

Hire Terms & Conditions

1. Definitions

- 1.1 "Equipment" means the items hired out by the Owner to the Hirer. "Hirer" means any person who requests the Owner to hire Equipment to it, including its employees and agents. "Owner" means Hoad Water Cartage Pty Ltd trading as Andy's Water Transport ABN 98 781 093 261, its employees and agents. 'Terms' means these terms and conditions.

2. Terms of Payment

- 2.1 The Hirer agrees to pay the Owner's hire charges and any other charges, including charges for loss, damage and repairs, or any tax, GST, duty, levy, or other expenses paid or payable by the Owner.
- 2.2 If not otherwise specified by the Owner in writing all hiring charges, including taxes and duties, along with any charges for loss, damage or repairs, are to be paid in accordance with trading terms outlined in Invoices issued to the Hirer by the Owner.
- 2.3 The Hirer agrees to pay any expenses incurred or loss suffered by the Owner as a result of breach by the Hirer of its obligations pursuant to these Terms (including legal costs on a solicitor-client basis) and to pay all costs and expenses incurred by the Owner, its legal advisers, mercantile agents and others in respect of anything instituted or being considered against the Hirer, whether for debt, possession of any Equipment or otherwise.
- 2.4 The Hirer acknowledges and agrees that the Owner may pay a rebate, commission or other financial benefit to event organisers or like suppliers in connection with the hiring of the Equipment to the Hirer.

3. Hire

- 3.1 The Owner agrees to hire the Equipment to the Hirer on these Terms and the terms of the Quote. If there is any inconsistency, these Terms prevail.

4. Termination

- 4.1 The Owner may terminate hire of the Equipment any time on the earlier of:
- The expiry of the hire period designated on the form; and
 - The Hirer being in breach of these Terms, in which case the Hirer shall have no claims against the Owner for such termination.
- 4.2 The Hirer may terminate the hire of the Equipment by notifying the Owner that the Equipment is ready for collection. In such instances, the Hirer agrees to keep the Equipment safe until collection.
- 4.3 Upon termination of hire, the Owner is entitled to take possession of the Equipment immediately and for this purpose the Hirer irrevocably appoints the Owner as the Hirer's agent and authorises the Owner to:
- Enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated; and
 - Remove the Equipment whether or not it is affixed to the land or premises or connected to property.
- 4.4 If the Equipment is not ready for pick-up by the Owner at the expiration or termination of the hire period the Hirer shall pay an additional charge of 100% the daily rate for every additional day or part thereof that the Equipment is retained by the Hirer unless otherwise specified by the Owner.

5. The Hirer's Obligations

- 5.1 The Hirer will:
- Hire the Equipment at its own risk, and bear responsibility for the Equipment hired from the time of its delivery into the possession of the Hirer until collection by the Owner;
 - Where necessary be responsible for obtaining the necessary permits and/or plans and pay such fees as may be required to use the Equipment;
 - Upon installation, delivery or collection of the Equipment, immediately examine the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. In accepting the Equipment, the Hirer acknowledges that it has duly examined the Equipment and has satisfied itself as required. Should the Hirer alter its installation or delivery requirements prior to, during, or after installation or delivery, the Hirer is liable for all extra costs of the Owner's employees and cartage;
 - Not remove the Equipment from the location designated in the Quote and must not sub-hire, part with possession or part with control of, the Equipment without the Owner's written

permission.

- assume the risk of and indemnify and hold the Owner harmless from and against any and all property damage and personal injury resulting from use of the Equipment or contact with an obstruction of any kind.
- use the Equipment in a proper, safe and prudent manner and only for the purpose and capacity for which it was designed;
- comply with any written instructions given to the Hirer or accompanying the Equipment;
- ensure all Equipment is readily accessible for collection by the Owner's driver; and
- will pay for all cleaning and for any damage resulting from improper use or exposure to the elements.

6. Property

- 6.1 The Hirer acknowledges that the Owner may inspect the Equipment at any time during the period of hire, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide all assistance and co-operation necessary to facilitate such inspection of the Equipment.
- 6.2 The Hirer shall indemnify the Owner in relation to any action of trespass or any other action or claim against the Owner in the course of the Owner exercising its right to inspect the Equipment.
- 6.3 The Hirer acknowledges that all property in and title to the Equipment at all times remains with the Owner. The Hirer does not acquire any property in or title to the Equipment and the Hirer's interest in the Equipment is as bailee of the Owner only.

7. Loss of or Damage to Equipment

- 7.1 If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner of the details. Notification shall not absolve the Hirer from its obligations under these Terms.
- 7.2 In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall immediately stop using the Equipment and take all steps necessary to prevent the Equipment from sustaining any further damage. The Hirer must also take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment and must not repair or attempt to repair the Equipment without the Owner's prior written consent.
- 7.3 If the Equipment is lost or damaged and the loss of or damage to the Equipment is caused by the negligence or wilful act or omission of the Hirer or the breach of any of these Terms by the Hirer, the Hirer shall without limitation be liable for:
- Any costs incurred by the Owner in repairing or replacing the Equipment; hire charges for the Equipment until the Equipment is repaired or replaced; and
 - Any other costs whatsoever incurred or loss suffered by the Owner as a result of the damage to or loss of the Equipment.

8. Release and Indemnity

- 8.1 The Hirer hereby releases the Owner from, and agrees to indemnify the Owner in respect of any third-party claims, action, suits, demands, costs and expenses for damage or injury to person or property arising directly or indirectly out of the hire or use of the Equipment by the Hirer or the Hirer's breach of any of these terms.

9. Insurance

- 9.1 The Hirer will maintain at its own expense all appropriate policies of insurance:
- For theft and damage to the Equipment hired in an amount not less than the full replacement cost of the Equipment; and
 - For liability, property and casualty insurance coverage in amounts necessary to fully protect the Owner and its Equipment against all claims, loss or damage whatsoever.

10. Limitation of Liability

- 10.1 To the full extent permitted by law, all warranties, conditions and guarantees that may otherwise apply or be implied are excluded and the Owner's only obligation resulting from a breach by it or of any condition, warranty or guarantee that cannot be excluded is limited to replacing the Equipment or supplying Equipment similar to the Equipment, repairing the Equipment, paying the cost of replacing the Equipment or paying the cost of repairing the Equipment.

11. Security Interest

- 11.1 These Terms create a security interest in favour of the Owner in the Equipment pursuant to the Personal Property Securities Act 2009 (Cth).

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- 11.2 The Hirer undertakes to immediately do such acts and provide such information as in the Owner's opinion may be necessary or desirable to enable the Owner to perfect any security interest created or provided for by these Terms, as a perfected security interest with first priority.
- 11.3 To the fullest extent permitted by law, the Hirer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for, or perfected in the manner contemplated by, these Terms.
- 12. Force Majeure**
- 12.1 If the Owner is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes, lockouts, fires, riots, civil commotion or unrest, interference by civil or military authorities or act of war) the Owner may give written notice to that effect to the Hirer, giving full particulars of such force majeure in which case the obligations of the Owner under these Terms shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure. The Owner shall not be liable for any loss or damage suffered by the Hirer as a result of any delays caused by such force majeure events.
- 13. Credit Reporting**
- 13.1 The Hirer authorises the Owner to:
- Obtain from a credit reporting agency a credit report containing personal information about the Hirer and the Hirer's guarantors pursuant to section 18K(1)(b) of the Privacy Act 1988;
 - Obtain a report from a credit reporting agency and other information in relation to the Hirer's commercial credit activities;
 - In accordance with section 18N(1)(b) of the Privacy Act 1988, give to and obtain from any credit provider that may be named in a credit report issued by a credit reporting agency information about the Hirer's credit arrangements, which may include information about credit worthiness, credit standing, credit history or credit capacity; and
 - Use any credit information for the purposes of this contract (section 18L(4) of the Privacy Act 1988) and assisting the Hirer to avoid defaulting on its payment obligations, notifying credit providers of a default, and assessing credit worthiness.
- 14. Governing Law**
- 14.1 These terms and conditions are governed by the Laws of South Australia and the Hirer and the Owner submit to the jurisdiction of the courts of that State.
- 15. Charge**
- 15.1 The Hirer charges in favour of the Owner all its estate and interest in any land and in any other assets whether tangible or intangible in which the Hirer now has any legal or beneficial interest or in which the Hirer may later acquire any such interest with payment of all monies owed by the Hirers and agree upon request in writing, to execute a registrable instrument transferring to the Owner, the Hirers estate and interest by way of security.
- 16. Miscellaneous**
- 16.1 If any of the Terms becomes void or unenforceable for any reason then that part will be severed from these Terms to the intent that all other parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts. Failure by the Owner to insist upon strict performance of any of these Terms, or to exercise in whole or in part any right that it may have under these Terms or at law, shall not be deemed to be a waiver of any rights that the Owner may have and shall not be deemed a waiver of any subsequent breach by the Hirer of any of these Terms.
- 17. Privacy**
- 17.1 The Company is committed to protecting personal privacy. We will comply with the Privacy Act 1988 (Cth). In accordance with the Australian Privacy Principles as contained in the Act, and as reflected in the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected to enable it to supply Customers with its services
- 17.2 Customers who have any concerns about, or would like a copy of, the full Privacy Policy are requested to direct them to:
Privacy Officer
Hoad Water Cartage Pty Ltd trading as Andy's Water Transport
ABN 98 781 093 261
PO Box 269
Uraidla SA 5142
Or to download a copy of the policy from our website
andyswater.com.au