

# SITECH Solutions Pty Ltd – Hire Terms and Conditions

## 1 General

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- (a) The Supplier rents the Products to the Customer for the Rental Period in accordance with these Hire Terms and Conditions and the terms of the Supplier's Hire Equipment Off-hire/Return Process (collectively referred to as the **Terms**).
- (b) These Terms prevail over any prior agreement, arrangement or understanding and over any terms and conditions of the Customer, whether incorporated into the Customer's response to a quote or other instructions given to the Supplier in relation to the hire of the Products to the Customer by the Supplier.

## 2 Ordering

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- (a) When the Customer issues a Purchase Order which is consistent with a Quote, it offers to contract with the Supplier on the basis of the Quote, Purchase Order and these Terms.
- (b) The Supplier accepts and is deemed to have accepted a Purchase Order on the earlier of:
  - (i) when it notifies the Customer that it accepts the Purchase Order; and
  - (ii) Delivery as defined in clause 3(c); and from this time a **Contract** is formed.
- (c) The Contract will comprise the following documents (with the order of priority listed below):
  - (i) the Quote;
  - (ii) any notice of acceptance provided by the Supplier in accordance with clause 2(b)(i);
  - (iii) these Terms;
  - (iv) any document attached to these Terms by the Supplier and
  - (v) the Purchase Order.
- (d) The Customer acknowledges and agrees that it must not rely on any results given by the Products and that any such outcomes need to be verified by appropriately qualified personnel of the Customer.
- (e) The Customer must:
  - (i) provide the Supplier with access to the Customer's premises and such information and assistance necessary to enable the Supplier to carry out its obligations under this Contract; and
  - (ii) cooperate with the Supplier and act reasonably and in good faith in connection with this Contract.
- (f) The Customer acknowledges and agrees that if it does not comply with clause 2(e) then the Supplier is not obliged to continue to supply the Products to the Customer.
- (g) The Customer must return the Products to the Supplier by the end of the Hire Period.
- (h) Where there is no fixed Hire Period stated in the Quote:
  - (i) the hire will be ongoing;
  - (ii) a minimum hire of 1 week applies;
  - (iii) the Customer must email hire@sitechsolutions.com.au at least 2 Business Days prior advising the date that the Customer will return the Products; and
  - (iv) the Hire Period will terminate on the return of the Products.

## 3 Fees and risk

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- (a) The Hire Fee is a weekly rate and pro-rated where the Hire Period includes a part week.
- (b) Where the Customer:
  - (i) **holds an approved credit account with sufficient available credit**, the Customer must pay the Hire Fee on Products monthly in arrears,

- (ii) **does not hold an approved credit account**, the Customer must pay the Hire Fee for the Products upfront and in advance of Delivery

- (c) The Supplier must either request a third party to deliver the Products to the address nominated by the Customer for the Customer to unload or make the Products available for collection by the Customer (**Delivery**). The Supplier will communicate an anticipated delivery or collection timeframe promptly after Contract formation and use reasonable endeavours to comply with such timeframe. The Customer acknowledges delivery and collection timeframes are subject to Product availability and third-party freight provider timeframes.

- (d) The Customer bears the risk relating to the Products from Delivery until the time the Products are returned to the Supplier's site.

- (e) The Customer must effect and maintain from a reputable insurance company:

- (i) where a third party is delivering the Products, transit insurance for the Products, covering the Products from the time the Products are loaded onto the third party vehicle until Delivery; and

- (ii) all risks property insurance for the Products, covering the Products from Delivery until the time the Products are returned to the Supplier's site;

for amounts not less than the Products' full replacement value

- (f) If requested by the Supplier, the Customer must provide the Supplier with a copy of the certificate of currency for these policies.

## 4 Retention of title

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- (a) The Products remain the property of the Supplier at all times.

- (b) The Customer:

- (i) is bailee of the Products for the Supplier;

- (ii) must retain actual possession of the Products at all times;

- (iii) must not deal with the Products contrary to the terms of this Contract; and

- (iv) irrevocably authorises the Supplier to enter, at any time, the premises where the Products are stored or, in the reasonable opinion of the Supplier, are likely to be stored, for the purposes of examination of the Products, and warrants that it has the capacity to grant that right of entry.

- (c) Upon taking possession of the Products, the Customer must store the Products in such a way that the Products are recognisable as the property of the Supplier.

- (d) If the Customer fails to pay the Hire Fee in relation to any Product in accordance with clause 3(b) then, without limiting any other remedies available to the Supplier:

- (i) the Supplier may defer provision of all Products until any outstanding Hire Fees are paid;

- (ii) the Customer's right to possession of the Products ends immediately;

- (iii) the Supplier may recover possession of the Products; and

- (iv) the Customer irrevocably authorises the Supplier to enter, at any time, the premises where the Products are stored or, in the reasonable opinion of the Supplier, are likely to be stored, for the purposes of recovery of the Products, and

# SITECH Solutions Pty Ltd – Hire Terms and Conditions

warrants that it has the capacity to grant that right of entry. For the purposes of enabling the Supplier to recover the Products, the Customer

irrevocably appoints Supplier as the Customer's agent to enter any site or premises in which the Products may be located.

- (e) The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs on a full indemnity basis) incurred or suffered by the Supplier in connection with the Supplier exercising, or attempting to exercise, its rights under this clause 4 except to the extent caused by the negligent act or omission of the Supplier.

## 5 Personal Property Securities Act

- (a) The Customer acknowledges the Supplier may register a security interest under the PPSA in relation to the Goods.
- (b) The Customer agrees that it will not register, or attempt to register, a security interest over the Products.
- (c) To the extent permitted by law, each party waives its rights or entitlements to any verification statements or other notices or communications that may be necessary, required or desirable under the PPSA.
- (d) If any provisions of these Terms are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

## 6 Use of products

The Customer must only use the Products, and must care for the Products, in accordance with the applicable operation manual and any directions of the Supplier from time to time.

## 7 Warranties

The Customer represents and warrants, and it is a condition of this Contract, that any premises at which the Products are located will be safe and secure for the Products and, if applicable, the Supplier's personnel.

## 8 Confidential information

### (a) Confidentiality

Neither party may disclose, or allow any person to disclose, confidential information to third parties (unless compelled by law and subject to the confidential information remaining outside of the public domain) including:

- (i) the subject matter, correspondence in respect of, and contents of this agreement (but not its actual existence);
- (ii) information regarding a Customer's machine;
- (iii) the subject matter and the existence of any dispute or difference; or
- (iv) the Hire Fee and any discounts, rebates or cost saving measures.

### (b) Privacy and Personal Information

The Supplier respects the privacy of personal information including personal and contact information, such as an individual's name, street, postal and email addresses and telephone and fax numbers, professional information, financial and bank account details and consumer credit information.

The Customer acknowledges, accepts and agrees:

- (i) to the Supplier's privacy statement available from <https://www.sitechsolutions.com.au/privacy-policy/>;
- (ii) that the Supplier may obtain and use Personal Information of the Customer and disclose it to its related parties as defined by the Corporations Act 2011 (Cth) and Trimble Incorporated (USA); and

- (iii) that without using such information, the Supplier may not be able to provide the Products.

## 9 Liability

### (a) Limitation

- (i) Subject to clause 10(b) and any Non-Excludable Rights, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with this Contract is limited to resupply of the relevant Products for a period equal to the Hire Period and in any event and notwithstanding any other provision of this Contract, shall not exceed the Hire Fees paid under this Contract.
- (ii) The limitation set out in clause 9(a)(i) is an aggregate limit for all claims, whenever made.

### (b) Consequential Loss

Without limiting clause 9(c), for clarity the neither party is not liable for any Consequential Loss however caused (including by negligence of a party), suffered or incurred in connection with this Contract except for amounts specifically payable to the Supplier in accordance with this Contract

### (c) Consumer Provisions

- (i) This section applies to Customers that are Consumers. A Customer is a Consumer (**Consumer**) if:
  - (1) the Hire Fee of the Products is less than the amount prescribed under the Australian Consumer Law; or
  - (2) the Products are of a kind ordinarily acquired for personal, domestic or household use or consumption (irrespective of the Price).
- (ii) The below wording is mandatory under the Australian Consumer Law and for this subclause only, the Supplier's hire of Products to the Customer should be read as "services":

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (1) to cancel your service contract with us; and
- (2) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

- (iii) Nothing in this agreement is intended to effect Non-Excludable Rights.
- (iv) Where clause 9(c)(i)(2) does not apply, to the maximum extent permitted by law and notwithstanding clause 9(c)(ii), the liability of the Supplier in respect of any breach or failure to comply with a Non-Excludable Right is limited to:
  - (1) supplying the Products again; and
  - (2) paying the cost of having the Products supplied again.

## 10 Indemnity

### (a) General Indemnities

- (i) The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:
  - (A) any damage to, or destruction or loss of, the

# SITECH Solutions Pty Ltd – Hire Terms and Conditions

Products while the Products are at the Customer's risk;

(B) any claim by a third party against the Supplier in connection with the Customer's use of the Products; or

(C) any use of the Products other than in accordance with the operation manual,

except to the extent that such loss or damage is caused by the negligent act or omission of the Supplier

## (b) Personal Injury and Property Damage Indemnities

Each party indemnifies the other, its employees and agents against loss or damages for physical destruction of or damage to property, death, injury, illness or disease arising out of or in connection with the carrying out its obligations under this Contract, save to the extent caused or contributed to by the other party. The total liability of either party under this subclause is limited to amounts recoverable, or that should have been recoverable if insurance policies required by the Contract were in place.

## 11 Intellectual property rights and rebranding

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(a) The Customer acknowledges and agrees that nothing in this Contract grants the Customer any interest in the Intellectual Property Rights of the Supplier.

(b) Subject to any Non-Excludable Rights, the Customer acknowledges and agrees that the Supplier does not give any express or implied warranties in relation to the Products including any warranties in relation to:

(i) use of the Products; or

(ii) rights granted to the Customer under this agreement not infringing any third party's Intellectual Property Rights.

(c) The Customer:

(i) must not decompile or reverse engineer the Products (and/or any included software);

(ii) acknowledges and agrees that the Products are not defect free, and that the Products may contain defects that cause them to malfunction or not operate in the manner set out in the operation manual;

(iii) must immediately notify the Supplier if the Customer suspects that the Products (and/or any included software) infringe or may infringe any third party's Intellectual Property Rights and take any action reasonably required by the Supplier in connection with that infringement; and

(iv) acknowledges and agrees that if the Supplier suspects that the Products (and/or any included software) infringe or may infringe any third party's Intellectual Property Rights, then the Supplier may modify or replace the Products with alternative products or require the Customer to cease using the Products.

(d) If the Products include any software:

(i) subject to the Customer paying the Hire Fee in accordance with clause 3(a), the Supplier grants the Customer a non-exclusive, non-transferable licence for the Hire Period to:

(A) install and run the software for the purpose of using the Products; and

(B) make a reasonable number of copies of the software for backup purposes;

(ii) unless specified in the Contract, the Customer is responsible for installation of the software;

(iii) the Customer acknowledges and agrees that the Supplier is not obliged to provide any upgrades

or updates to the software; and

(iv) the Customer acknowledges and agrees that the software is not error free, and that the software may contain errors that cause it to malfunction or not operate in the manner contemplated by any applicable Specification.

(e) The Customer must not remove a Supplier Mark from a Product or represent that the Products are associated with any registered or unregistered trade mark other than a Supplier Mark.

## 12 Term and termination

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### 12.1 Term

This Contract commences on the Commencement Date and continues for the Hire Period unless terminated earlier in accordance with this clause 12.

### 12.2 Termination for breach

(a) If either party:

(i) materially breaches this Contract and fails to remedy the breach within 14 days' written notice from the other party; or

(ii) is subject to an Insolvency Event;

then the other party may terminate this Contract by written notice in which case this Contract will terminate on the date specified in that written notice.

(b) In the event that the Supplier is the party to terminate under this clause:

(i) all amounts owing to the Supplier already invoiced to the Customer will immediately become due and payable;

(ii) the Supplier may invoice any Hire Fees up to the date of termination not already invoiced, and those amounts will immediately become due and payable; and

(iii) the Supplier shall immediately be entitled to retake possession of all Products in the possession or under the control of the Customer not paid for in full and invoice to the Customer any direct costs (including freight or technician labour or travel) of doing so.

### 12.3 After termination or expiry

(a) On termination or expiry of this Contract accrued rights or remedies of a party are not affected

(b) Termination or expiry of this Contract will not affect clauses 3(d), 3(e), 3(f), 4, 5, 8, 9, 10 and 11 and any other clause of this Contract which is expressly or by implication intended to come into force or continue after termination.

## 13 Force majeure

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(a) A party shall not be liable for any failure to perform any of its obligations, other than the Customer's obligation to pay the Hire Fees, for so long as the party is unable to fulfil its obligations because of the occurrence of a Force Majeure Event.

(b) The party affected shall use its best endeavours to resume fulfilling its obligations under the Contract as promptly as possible, but nothing in this clause shall require a party to settle any strike, lock-out, or stoppage of work on terms which, in its opinion, are not satisfactory.

(c) Either party may terminate the Contract if a Force Majeure Event continues for greater than 60 days, and where termination occurs under this subclause, the Supplier will be entitled to compensation for those items listed in clause 12.2(b).

## 14 Taxes

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(a) The Customer must pay all stamp duty, taxes, duties, government charges and other taxes of a similar nature

# SITECH Solutions Pty Ltd – Hire Terms and Conditions

(including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with this Contract.

- (b) The Hire Fees do not include GST.
- (c) If a Supply made under or in connection with this Contract is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
  - (i) the GST Act Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this Contract for that Supply); and
  - (ii) the GST Act Supplier must give the GST Act Recipient a Tax Invoice for the Supply.
- (d) If either party has the right under this Contract to be reimbursed or indemnified by another party for a cost incurred in connection with this Contract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.
- (e) In clauses 14(b), 14(c) and 14(d):
  - (i) **GST Act Recipient** has the meaning given to 'Recipient' in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
  - (ii) **GST Act Supplier** means the entity making the Supply; and
  - (iii) other capitalised terms that are not defined in clause 16 have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 15 General

- (a) The laws of New South Wales, Australia govern this Contract and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.
- (b) Where this Contract contemplates that the Supplier may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, the Supplier may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this Contract expressly requires otherwise.
- (c) The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under this Contract without the prior written consent of the Supplier.
- (d) The Supplier may assign its interest under this Contract.
- (e) Unless expressly stated otherwise, this Contract does not create a relationship of employment, trust, agency or partnership between the parties.
- (f) Each provision of this Contract will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- (g) This Contract represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (h) The Supplier may subcontract the performance of all or any part of the Supplier's obligations under this Contract.
- (i) A right under this Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

(j) Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under this Contract, the Customer must pay Interest on that amount.

- (k) If the Customer is more than one person, each person shall be jointly and severally liable to the Supplier.
- (l) The Supplier reserves the right to change these Terms at any time and the Customer acknowledges and agrees that written notice to the Customer given by ordinary mail is deemed to be sufficient notice of any change and will bind the Customer in respect of any supply of Products after the date of deemed notification.

## 16 Definitions and interpretation

In this Contract:

**Commencement Date** means the date the Contract is formed under clause 2(b)

**Consequential Loss** means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.

**Customer** means the customer shown on the Quote and Purchase Order.

**Force Majeure Event** means any occurrence or omission outside a party's reasonable control and includes:

- (a) a physical natural disaster including fire, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) pandemic, epidemic or quarantine restriction;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (f) law taking effect after the date of this Contract; and
- (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

**Hire Period** means the time between the Delivery and return of the Products. A minimum hire period of 1 week, or such longer time as specified in the Quote, applies.

**Hire Fee** in respect of a Product means the hire fee and any cost of delivery for that Product specified in the Contract.

**Insolvency Event** in the context of a person means:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person;
- (b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act 1966 (Cth) or a debt agreement under part IX Bankruptcy Act 1966 (Cth);
- (c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act;
- (d) the person ceases to carry on business; or
- (e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

**Intellectual Property Rights** means copyright, trade marks, patents, designs and any other intellectual property right or

# SITECH Solutions Pty Ltd – Hire Terms and Conditions

intangible proprietary information.

**Interest** means interest on any payment owing under this Contract calculated:

- (a) at the rate of 1.5% per month or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.

**Non-Excludable Rights** rights under the Australian Consumer Law or other laws which may not be excluded by this agreement.

**PPSA** means:

- (a) the Personal Property Securities Act 2009 (Cth) and any regulations made under that Act; and
- (b) any amendment made to any other legislation as a consequence of a law referred to in paragraph (a), including, without limitation, amendments to the Corporations Act 2001 (Cth).

**Products** means the products described in the Quote and Purchase Order.

**Purchase Order** means the Customer's purchase order or other communication (including an email or text) advising the Supplier that it wishes to proceed with Quote.

**Quote** means any quotation, estimate or price prepared or represented by the Supplier

**Related Body Corporate** has the meaning given to that term by section 9 Corporations Act 2001 (Cth).

**Specification** means the specification provided to the Customer by the Supplier in respect of each Product (if any), as amended by the Supplier from time to time.

**Supplier** means Sitech Solutions Pty Ltd ACN 137 343 090.

**Supplier Mark** means any registered or unregistered trade mark owned by, licensed to or nominated by the Supplier from time to time.

## 16.2 Interpretation

In this Contract:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) no rule of construction applies in the interpretation of this Contract to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
- (c) a reference to a party is a reference to the Supplier or the Customer, and a reference to the parties is a reference to both the Supplier and the Customer.