

## Hire Agreement Terms – an agreement applying to all hires

### Table of Details

<b>Owner Name</b>	<b>Botany Scaffold Pty Ltd</b>		
<b>ABN</b>	<b>31 161 867 518</b>		
Address	249-261 Princess Hwy St Peters NSW 2044		
Email address	accounts@botanyaccess.com.au		
Telephone	02 9666 3745 Opt 4	Mbl	0423 900 343
<b>Customer Name</b>			
ACN (if a company)			
Date of birth (if an individual)			
Trust Name (if applicable)			
Trust ABN (if applicable)			
Address			
Postal Address			
Email address			
Contact Name			
Telephone		Fax	

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Customer or its authorised officer

Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorised officer

# Hire Agreement Terms

## 1 Definitions

**Account Facility** means any billing arrangement between Owner and the Customer, which subject to approval of the Application by Owner, will be administered in accordance with these Terms.

**Application** means any application for an Account Facility of which these Terms form part.

**Authorised Person** means such person or persons as may be notified to Owner by the Customer as being entitled to accept delivery of and operate the Equipment.

**Claim** includes demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, however arising and whether ascertained or unascertained.

**Commencement Date** means in respect of a hire the date specified in the relevant Hire Schedule.

**Customer** means where the context permits, the Customer's servants, agents, employees, contractors and Authorised Persons.

**Daily Rate** means Owner's daily charge for hire of the Equipment as specified in a Hire Schedule or as otherwise agreed with or notified to the Customer by Owner, or in the absence of specific agreement or notification, the applicable rates generally published by Owner.

**Equipment** means any goods hired to the Customer under this document including but not limited to elevating work platforms, hoists, forklifts and telehandlers and related or affiliated equipment including tools, parts and accessories.

**Hire Charges** means the amount payable to Owner by the Customer for the use of the Equipment determined in accordance with these Terms.

**Hire End Date** means in respect of a hire the date specified in the relevant Hire Schedule. If the Owner agrees that the hire continues until the Equipment is off-hired then the Hire End Date is the date that the Owner provides an off-hire number or other off-hire details to the Customer.

**Hire Period** means a period commencing on the Commencement Date and expiring on the Hire End Date.

**Hire Schedule** means a schedule, delivery docket or other document which Owner may require Customer to sign to hire particular Equipment and which includes particulars of the Equipment, the Hire Period and such other information as Owner may decide to require. An indicative form of schedule is attached to these terms and conditions.

**Sundry Charges** means the costs of all cartage, cleaning, oil, grease, harnesses and such other costs as Owner may incur relating to the Customer's use of the Equipment and where appropriate, will be determined in accordance with Owner's schedule of standard sundry charges as varied from time to time.

1.2 In the interpretation of these Terms, unless the context otherwise requires:

(a) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;

(b) each covenant by two or more persons as a party is made jointly by all and severally by each;

(c) singular includes plural and vice versa;

(d) these Terms will be construed in accordance with the laws of the State or Territory in which the Owner has its head office at the date of acceptance of these Terms by the Customer; and

(e) time is of the essence of all the Customer's obligations to Owner, particularly payment of amounts owing.

## 2 Hire

Owner agrees to hire Equipment to the Customer. The Customer must complete and sign a Hire Schedule and such other documents as Owner may require. Each Hire Schedule is not a separate contract but forms a part of this hire document between Owner and the Customer, together with any facility applications, guarantee or other contractual documents. Owner may in its absolute

discretion terminate this document and/or decline to hire Equipment to the Customer at any time.

## THE CUSTOMER IS ONLY THE BAILEE OF THE EQUIPMENT

## THE CUSTOMER MUST NOT CLAIM ANY RIGHT OR TITLE TO IT OR ANY OPTION TO PURCHASE IT.

## 3 Customer's Acknowledgment

The Customer acknowledges and agrees that:

(a) Any Account Facility is a trader's facility and the Customer is a trader requiring the Account Facility predominantly for the purposes of carrying on or in connection with the carrying on or establishing of a trade, business or profession;

(b) the Customer has read and agrees to be bound by these Terms;

(c) all Hire Charges and other charges are payable by the Customer at the rate applicable under this document but any document to reduce damage and theft waiver charges must be in writing and signed by an authorised officer of Owner;

(d) if Owner approves an Account Facility, Owner may terminate the Account Facility at any time without any prior notice;

(e) The full amount of all Hire Charges and other charges payable by the Customer with an Account Facility to Owner will become due and owing 30 calendar days after the date on which the charges were first invoiced. The Account Facility is not a credit facility;

(f) any Account Facility is personal to the Customer and cannot be assigned or transferred to any other party without the prior written consent of Owner;

(g) if the Customer is a company (other than a listed public company) the Customer must notify Owner of any action having the effect of altering its control whether by transfer of shares, replacement of its directors or otherwise.

## 4 Credit Reporting

By signing the applicant's declaration in the Application, the customer consents to Owner:

(a) disclosing to a credit reporting agency certain personal information about the Customer including identity particulars, the Account Facility limit, payments which may become more than sixty days overdue, any serious infringement of the Account Facility or the Terms which Owner believes has been committed by the Customer and advice that payments are no longer overdue;

(b) obtaining from a credit reporting agency a report containing personal credit information about the Customer and a report containing information about the Customer's commercial activities or commercial creditworthiness to enable Owner to assess the Application; and

(c) giving to any guarantor under the Account Facility information including a copy of the Application and any demands for payment of overdue amounts and statements of the Account Facility.

## **5 Liability for Payment**

### **5.1 Customer's Liability**

The Customer agrees to pay:

(a) Hire Charges, Sundry Charges and all other charges, costs and expenses payable to Owner in the manner directed by Owner;

(b) interest on all outstanding amounts from the due date for payment calculated at a rate which is the higher of 1.2% per month or the cash target rate set from time to time by the Reserve Bank of Australia plus a margin of 5% per annum;

(c) damage and theft waiver charges in relation to the Equipment unless otherwise agreed;

(d) any costs of repairing or replacing the Equipment required as a result of the Customer's acts, omissions, neglect or default unless otherwise agreed;

(e) any GST or similar tax imposed on any supply by Owner to the Customer under this document and any other state or federal taxes, duties or charges imposed in respect of this document including stamp duty unless already clearly included in the agreed charges; and

(f) all costs (including legal costs calculated on a solicitor and own client basis) incurred by Owner relating to any default by the Customer.

5.2 Hire Charges are calculated by multiplying the number of days in the Hire Period by the Daily Rate.

5.3 Owner may charge additional hire at the Daily Rate for periods during which the Equipment is being delivered to or collected from the Customer or during which Owner is unable to deliver or collect the Equipment through no fault of its own or during which the Equipment is unavailable for hire by Owner due to damage caused by the Customer. The imposition of these charges does not mean that Owner agrees to extend the Hire Period.

5.4 Any claims for credit by the Customer must be made within seven (7) days of receiving Owner's invoice.

5.5 Owner reserves the right to revise its schedule of hire rates and related charges without prior notice. Owner may also revise its hire rates and related charges in circumstances where Owner incurs such charges as a result of non-disclosure by the Customer, unforeseen site problems or incorrect physical dimensions, weights or distances relied on by Owner.

5.6 The Owner may agree that the Hire Period ends when the Equipment is off-hired and not at the end of a specified period. Otherwise, the Owner may in its sole discretion, decide whether to accept return of the Equipment before the end of the Hire Period. Such an acceptance does not alter the Hire Period and the Customer will remain liable for all Hire Charges payable to Owner despite early return of the Equipment. However, Owner will endeavour to re-hire the Equipment in which case the Customer will only be liable for Hire Charges until the date of such re-hire or until expiration of the Hire Period, whichever is earlier.

## **6 Use of Equipment**

### **6.1 Customer's Obligations**

The Customer must:

(a) ensure that the Customer or an Authorised Person is available to accept the Equipment upon delivery;

(b) ensure the Equipment is used:

- (i) for the purpose for which it was designed by the manufacturer;
- (ii) by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment; and
- (iii) in accordance with all applicable laws and regulations in a skilful, safe and tradesmanlike manner not

extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear;

(c) notify Owner immediately if the Equipment breaks down, malfunctions or is damaged;

(d) not undertake any repair to the Equipment without the consent of Owner;

(e) maintain and return the Equipment to Owner in good repair and condition and ensure that a check of battery water levels, fuelling, greasing, oiling and proper servicing of the Equipment is carried out on a daily basis;

(f) not transfer, assign, encumber, loan or sell the Equipment and must not (except for the purpose of returning the Equipment) remove the Equipment or allow it to be removed from the site address notified to Owner for use of the Equipment without the written consent of Owner;

(g) not alter, make any additions to, deface or Owner any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;

(h) ensure that the Equipment is not stolen;

(i) accept full responsibility for the safe-keeping of the Equipment; and

(j) indemnify Owner for all loss, theft or damage to the Equipment.

### **6.2 Condition of Equipment.**

The Customer acknowledges that:

(a) it accepts delivery of the Equipment in "as is" condition unless it indicates otherwise at the time of delivery;

(b) it is liable for all flat and/or damaged tyres and the replacement cost of missing harnesses, generators etc.;

(c) it understands the safe and proper use of the Equipment and has received adequate training in its operation and use;

(d) Owner may inspect, repair or remove (in the event of any default of the Customer) the Equipment at any time and access to the Equipment must be granted for that purpose;

(e) if Owner is collecting the Equipment at the expiration or earlier determination of the Hire Period, the Equipment must be left in an appropriate, easily identified and accessible area; and

(f) Owner will not be deemed to have accepted return of the Equipment in good repair and condition until such time as the Equipment has been fully inspected by Owner at its depot following its return.

### 6.3 Carriage of Equipment.

Owner is not a common carrier and does not accept the obligation or liability of common carriers. Owner may refuse the handling, lifting and or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.

## 7 PPS Law

7.1 This clause applies to the extent that Owner's interest in respect of a hire provided for in this document is a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law). References to PPS Law in this document include references to amended, replacement and successor provisions or legislation.

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

(a) ensuring that Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling Owner to gain first priority (or any other priority agreed to by Owner in writing) for its security interest; and

(c) enabling Owner to exercise rights in connection with the security interest.

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

7.4 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 Owner to give a notice to the Customer); 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 Owner to give a notice to the Customer); 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).

7.5 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 Owner. Customer agrees that in addition to those rights, Owner shall, if there is default by Customer, 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 Customer agrees that Owner may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

7.6 The Customer 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.

7.7 Owner and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer 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 Owner the benefit of section 275(6)(a) and 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.

7.8 The Customer 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 Owner. The Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Owner and must be expressed to be subject to the rights of Owner under this document. Customer may not vary a sub-hire without the prior written consent of Owner (which may be withheld in its absolute discretion).

7.9 The Customer must ensure that 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.

7.10 The Customer 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 Customer to gain (subject always to the rights of Owner) first priority (or any other priority agreed to by Owner in writing) for the security interest; and

(c) enabling Owner and the Customer to exercise their respective rights in connection with the security interest.

7.11 To assure performance of its obligations under this document, the Customer hereby gives Owner an irrevocable power of attorney to do anything Owner considers the Customer should do under this document. Owner may recover from Customer the cost of doing anything under this clause 5, including registration fees.

## 8 Damage Waiver and Indemnities

### 8.1 Damage and Theft Waiver

Damage and theft waiver is not insurance. However if the Customer pays the Owner's charge for damage

and theft waiver the owner will limit any claim Owner may have against the Customer in respect of damage or theft of the Equipment to the greater of \$1000 or 10% of the value reasonably determined by the Owner to be the cost of replacement of the relevant Equipment.

#### **8.2 When Damage and Theft Waiver applies**

Unless the Customer provides to the satisfaction of Owner, evidence of insurance cover for the Equipment while in the Customer's possession, of at least the replacement cost of each item of Equipment with the interest of the Owner noted, Owner will provide damage and theft waiver in respect of the Equipment at the Customer's cost.

#### **8.3 Charge for Damage and Theft Waiver**

Normally the Owner and Customer will agree the percentage charge for damage and theft waiver. Unless a lesser percentage is agreed with the Owner, the charge for damage waiver is 12.5% of the Hire Charges.

#### **8.4 Limitation on Damage and Theft Waiver**

The Customer acknowledges that any damage and theft waiver taken out by Owner in respect of the Equipment will not extend to cover and the Owner does not waive its rights in respect of any loss, theft or damage resulting from the Customer's negligent or wilful failure to comply these Terms or in respect of abuse or misuse of the Equipment or any thing occurring during transportation of the Equipment.

#### **8.5 Release and risk**

The Customer acknowledges that:

(a) the Equipment shall be at the sole risk of the Customer and Owner will not be liable for any Claim the Customer may incur or that may arise from any cause whatever including any fault or other defect in the Equipment; and

(b) Owner will not be responsible for and is free from all liability in respect of all such Claims.

#### **8.6 Indemnity**

The Customer shall accept full responsibility for, and indemnify Owner against all Claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the Hire Period however arising, whether from negligence of the Customer or Owner or otherwise and without limiting the foregoing whether or not the Equipment was being operated or transported by a servant of Owner or any other person for whose acts Owner might be or is held to be responsible in connection with the operation of the Equipment.

#### **8.7 Retrieval of Equipment**

The Customer shall indemnify Owner for any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise.

### **9 Default and Termination**

#### **9.1 Default**

The Customer will be in default of this agreement:

- (a) it fails to comply with any term of this or any other agreement between Owner and the Customer;
- (b) becomes bankrupt or makes any arrangement with creditors for liquidation of debts; or
- (c) it is wound up or any administrator, receiver, or receiver and manager is appointed to the Customer.

#### **9.2 Remedies upon Default**

If the Customer is in default then, without prejudice to any other rights or remedies:

- (a) Owner may terminate any hire between Owner and the Customer and take possession of the Equipment by entering onto any land or premises owned by or under the control of the Customer upon which the Equipment is situated; and

(b) the Customer will pay to Owner all losses, damages, costs and other expenses whatever suffered by Owner as a result of that default including any costs of recovering possession of the Equipment.

#### **9.3 Termination and inability to supply**

Owner may terminate this agreement and any hire under it for its own convenience on 24 hours notice as and when it wishes. Owner will not be liable for any Claims arising out of termination or its inability to supply the Equipment. This is in addition to the Owner's rights to decline to hire.

#### **9.4 Third party interests**

The Customer acknowledges that Owner may hire or lease the Equipment from a third party and in that event title to the Equipment remains with that third party. The Customer agrees, upon reasonable notice, to allow that third party to access the location where the Equipment is located from time to time to inspect the Equipment. The Customer acknowledges and agrees that if Owner's agreement with that third party terminates during the term of a hire, unless otherwise agreed by the Owner any hire under this document will automatically terminate and the Owner may immediately recover possession of the Equipment from the Customer. The Owner will not be liable to the Customer in any circumstance for any claim that the Customer may otherwise have in respect of termination.

### **10 Amendment**

This document may be changed by Owner from time to time by Owner giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Owner sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer..