



RSMB Holdings Pty Ltd T/as

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CONDITIONS OF HIRE

1. DEFINITIONS in this agreement:

- 1.1 The “**Agreement**” means this Agreement.
- 1.2 “**Business Day**” means any day which banks are open for business in Sydney, except for public holidays and weekends.
- 1.3 “**Claim**” includes any cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, whether at law, in equity, under statute or otherwise including any Claim arising from a breach of the HIRER’S warranties pursuant to this Agreement.
- 1.4 The “**Collateral**” means all present and after-acquired property, assets and undertakings of the HIRER and has that meaning for the purposes of Clause 22.1.
- 1.5 The “**equipment**” means the chattels described as delivered on the OWNER’S delivery dockets.
- 1.6 The “**final date**” is the day of return to the OWNER’S depot or agreed with the OWNER via formal communication and is the date on which the hire will cease.
- 1.7 The “**hire period**” means the period commencing on the start date and ending on the final date.
- 1.8 The “**HIRER**” means any person, company or representatives and permitted assigns and any entry entitled by law to administer the HIRER’S affairs who hires any equipment from the OWNER.
- 1.9 “**Liability**” means any actual, present or future liability or obligation, including for any damage, loss, cost and expense (including legal costs and expenses and incidence of taxation of whatsoever nature or description).
- 1.10 The “**OWNER**” means Positive Hire Pty Ltd ACN 003 598 338 and its permitted signees.
- 1.11 The “**rent**” is the current price list rate at the Start Date of the hire period for the hired equipment unless otherwise agreed in writing.
- 1.12 The “**start date**” is the day of dispatch or collection of equipment from the OWNER’S depot and is the date upon which the hire period will commence.

2. **HIRE PERIOD** The hire period commences on the start date and ends on the final date subject to a minimum hire period of two (2) weeks unless otherwise agreed in writing.

3. **PRICE REVISION** Prices charged at the time of delivery are those applicable at the time of delivery. If the OWNER’S standard hire prices for any of the equipment are revised after the start date, the OWNER may give the HIRER not less than four (4) weeks’ notice of the revised price which shall thereafter be the price at which the HIRER hires the equipment.

4. **TERMS OF PAYMENT** unless otherwise agreed in writing.

4.1 Payment shall be strictly net thirty (30) days ("due date"):

4.2 The OWNER may charge interest on any amount outstanding on the due date at the rate prescribed by the Penalty Interest Rates Act (NSW) from the due date until the date of payment in full, calculated daily.

4.3 All payments made by the HIRER to the OWNER will be applied as follows:

4.3.1 Firstly in or towards payment of any costs (including legal costs on a solicitor-own client basis), charges, expenses or outgoings incurred or paid by the OWNER in relation to any dishonored cheque fees, collection costs or any action taken by the OWNER for the recovery of any amounts owing by the HIRER or the OWNER.

4.3.2 Secondly in or towards payment of any interest due or payable hereunder; and

4.3.3 thirdly in or towards payment of the HIRER'S oldest debt owing to the OWNER.

4.4 If the HIRER defaults in payment of any account on the due date all moneys which would become owing by the HIRER to the OWNER at a later date for supply of goods and/or services shall be immediately due and payable without the requirement of any notice to the HIRER.

- (a) The OWNER reserves the right to require the HIRER to provide further security as a condition precedent to the continuation of supply and further reserves the right to alter the terms of payment at any time without notice and substitute cash with order or cash on delivery or any other terms.
- (b) The OWNER may, at its option, cease to perform any further work or supply any further goods if the HIRER fails to make any payment on the due date.
- (c) An accounting fee of 20% per annum will be charged on any outstanding monthly balance.

5. **TRANSPORTATION** The standard hire prices of the equipment do not include costs of transportation for delivery or return nor costs associated loading and unloading, escorts and the HIRER must arrange for transport and unloading at its own cost. Positive Hire Pty Ltd. will quote transportation costs at time of request.

6. **RECEIPT OF EQUIPMENT.** The HIRER'S representative's acknowledgment of receipt of the equipment by signing the delivery docket shall be conclusive evidence of the receipt of the equipment listed therein in good order and condition. If delivery takes place in accordance with the HIRER'S instructions and no representative of the HIRER'S is available to take delivery, delivery of the equipment detailed in the delivery docket will be deemed to have taken place even in the absence of the HIRER'S representative's signature, and a certificate from the OWNER shall be conclusive evidence of the time, date and location of such delivery, and the start date of the HIRER'S hire.

8. **SPECIFIED TIME FOR DELIVERY** No liability whatsoever shall be accepted for failure to deliver on time or at all. Delay in delivery in part or in full shall not entitle the HIRER to any damages or claims whatsoever against the OWNER resulting from such failure to deliver.

9. **END OF TERM AND RETURN** Upon expiration of the hire of any equipment for whatever reason the HIRER shall deliver the equipment to and offload it at the OWNER'S depot in good repair ordinary wear and tear excepted. No returns will be accepted on weekend's public holidays or after 3 p.m. Monday to Friday unless prior arrangements

have been made in writing. If for any reason whatsoever the HIRER fails to sign a return docket the HIRER shall be deemed to have irrevocably accepted the opinion of the OWNER'S agent as to the items listed therein and to the condition of the equipment and to have accepted liability for any damage to the equipment identified on the return docket.

10. **EQUIPMENT RETURNS CHECK** On return of any equipment to the OWNER'S Depot such equipment will be inspected by the OWNER and the HIRER hereby agrees that this inspection will be prima facie evidence of the identity of the equipment returned and its condition.

11. **NON-RETURN, LOSS OR DAMAGE OF EQUIPMENT**

11.1 The OWNER may give notice to the HIRER during the hire period or at the expiration of the hire period to return the equipment. If the HIRER fails to return the equipment within seven days of the giving of that notice, the HIRER is indebted to the OWNER as a debt or a liquidated amount for the replacement value of the equipment. The equipment will be deemed to be sold from the OWNER to the HIRER at the OWNER's discretion at the OWNER's current sale price as if the equipment were new at the date of expiration of the hire period. Rental will continue to accrue until the replacement value of the equipment is paid to the OWNER by the HIRER.

11.2 The HIRER is responsible to the OWNER for all costs associated with reinstatement and repair of equipment that has been damaged during the hire period. The OWNER may give notice to the HIRER of such reinstatement and repair costs to be paid by the HIRER within seven days of the giving of that notice. Rental will continue to accrue until the reinstatement and repair cost of the equipment is paid to the OWNER by the HIRER.

11.4 Despite any other provision of this Agreement, the HIRER indemnifies the OWNER in respect of all loss or damage suffered by the OWNER as a result of the non-return or damage to equipment.

11.5 Despite any other provision of this Agreement, the indemnity in sub-clause 11.4 hereof is not qualified and is not capable of being qualified and is not extinguished and is not capable of being extinguished to any extent.

12. **CLEANING:** The rental equipment must be returned to the OWNER cleaned of concrete and paints. The HIRER shall at its own expense clean the equipment in a proper and workmanlike manner. Should the HIRER fail to clean the equipment to the satisfaction of the OWNER, then the HIRER agrees to pay an additional hourly cleaning charge pending the uncleanliness of the equipment. Furthermore the OWNER reserves the right to seek compensation for further damages beyond repair.

13. **PATENTS:** The HIRER hereby acknowledges that ALL Equipment are patented or the subject of patents applied for and it shall not copy or attempt to copy the equipment.

14. **USE AND OPERATION:** The HIRER shall cause the equipment to be used in a proper manner for the purpose for which it was designed and only in accordance with any specifications, approvals and instructions given by the OWNER. The HIRER hereby

agrees that the OWNER will not be liable for any damage loss or injury caused or contributed to in any manner whatsoever by the unauthorised use of the equipment or use that is not in accordance with the OWNER'S specifications, approvals or instructions.

15. **SAFETY:** The HIRER hereby releases the OWNER from any liability incurred during the erection, use and all subsequent movement of the equipment during the hire period. The HIRER shall ensure that all safety checks, obligations and installation tests have been carried out, or as directed by the OWNER, on the equipment in respect of the erection, dismantling, location, use and fixing of the equipment during the hire period. The HIRER'S engineer shall approve and be responsible for the installation and use of the equipment till returned to the OWNER'S depot. The HIRER hereby agrees that the OWNER shall not be liable for any damage caused directly or indirectly from the use, and installation of the equipment.

16. **TRAINING:** The HIRER acknowledges and agrees that it is the HIRER'S responsibility to ensure that all operators of the equipment are properly and adequately trained in the use of the equipment, and agree that they shall at all times comply with the OWNERS' instructions in relation to the use, installation and safety of the equipment.

17. **CHANGES AND ALTERATIONS:** The HIRER shall not alter, modify or tamper with the equipment in anyway whatsoever. Any such alteration shall be considered damage to the equipment. The OWNER expressly excludes any liability for any damage howsoever caused in relation to any equipment that is modified or altered without the OWNER'S express written consent.

18. **GOOD ORDER AND REPAIR:** The HIRER shall during the hire period maintain the equipment in good order and repair.

19. **TRANSFER OF GOODS:** The equipment may be used at the location specified on the delivery docket and no part thereof shall without the written consent of the OWNER be transferred to any other site or location. The HIRER shall not sell, assign, mortgage, pledge, lease or license, or otherwise deal or part with possession of the said equipment or any part of the same.

20. **TITLE:** The equipment shall at all times remain the property of the OWNER shall have no interest therein except as Bailee. The HIRER shall have no interest therein except as Bailee. The HIRER will not attempt to deal with the equipment or any part thereof or with any interest therein or in this Agreement. The HIRER hereby indemnifies the OWNER against all losses, costs, charges, damages and expenses incurred by the OWNER which are caused or contributed to in any manner whatsoever by the HIRER'S breach of any of the HIRER'S obligation under this agreement.

21. **PERSONAL PROPERTY SECURITIES ACT 2009**

22.1. The HIRER grants a security interest in the Collateral to the OWNER to secure payment of all monies due to the OWNER by the HIRER pursuant to these terms and

conditions, registrable on the Personal Properties Securities Register, for the purposes of the Personal Properties Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this document include references to amended, replacement and successor revisions or legislation. This security interest is of the Collateral and includes anything in respect of which the HIRER has at any time a sufficient right, interest or power to grant a security interest and if the HIRER is trustee of a trust, Collateral means all the HIRER's present and after-acquired property including its assets and undertaking which is the subject of the trust and includes anything in respect of which the HIRER as trustee of the trust has at any time a sufficient right, interest or power to grant a security interest.

22.2 The OWNER may register any actual impending or likely security interest. The HIRER may not make any Claim against the OWNER in respect of any registration even if it is determined that the OWNER should not have registered a security interest. The HIRER must do anything (such as obtaining consents and signing documents) which the OWNER requires for the purposes of:

- (a) Ensuring that the OWNER's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) Enabling the OWNER to gain first priority (or any other priority agreed to by the OWNER in writing) for its security interest; and
- (c) Enabling the OWNER to exercise rights in connection with the security interest.

22.3 The rights of the OWNER under this document are in addition to and not in substitution for the OWNER's rights under other law (including the PPS Law) and the OWNER may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt, the OWNER's security interest will attach to proceeds.

22.4 To the extent that Chapter 4 of PPSA applies to any security interest under this document, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this document in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the OWNER to give a notice to the HIRER); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the OWNER to give a notice to the HIRER); section 129(2) and 129(3); section 132(3)(d)(contents of statement of account after disposal); section 132(4)(statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security document).

22.5. To the extent they apply, the following provisions of the PPS Law; 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 the OWNER. The HIRER agrees that in addition to those rights, the OWNER shall, if there is default by HIRER, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the HIRER agrees that the OWNER may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or license.

22.6. 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 PPS Law. This waiver also extends to any verification statement in respect of security interests arising or provided for under security documents prior to the date of this document.

22.7. The OWNER and the HIRER agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The HIRER must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The document in this sub-clause is made solely for the purpose of allowing to the OWNER the benefit of section 275(6)(a) and the OWNER shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

22.8. The HIRER must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the equipment other than with the express written consent of the OWNER. The HIRER must not lease, hire, bail or give possession ('sub-hire') of the equipment to anyone else unless the OWNER (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the OWNER and must be expressed to be subject to the rights of the OWNER under this document. The HIRER may not vary a sub-hire without the prior written consent of the OWNER (which may be withheld in its absolute discretion).

22.9 The HIRER must ensure that the OWNER is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the equipment.

22.10. The HIRER must take all steps including registration under PPS Law as may be required to:

- (a) Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) Enabling the HIRER to gain (subject always to the rights of the OWNER) first priority (or any other priority agreed to by the OWNER in writing) for the security interest; and
- (c) Enabling the OWNER and the HIRER to exercise their respective rights in connection with the security interests.

22.11 To assure performance of its obligations under this document, the HIRER hereby gives the OWNER an irrevocable power of attorney to do anything the OWNER considers the HIRER should do under this document. The OWNER may recover from the HIRER the cost of doing anything under this clause 22, including registration fees.

23 BREACH OF CONDITIONS If the HIRER shall make default in punctual payment of any money payable hereunder or fail to observe and perform any of the terms and conditions

hereof or become bankrupt, insolvent or enter into any Deed or Agreement or Composition with his creditors or suffer execution to be issued against it, appoint an administrator, or go into voluntary or compulsory liquidation, this Agreement shall forthwith be determined and all monies paid in advance shall be immediately forfeited to the OWNER and the HIRER hereby expressly authorises the OWNER to enter onto the site where the Equipment is located for the purpose of retaking possession of the said equipment and for that purpose to enter into or upon any premises where the equipment is stored or erected for the purpose of removal of same. The termination of the hire Agreement pursuant to this clause shall not affect the right of the OWNER to recover from the HIRER any monies payable hereunder or any other damages for breach of the conditions.

24. **INSURANCE** All equipment hired by the HIRER shall be at the HIRER'S risk from the start date. The HIRER shall insure the equipment for the replacement value and that appropriate public liability insurance is obtained.

25. **INDEMNITY** The OWNER shall not be responsible for the delay in completion of the job in relation to which the equipment is hired or failure to so complete resulting from any act of default beyond the OWNERS' control, including but not without limiting the generality of the foregoing: civil commotions, industrial disputes, strikes, lock-outs, epidemics, inclement weather, war, fire, accidents or government intervention.

26. **AFFIXING SIGNS:** The OWNER shall be entitled to affix to the equipment on hire during the period of hire a sign/signs exhibiting the OWNERS' name, address and any other details that it thinks fit, and the HIRER shall not damage, remove, interfere or obscure such sign/signs, and the HIRER hereby grants to the OWNER the right to enter the premises where the equipment is being stored or used to take photographs on site for promotional purposes.

27. **ENTRY TO SITE:** The OWNER shall be allowed at any reasonable time to enter the HIRER'S premises or the location of the equipment from time to time, for the purpose of inspecting the equipment on site.

28. **COMPETITION AND CONSUMER ACT** If this agreement and the within hire constitute a supply of goods or services to a consumer as defined in the Competition and Consumer Act 2010 (the "Act") nothing herein shall exclude, restrict or modify any condition, warranty, right or remedy which pursuant to the Act applies to this Agreement or within hire or is conferred on the HIRER provided that to the extent that the Act permits the OWNER to limit the liability for a breach of a condition or warranty implied by the Act then the OWNER'S liability for same, including all consequential loss which the HIRER may sustain or incur, shall be limited to:

(a) In the case of goods deemed under the Act to be supplied to a consumer hereunder, the replacement of such goods or the supply of equivalent goods or payment of the cost of replacing such goods or acquiring equivalent goods or the repair of such goods or payment of the cost of having such goods repaired.

(b) In the case of services deemed under the Act to be supplied to a consumer hereunder the supplying of such services again or the payment of the cost of having

the services supplied again as the case may require.

29. **LIABILITY** The OWNER shall not be liable for any direct or indirect or consequential losses or expenses suffered or incurred by the HIRER howsoever caused, including any loss or damage incurred by the HIRER as a result or in connection with defective or faulty equipment that is manufactured or sourced overseas, and acknowledges and agrees that it shall have no right, claim or action against the OWNER in this regard.

30. **CHARGE ON PROPERTY** The Hirer hereby charges (and if more than one Hirer, then each of them jointly and severally charge) with payment of any monies owing at any time to the Owner, all estates and interests in freehold and leasehold land which the Hirer(s) has or may acquire and hereby further covenants and agrees to execute such further documents or instruments as may be necessary to enable the registration of such charge at the Land Titles Office.

31. **REPRESENTATIONS**

(a) Subject to the previous clause all conditions, representations and warranties express or implied whether arising by virtue or stature or otherwise as to the condition, suitability, quality fitness or safety of the equipment are to the maximum extent permitted by law expressly negated and excluded. And it is agreed that the OWNER gives no condition, warranty or undertaking and the HIRER acknowledges that the OWNER has made no representation in relation to the condition, suitability, quality, fitness or safety of the equipment.

(b) The OWNER shall not be liable for any representation, promise or statement made or allegedly made by or on behalf of the OWNER in relation to the equipment or its usage other than as expressly set out herein.

32. **WAIVER** No waiver or indulgence given by the OWNER to the HIRER shall be of any force or effect unless in writing and shall be strictly construed and shall not except according to its express terms constitute an estoppels' against the OWNER.

33. **PROPER LAW** This agreement shall be governed by the laws of the State of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria and all Courts exercising appellate jurisdiction there from.

34. **DRAWING AND DESIGNS:** The HIRER agrees that any drawings, designs or calculations by the OWNER in relation to the proposed use of the equipment were performed without any obligation by, or any liability accruing to the OWNER and to the maximum extent permitted by law the HIRER releases the OWNER from any liability in relation thereto. The HIRER agrees that as between the OWNER and the HIRER the selection of the equipment was based solely upon the decision of the HIRER.

35. **DEFAULT IN PAYMENT**

(a) In the event that the HIRER defaults in any payment to the OWNER on any account whatsoever or commits any act of bankruptcy, appoints an Administrator, or enters into voluntary liquidation, or a petition to wind up the HIRER is presented in any Court of Competent jurisdiction, the OWNER may, in its sole discretion and without prejudice to another rights or remedies available to it, terminate this HIRE Agreement, or suspend delivery of goods hereunder and where the equipment remains on site at the HIRERS'

site or premises, retake possession of them.

(b) The HIRER hereby agrees that a certificate signed by a director or authorised officer of the OWNER shall be prima facie evidence of the amount due and owing by the HIRER to the OWNER as at the date of the certificate.

36. **SEVEREABILITY** If any part of this agreement is for any reason unenforceable that provision or part shall be struck out and the remaining provisions and parts shall apply as if that part or provision never formed part of this agreement.

37 **MAINTENANCE** The day to day maintenance, safety checking and the use of the equipment is the responsibility of the HIRER until returned to the OWNERS' depot. If a representative of the OWNER is requested by the HIRER to inspect, maintain or relocate the equipment such request will be deemed as a service call and the cost of such will be redeemable by the OWNER at the OWNERS current advertised rates.

38. **ACCEPTANCE** The delivery and use of the equipment shall be deemed to be an acceptance of all the Terms and Conditions of Hire and Sale.

39. **NOTICE**

- (a) A notice, consent, approval or other communication (each a "Notice") pursuant to these Terms and Conditions must be in writing, in English, signed by or on behalf of the person giving it (except for emails), and addressed to the person to whom it is to be given and:
 - (i) hand delivered to that person's postal address;
 - (ii) sent by pre-paid mail to that person's postal address; or
 - (iii) sent by email to that person's email address.
- (b) A Notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered to a person's address: on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail: on the fifth Business Day after posting; or
 - (iii) if sent by email and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending if sent before 5.00 pm on a Business Day, otherwise on the next Business Day.

For the purposes of this clause 39, the address of a person is the address which that person may from time to time give notice to each other person.