

## Summary of Hire Charges and Standard Terms and Conditions of Hire (0007)

Updated: March 2018

### SUMMARY OF HIRE CHARGES FOR MACHINE SYSTEMS

#### PRICING & PAYMENT

- Payment for Hires is due monthly in advance unless agreed otherwise.
- ALL PRICING EXCLUDES GST.

#### HIRE OF EQUIPMENT

##### Delivery, Installation and Commissioning

- When hiring a complete Machine Control system, the Hirer is required to pay installation and de-installation charges that may include, the cost of brackets welded to the machine, travel, labour and freight.
- Accommodation and meals are to be supplied OR the cost thereof will be invoiced to the Hirer.
- Charges associated with installation and de-installation will be invoiced separately to the hire.
- Missing or damaged goods delivered on Hire Contracts or other paperwork must be reported in writing within two (2) days of receiving the goods otherwise the Hirer accepts full liability.

##### Hire Contract

- Off Hires or Stand-downs are **NOT** applicable for:
  - Rostered days off (RDO's);
  - Wet weather **except** severe weather events as determined by Position Partners
  - Other site downtimes; or shutdowns
  - Public Holidays **except** Christmas break which is from 25<sup>th</sup> December to and including the first Friday (Business day) in January, and Easter specifically from Good Friday through to and including Easter Monday
- Long term Hire rates apply to hires exceeding three (3) months if arranged at the commencement of the hire. Equipment Off Hired before the agreed three (3) month minimum term will revert back to the standard hire rate and be back charged for the period.
- **Invoicing Terms: One (1) week hire is equal to five (5) days. Weekends are not charged in the weekly rate.**
- If equipment is moved from the known site during the hire period, the Hirer must inform Position Partners in writing.
- Lost or damaged goods are the responsibility of the Hirer, replacements or repairs will be invoiced to the Hirer.
- Any changes or amendments to the Hire Contract must be agreed to by an authorised representative from both the Hirer (not a third party) and Position Partners.
- Hires provided during repairs must be returned within 5 business days of repair being completed or hire charges will be applied.

##### Additional Charges

- Pickup and delivery charges apply to all Hire equipment unless collected and/or returned by the Hirer.
- Costs associated with repairs or replacements must be authorised by the Hirer (not a third party) prior to Position Partners carrying out the repairs or sending replacements.
- The Hirer will be charged for the replacement of missing or damaged goods.

##### Hire Asset Return

- Immediate steps must be taken to return ALL Off Hired equipment back to the Position Partners branch stated on the Hire Contract (unless agreed otherwise).
- Hire charges will continue and be retrospective for equipment not returned within 1 working day from the Off-Hire date.
- The Hirer must arrange for Position Partners staff to have full access to site and equipment for de-installations.

### SUMMARY OF HIRE CHARGES FOR SURVEY & LASERS

#### PRICING & PAYMENT

- Payment for Hires is due monthly in advance unless agreed otherwise.
- ALL PRICING EXCLUDES GST

#### HIRE OF EQUIPMENT

##### Delivery, Installation and Commissioning

- Charges associated with installation and de-installation will be invoiced separately to the hire.
- Accommodation and meals are to be supplied OR the cost thereof will be invoiced to the Hirer.
- Missing or damaged goods delivered on Hire Contracts or other paperwork must be reported in writing within two (2) days of receiving the goods otherwise the Hirer accepts full liability.

##### Hire Contract

- Off Hire or Stand-downs are **NOT** applicable for:
  - Rostered days off (RDO's);
  - Wet weather **except** severe weather events as determined by Position Partners
  - Other site downtimes; or shutdowns
  - Public Holidays **except** Christmas break which is from 25<sup>th</sup> December to and including the first Friday (Business day) in January, and Easter specifically from Good Friday through to and including Easter Monday
- Long Term Hire rates apply to hires exceeding three (3) months if arranged at the commencement of the hire. Equipment Off Hired before the agreed three (3) month minimum term will revert back to the standard hire rate and be back charged for the period.
- **Invoicing Terms: One (1) week hire is equal to five (5) days. Weekends are not charged in the weekly rate.**
- If equipment is moved from the known site during the hire period, the Hirer must inform Position Partners in writing.
- Lost or damaged goods are the responsibility of the Hirer, replacements or repairs will be invoiced to the Hirer
- Any changes or amendments to the Hire Contract must be agreed to by an authorised representative from both the hirer (not a third party) and Position Partners.
- Hires provided during repairs must be returned within 5 business days of repair being completed or hire charges will be applied.

##### Additional Charges

- Pickup and delivery charges apply to all Hire equipment unless collected and/or returned by the Hirer.
- Costs associated with repairs or replacements must be authorised by the Hirer (not a third party) prior to Position Partners carrying out the repairs or sending replacements
- The Hirer will be charged for the replacement of missing or damaged good.

##### Hire Asset Return

- Immediate steps must be taken to return ALL Off Hired equipment back to the Position Partners branch stated on the Hire Contract (unless agreed otherwise).
- Hire charges will continue and be retrospective for equipment not returned within 1 working day from the Off-Hire date.
- The Hirer must arrange for Position Partners staff to have full access to site and equipment for de-installations.

## TERMS AND CONDITIONS OF HIRE

### DEFINITIONS

- 1.1 "Collateral Documents" means delivery dockets, Goods Order, quotations, invoices, guarantees or other documents which form or describe the subject matter of a contract entered into in accordance with this Hire Contract. It does not include any descriptions, illustrations and performances contained in catalogues, price lists and advertising material;
- "Goods" means any items or equipment hired by the Hirer from Position Partners
- "Hire" means the total amount payable by the Hirer to Position Partners for the hire of the
- "Hire Contract" means the contract and forms part of, or any other written contract or agreement between Position Partners and the Hirer
- "Hire End Date" means the date the Goods were Off Hired.
- "Hire Period" means the period commencing on the Hire Start Date and ending on the Hire End Date;
- "Hire Start Date" means the date specified in the Hire Contract as the date on which the Hire of the Goods commences, or if no date is specified, the date on which the Hirer takes delivery of the Goods from Position Partners
- "Hirer" means the party specified on the Hire Contract and where the context requires, includes that party's employees, agents or representatives
- "Hirer's Premises" means the premises owned or occupied by the Hirer at which the Goods will be safely and securely stored in accordance with these Terms and Conditions
- "Terms and Conditions" means these terms and conditions
- "ACMA" is the Australian Communications and Media Authority

### 2. ACKNOWLEDGEMENT

The Hirer acknowledges and agrees that these Hire Terms and Conditions form an integral part of all contracts and agreements involving the Hire of Goods from Position Partners to the Hirer unless Position Partners and the Hirer agree in writing to separate or varied Hire Terms and Conditions.

### 3. HIRE OF GOODS

- 3.1 Position Partners agrees to hire the Goods to the Hirer for the Hire Period on these Terms and Conditions.
- 3.2 The Hirer agrees to hire the Goods from Position Partners for the Hire Period on these Terms and Conditions.

### 4. PAYMENT OF HIRE

- 4.1 Position Partners will issue a tax invoice to the Hirer for the Hire of the Goods pursuant to the Hire Contract
- 4.2 The Hirer agrees to pay to Position Partners:
- Within the time-frame specified on the invoice.
  - As and when otherwise agreed in writing between Position Partners and the Hirer.
  - The whole of the Hire payable for the Goods immediately upon signing the Hire Contract or as separately agreed.
- 4.3 Failure by the Hirer to pay any Hire or any other money owing to Position Partners shall entitle Position Partners to immediately terminate the Hire Contract in addition to any other contracts or agreements made between Position Partners and the Hirer without incurring any penalty or liability for such termination.
- 4.4 If payment is not received, Position Partners reserves the right to charge interest at the rate of twenty (20) per cent per annum, calculated and compounding daily, on any amount of Hire owing from the date the amount was due until the date paid.

### 5. EXTENSION OF HIRE PERIOD

The Hirer may extend the Hire Period under the same terms and conditions.

### 6. POSITION PARTNERS' LIABILITIES FOR GOODS HIRED

The Hirer acknowledges and agrees that:

- 6.1 The hirer has relied on its own knowledge and expertise as to suitability for purpose.
- 6.2 Position Partners gives no warranties or makes any claims as to the suitability of the Goods for any purpose. No previous supplies by Position Partners to the Hirer of any Goods is indicative that the Goods are of a particular quality or type or suitable or fit for a particular purpose.

### 7. HIRERS OBLIGATIONS

The Hirer acknowledges and agrees that it will:

- 7.1 Keep and maintain the Goods in a first-rate condition.
- 7.2 Use the Goods as they would be used by a careful and prudent owner.
- 7.3 Not use the Goods for any illegal purpose.
- 7.4 Immediately report in writing should any damage, loss or theft occur to Goods hired from Position Partners. Note - replacement cost of goods will be charged at current Recommended Retail Price and reference will be made to the respective contract.
- 7.5 Not sell, mortgage, pledge, sublet, lend, charge or otherwise deal with the Goods in a manner which is inconsistent with the Hire Contract.
- 7.6 Be responsible for theft or damage to goods and take out appropriate insurance, if necessary, whilst in their care.
- 7.7 Properly, safely and securely store the Goods when they are not being used in such a manner as to avoid damage, loss or theft.
- 7.8 Not alter, tamper with, or modify the Goods in any way.

### 8. RETENTION OF TITLE TO GOODS

The Hirer acknowledges and agrees that:

- 8.1 The Goods are the property of Position Partners at all times and has no legal claim to the Goods.
- 8.2 The Hirer further acknowledges that they only have temporary possession of the Goods under these terms and conditions.

### 9. REPOSSESSION OF GOODS

- 9.1 In addition to any other rights Position Partners retains the rights under the Hire Contract, to take all steps necessary to recover the Goods, including entering the Hirer's premises to do so for the purpose of inspecting or recovering possession of the Goods. The Hirer hereby grants to Position Partners an irrevocable license to do so without liability for trespass or any resulting damage if the Hirer is in breach of the terms and conditions.
- 9.2 The Hirer acknowledges and agrees that clause 9.1 constitutes specific authority for Position Partners to enter the Hirer's premises in the event of a dispute, mediation, arbitration or court proceeding with the Hirer.
- 9.3 The Hirer indemnifies Position Partners against any liability, loss, damage, cost, expense, action proceeding or demand incurred, suffered or made by Position Partners or a third party arising out of Position Partners exercising its rights under clause 9.1 and 9.2.
- 9.4 The Hirer acknowledges and agrees that Position Partners would not be deemed to be relinquishing any of its rights as a creditor when exercising any of its rights as owner of the Goods under this clause 9.
- 9.5 Position Partners does not relinquish any of its rights against the Hirer until all monies due and payable to it by the Hirer, whether under the Hire Contract or otherwise, are paid in full.

### 10. INDEMNITIES BY HIRER

- 10.1 The Hirer agrees to operate the Goods at its own risk.
- 10.2 The Hirer hereby indemnifies and holds harmless Position Partners from all liabilities, losses, damages, costs, expenses, actions, proceedings or demands arising out of or in relation to:
- Damage to the Goods caused by the Hirer or any other person;
  - Any loss or damage to any property of the Hirer;
  - Any loss or damage to the property of any other person; or
  - The death of, or injury to, any person, resulting from the use of the Goods by the Hirer.
- 10.3 To the full extent permitted by law, the Hirer hereby releases and discharges Position Partners and its employees, contractors and agents from:
- All claims and demands on Position Partners; and
  - Any loss or damage caused by Position Partners or its employees, contractors or agents including financial, consequential or economic loss arising directly or indirectly from any cause.
- 10.4 The indemnities and assumptions of liability contained in this clause 10 will continue in full force and effect notwithstanding the expiration or termination of the Hire Contract.

## 11. TERMINATION

Position Partners may immediately terminate the Hire Contract to the Hirer and enforce clause 9 if the Hirer:

- 11.1 Commits a breach of any term of the Hire Contract or these Terms and Conditions.
- 11.2 Makes any false, inaccurate or misleading statement in relation to the making of the Hire Contract.
- 11.3 Ceases its current business or a material part of its current business or threatens to do either of these things.
- 11.4 Threatens or resolves to wind itself up or to appoint an administrator or liquidator or gives notice of intent.
- 11.5 Has a receiver or manager appointed to it.
- 11.6 If placed under administration, liquidation or makes or proposes to make any arrangement with its creditors or becomes bankrupt.
- 11.7 Has a judgment debt entered against the Hirer for an amount exceeding \$1,000.00 and this is not satisfied by the Hirer within fourteen (14) days.

## 12. IDENTIFICATION OF GOODS

- 12.1 Position Partners may affix on the Goods any plates, marks, logos or insignias indicating that the Goods are the property of Position Partners.
- 12.2 The Hirer agrees not to remove, deface or in any other way obstruct the visibility of the plates, marks, logos or insignias affixed by Position Partners on the Goods.

## 13. MATTERS BEYOND CONTROL OF POSITION PARTNERS

Position Partners is not responsible to the Hirer in any way if it is unable to or is delayed in performing its obligations under the Hire Contract, if that inability or delay arises directly or indirectly from the happening of any event not within the reasonable control of Position Partners.

## 14. ASSIGNMENT

The Hire Contract or any other contract or agreement between Position Partners and the Hirer cannot be assigned by the Hirer without Position Partners' prior written consent.

## 15. RECOVERY OF COSTS

The Hirer indemnifies Position Partners from and against all costs, charges, damages and expenses (including legal fees on a full indemnity basis) incurred resulting from breaches in the Hire Contract or any other contract or agreement between the Hirer and Position Partners.

## 16. HIRER WARRANTY

- 16.1 The individual signing this Hire Contract or any other contract or agreement relating to the Hire of the Goods on the Hirer's behalf warrants that they have the necessary authority to sign on behalf of the Hirer.
- 16.2 If the Hirer is a corporation, it warrants to Position Partners that the individual signing the Hire Contract or any other contract or agreement relating to the Hire of the Goods on the Hirer's behalf has the necessary authority to sign on behalf of the Hirer.

## 17. GOVERNING LAW

The Hire Contract and these Hire Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Victoria.

## 18. COSTS

- 18.1 Any fees incurred as a result of the Hire of the Goods shall be paid by the Hirer.
- 18.2 The Hirer shall pay any losses or expenses, including solicitor and own client legal costs, arising from the Hirer's failure to comply with its obligations, including payment of all invoices. Such losses, expenses, damages, commissions, interest and costs may be recovered by Position Partners as a liquidated debt.

## 19. RADIO COMMUNICATION DEVICES

- 19.1 Position Partners hereby authorise the hirer to operate radio communication devices under Section 114 of the Radiocommunications Act 1992 (the Act) as applicable.
- 19.2 Hirer operators of frequency(ies) must be aware and fully comply with all sections of the Act, including any applicable Licence Conditions Determinations made under the Act.
- 19.3 Hirer operators must only use the frequency(ies) as authorised under this Hire contract. Penalties under the Act may apply to companies and individuals.
- 19.4 On completion of the hire, the hirer must notify Position Partners and cease using any hired frequency(ies).

## 20. GOODS AND SERVICES TAX (GST)

- 20.1 Unless otherwise stated, all prices for services under this Agreement will exclude GST within the meaning of the GST Act.
- 20.2 Position Partners agrees to issue the Hirer with a tax invoice in relation to taxable supplies made under the Hire Contract

## 21. SECURITY INTEREST

- 21.1 The Hirer must not enter into any security agreement that allows any other person to have or to register a security interest in relation to the Goods.
- 21.2 In accordance with section 115 of the PPSA:
  - (a) The Hirer and the Owner hereby agree to contract out of sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 of the PPSA; and
  - (b) The Owner waives any rights the Hirer may have to:
    - (i) Receive any notices the Hirer may be entitled to receive under sections 95, 118, 121, 130, 132 or 135;
    - (ii) Receive a copy of any financing statement of any financing change statement registered by the Owner, or any verification statement confirming such registration, in respect of any security interest the Owner may have in the Goods;
    - (iii) Apply to a court for an order concerning the removal of an accession under section 97; and
    - (iv) Object to a proposal of the Owner to dispose or retain any collateral under sections 130 and 135.

For the purposes of this clause: "PPSA" means the *Personal Property Securities Act 2009*, and the expressions "accessions", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest", "purchase money security interest" and "verification statement" have the meanings given to them by the PPSA, and references to sections are sections of the PPSA.

## 22. TRUST

This Hire Contract binds the Hirer both personally and as trustee of any trusts of which the Hirer is trustee.

## 23. MISCELLANEOUS

- 23.1 The Hirer must notify Position Partners of any change in its structure or management, including any change of director, secretary, partnership, trusteeship and business address.
- 23.2 Where the Hirer comprises more persons than one, the provisions of this Hire Contract with respect to such party shall bind all of those persons severally and jointly in any claim arising out of a breach of this Hire Contract.
- 23.3 Any waiver by Position Partners of a default will not constitute a variation or waiver of any provision, condition or requirement of this Hire Contract, or other remedy available to Position Partners.
- 23.4 If any part of this Hire Contract are found to be invalid, illegal or unenforceable, such term or condition is to be severed, with the remainder of the Terms and Conditions remaining in full force and effect.