



## TERMS AND CONDITIONS – EQUIPMENT RENTAL

Following are the Terms and Conditions applying to the Rental of Equipment by HydroTerra Pty Ltd to the customer, as an individual or organisation placing an order with Hydroterra. The customer's purchase order constitutes automatic acceptance of HydroTerra's Terms and Conditions herein.

### Instrument Calibration

All **HYDROTERRA** instruments are subject to calibration/check testing prior to dispatch, however the Renter is responsible for ensuring appropriate calibration prior, during and following the use of an instrument. **HYDROTERRA** will carry out regular maintenance and repairs due to ordinary wear. **HYDROTERRA** under no circumstances will be responsible for the validity of instrument readings.

### Equipment Repairs & Cleaning

Prior to the dispatch of instruments, **HYDROTERRA** inspects and cleans instruments to ensure satisfactory performance. The Renter is to follow instrument maintenance guides or instructions, which are provided by **HYDROTERRA**. Any failure to clean and decontaminate instruments will incur additional costs based on \$30 for every 15 minutes (or part thereof) required to carry out repairs and decontamination.

### Damage or Loss

The Renter is responsible for all financial liabilities associated with instrument loss or damage during incorrect usage, possession or freight, and **HYDROTERRA** must be notified immediately any instrument is lost or damaged. The Renter assumes all financial liability for loss and damage of equipment due to misuse, abuse or accident.

The Customer accepts full responsibility to guard the equipment against theft, damage or negligence until it has been returned to **HYDROTERRA**. In respect to theft, damage or loss of equipment the renter of the equipment shall continue until the item has been adequately repaired (as deemed by **HYDROTERRA**) or the replacement cost has been paid by the customer to **HYDROTERRA**.

### Replacement of Malfunctioning equipment

In the event of instrument failure or malfunction, **HYDROTERRA** must be notified immediately, and a replacement will be shipped if available, if the instrument problem is not able to be rectified quickly and easily. Malfunctioning instruments are to be immediately returned to **HYDROTERRA**. Costs for road freight in such circumstances will be covered by **HYDROTERRA**; if airfreight is required additional charges are the responsibilities of the Renter.

### Freight conditions & Charges

**HYDROTERRA** will dispatch hiring instruments using a pre-paid express service, which will be invoiced as freight charges. The return of instruments and associated freight charges is the responsibility of the Renter unless arrangements have been made prior with **HYDROTERRA**. Any loss or damage to instruments during shipment from the Renter to **HYDROTERRA** is the responsibility of the Renter. **HYDROTERRA** must be notified immediately should any shipment problems occur. The Renter must ensure that it is contactable by phone on the day of dispatch and **HYDROTERRA** must be contacted by 12.00 pm the day before if there are any changes to the agreed day of dispatch, otherwise cancellation fees will apply including freight charges.

### Liability

Under no circumstance is **HYDROTERRA** liable for any damage, including financial or consequential losses, instrument losses, associated damage to other equipment/instruments, replacement instrument charges or downtime. **HYDROTERRA** will not be responsible or liable for any loss or damage of a Renter's business, property, personal injury or death. **HYDROTERRA** is indemnified by the Renter from any claims arising from, and associated with the hiring of instruments, including legal fees and charges.

### Rental Period

The hiring period commences on the date indicated on the Rental Order Confirmation Form. The duration of the Rent is based on the date the Instrument(s) are returned to **HYDROTERRA**. Instrument(s) returned after 12 noon will incur the additional Rental cost for that day. There is no charge for equipment held over the weekend, and the minimum hiring period is 1 day. Any extension of the Rental period must be approved by **HYDROTERRA**. The Rental Period continues until the equipment, and any accessories supplied with that equipment, are returned to **HYDROTERRA**.

### Daily Rental Rate

Is based on a 24-hour period; **Weekly rental rate** is based on a 7-day period; **Monthly rental rate** is based on a 4-week period

### Payment Terms

Payment terms are either in advance or on account, net 30 days from date of invoice, unless otherwise agreed. **HYDROTERRA** reserves the right to suspend shipments to customers whose accounts are overdue.

### Cancellation Fee

If a confirmed booking is cancelled, **HYDROTERRA** reserve the right to impose a 30% cancellation fee, or any actual costs incurred in relation to the booking.

### Early Cessation

Notwithstanding the rental period, **HYDROTERRA** expressly reserves the right to early cessation, which may be exercised on demand and at the absolute discretion of **HYDROTERRA**. In the event that **HYDROTERRA** so demands the customer shall forthwith return the equipment to **HYDROTERRA**. The applicable rental shall be adjusted and payable on a pro rata basis.

### Customer Covenants

The Customer agrees with **HYDROTERRA** that:

The equipment shall remain the property of **HYDROTERRA** unless otherwise agreed in writing from **HYDROTERRA**.

The Customer shall not sell, charge, pledge or part with possession of the equipment.

The Customer shall use the equipment in a careful and proper manner and not interfere or tamper with the equipment or let any other person / persons do so.

The Customer shall notify **HYDROTERRA** immediately if any judgement or order is levied against the Customer or the property of the Customer or if a petition is presented for the liquidation of the Customer or a receiver is appointed, or a scheme of arrangement is proposed.

The Customer shall permit **HYDROTERRA** or its agents or servants to enter the premises where the equipment is located at all reasonable times in order to inspect the equipment and carry out repairs to the equipment.

The Customer requires and will use the equipment for business purposes only.

The Customer accepts full responsibility to guard the equipment against theft, damage or negligence until it has been returned to **HYDROTERRA**. In respect to theft, damage or loss of equipment the Rental of the equipment shall continue until the item has been repaired by **HYDROTERRA** or the replacement cost has been paid by the Customer to **HYDROTERRA**.

### Warranty

**HYDROTERRA** warrants that each item of equipment rented is of merchantable quality and fit for purpose for which it was designed and undertakes to repair or replace equipment which has failed due to defects in materials or workmanship. Without limiting the generality of the foregoing, the aforesaid warranty does not extend to repair or replacement of equipment occasioned by:

The failure of the Customer to comply with any instructions or literature supplied with the equipment relating to the storage, installation, operation or servicing of the equipment;

Faulty installation or workmanship by a third party, which causes damage to the equipment;

The misuse, neglect or alteration in any manner by the Customer, its agents or employees or any third party.

### **Limitation Of Liability**

The Customer acknowledges that it has not relied upon any statement by **HYDROTERRA** in respect of the Customers purpose for the utilisation of the equipment and that **HYDROTERRA** is not responsible or liable for the failure of that equipment to perform for the purposes required by the Customer nor for any loss or damage alleged to have arisen from delay in delivery, malfunction or failure of any of that equipment.

### **Long Term Rent**

The Customer agrees that if a Rental rate discount has been provided for long term Rents and the customer returns the equipment prior to the nominated end date **HYDROTERRA** reserves the right to charge the customer full value for the period of Rental without discount.

### **Ownership of Equipment**

The Customer acknowledges that **HYDROTERRA** owns the Equipment and in all circumstances **HYDROTERRA** retains title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Rental Period). The Customer's rights to use the Equipment are as a bailee only.

Except in the circumstances set out below, the Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way. In no circumstances will the Equipment be deemed to be a fixture.

### **PPSA**

The Customer consents to **HYDROTERRA** affecting and maintaining a registration on the register (in any manner **HYDROTERRA** considers appropriate) in relation to any security interest contemplated or constituted by these Rental Terms in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Customer agrees to sign any documents and provide all assistance and information to **HYDROTERRA** required to facilitate the registration and maintenance of any security interest. **HYDROTERRA** may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Customer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

The Customer undertakes to:

- (a) do anything (in each case, including executing any new document or providing any information) that is required by **HYDROTERRA** (i) so that **HYDROTERRA** acquires and maintains one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that **HYDROTERRA's** security position, and rights and obligations, are not adversely affected by the PPSA;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by these Rental Terms without **HYDROTERRA's** prior written consent; and
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without **HYDROTERRA's** prior written consent.

If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with these Rental Terms and (a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply, and the Customer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and **HYDROTERRA** agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Customer waives any right they may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.



For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Rental Schedule provided by **HYDROTERRA** to the Customer from time to time. These Rental Terms are a security for the purposes of the PPS Act.

**HYDROTERRA** may apply amounts received in connection with these Rental Terms to satisfy obligations secured by a security interest contemplated or constituted by these Rental Terms in any way **HYDROTERRA** determine in their absolute discretion.

The Customer agrees to notify **HYDROTERRA** in writing of any change to their details set out in the Credit Application, within 5 days from the date of such change

### Sundry

These Terms and Conditions set forth constitute the entire agreement between **HYDROTERRA** and the Customer with respect to the equipment Rental and shall not be amended except in writing signed by both parties and the Customer does acknowledge and agree that all other warranties or the suitability of the equipment for any particular use or purpose whether implied or statutory are hereby excluded.