cancelled by the Customer:
- 25.2.1 within 30 days prior to the commencement of the Rental Term – the Customer agrees that the Estimated Loss is 50% of the Equipment rental price as set out in the quotation in respect of the order; and
- 25.2.2 after the Equipment has been delivered to the Customer (including any necessary installation) – the Customer agrees that the Estimated Loss is in accordance with the following table:
- | Rental Term | Estimated Loss (% of [total rental price less any rent already paid]) |
|----------------------------|---|
| Up to and including 7 days | 85% |
| From 8 days to 15 days | 75% |
| From 16 days to 30 days | 65% |
| Exceeding 30 days | 50% |
- 25.3 If this clause 25 applies, KA acknowledges and agrees that it will use reasonable endeavours to rent the Equipment to a third party to minimise the Estimated Loss.
- 26. PERSONAL PROPERTY SECURITIES ACT**
- 26.1 The Customer acknowledges that for the purposes of section 109(1) of the Personal Property Securities Act 2009 (Cth) ('PPSA') this document is a PPS lease that does not secure payment or performance of an obligation.
- 26.2 The Customer agrees, to the extent permitted by law:
- 26.2.1 to promptly give KA all assistance and information (including signing any documents) as KA requests to ensure that KA has a perfected first ranking security interest in the Equipment;
- 26.2.2 that KA may register a financing statement on the Personal Property Securities Register against the Customer;
- 26.2.3 that notices or documents required or permitted to be given to KA under the PPSA may be given in accordance with the PPSA;
- 26.2.4 not to change its name without notifying KA in writing of the Customer's intention to change its name at least 10 business days prior to doing so;
- 26.2.5 that it waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any security interest created under this document; and
- 26.3 Notwithstanding any other provisions of these terms and conditions, KA is entitled to apply any payment received by or on behalf of the Customer towards payment for any Equipment delivered to the Customer.
- 26.4 Subject to the provisions of the PPSA, the Customer and KA agree that the Customer and KA will not disclose any of the information set out in section 275(1) of the PPSA in relation to this document to any person.
- 26.5 A word or expression used in this clause 26 which is defined in the PPSA has the same meaning in this clause, unless the context otherwise requires.
- 27.1 Any notice, demand or other communication or made under these terms and conditions must be in writing: and
- 27.1.1 if given or made by KA signed by an authorised officer;
- 27.1.2 if given or made by the Customer signed by the Customer or an authorised officer; and
- 27.1.3 delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender.
- 27.2 Such notices will be taken to have been given or made:
- 27.2.1 in the case of delivery by post, three days after the date of posting;
- 27.2.2 in the case of delivery by hand, when delivered; and
- 27.2.3 in the case of delivery by fax, on receipt by the sender of a transmission control report.
- 28. GENERAL**
- 28.1 These terms and conditions are governed by and interpreted in accordance with the laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction and any appeal courts from them.
- 28.2 KA may assign all of its rights, benefits and interests under these terms and conditions to any other entity. The assignment will not affect the rights, claims or interests of the Customer or KA which prior to the date of assignment.
- 28.3 The Customer must not assign, transfer or novate its rights and obligations under these terms and conditions without the prior written consent of KA.
- 28.4 If any provisions of these terms and conditions are, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.
- 28.5 Neither failure to exercise, nor any delay in exercising, any right, power or remedy by KA operates as a waiver. A single or partial exercise by KA of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on KA unless in writing. KA's rights, powers and remedies under these terms and conditions are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any other agreement or instrument.
- 28.6 The Customer acknowledges and agrees that KA may obtain and disclose information in relation to the Customer to:
- 28.6.1 maintain a credit information file in relation to the Customer;
- 28.6.2 provide services to the Customer; and
- 28.6.3 share information with other KA dealers.
- 28.7 These terms and conditions apply to and bind the Customer's employees, contractors, agents and licensees.
- 28.8 Where KA's consent or approval is required that consent or approval may be withheld or granted in the sole and absolute discretion of KA.
- 28.9 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of these terms and conditions.
- 28.10 Where the day or last day for doing anything or on which an entitlement arises is a Saturday, Sunday or Public Holiday, the day or last day for doing the thing or date on which the entitlement arises, will be the immediately following day that is not a Saturday, Sunday or Public Holiday.

27. NOTICES