

GENERAL TERMS & CONDITIONS OF HIRE

ABN 54 619 804 303



DEFINITIONS

SWH: Cross Hire Equipment Group Pty Ltd trading as Smart Workzone Hire

The owner: SWH, its successors and assigns or any person acting on behalf of and with the authority of Cross Hire Equipment Group

The hirer: means the Client or any person acting on behalf of and with the authority of the Client

Electronic Traffic Control Equipment: Any, but not limited to, Portable Variable Message Sign (pVMS Trailer), VMS POD, Portable Traffic Light Set, Portable Light Tower and any other portable signs/trailers supplied by Cross Hire Equipment Group to the hirer for a limited period

RECITALS

- R1. The owner is the proprietor of the equipment listed in the Hire Schedule – please refer to Hire Contract
- R2. The hirer will hire the equipment specified in the Agreement from the owner upon the terms and conditions of hire
- R3. SWH reserves the right to change these terms and conditions at any time without prior notice. In the event that any changes are made, the revised terms and conditions shall be sent to the hirer

1. HIRE OF EQUIPMENT

- 1.1 The hiring of the equipment will commence from the commencement date specified in the Hire Schedule and continue for the term specified in the schedule.
- 1.2 The hirer is entitled to use the equipment for the hire period and for any agreed extension of the period.
- 1.3 The hirer agrees to return the goods to the address of the owner on or before the end of the hire period as outlined in the Hire Schedule.
- 1.4 The owner agrees to provide the Equipment to the hirer in good working order.

2. PERIOD OF HIRE

- 2.1 The Hire Period commences on the earlier of the following:
 - (a) when the hirer takes possession of the Equipment; or
 - (b) if the hirer requests delivery and collection of the Equipment.
- 2.2 The Hire Period is for an indefinite term and ends when the Equipment is returned.
- 2.3 The Hire Period includes weekends and public holidays.
- 2.4 A minimum Hire Period may apply in respect of certain items of Equipment ("Minimum Hire Period"). The owner will advise the hirer at the time of hiring if a Minimum Hire Period applies. If the hirer returns the Equipment before the expiration of the Minimum Hire Period, the hirer is required to pay all Hire Charges in respect of the Minimum Hire Period.

3. HIRE CHARGES

- 3.1 The hirer will pay for the hire of the Equipment at the Hire Charge set out in the Hire Schedule.
- 3.2 The Hire Schedule will specify the daily rate per type of product.
- 3.3 Hire Charges will commence from the Hire Period and continue until the date the owner is notified that the Equipment will be available for collection (the "Off Hire Date").

4. OTHER CHARGES

In addition to the Hire Charges, the hirer agrees to pay:

- (a) for any consumables, tolls, fuel or trade materials supplied by the owner.

- (b) if the hirer requires delivery, collection or installation/set-up of the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule.
- (c) if the hirer does not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment.
- (d) a charge for pumping out waste tanks or refilling water or fuel tanks.
- (e) any other applicable levies, fines, penalties and any other government charges arising out of the hirer use of the Equipment.
- (f) if the hirer requests operational guidance or training on the use of the Equipment and SWH staff are available to provide this, the cost for the provision of these services at rates agreed.
- (g) any reasonable charges incurred by the owner if we are unable to inspect or carry out maintenance on the Equipment during normal working hours.

5. PAYMENT

- 5.1 The hirer must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.
- 5.2 If the hirer does not pay the invoice in full by the payment due date, the owner may charge, in addition to any other costs recoverable under this Hire Agreement:
 - (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and,
 - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by the owner in recovering any unpaid amounts under this Hire Agreement.
- 5.3 The owner is entitled to set off against any amount the owner owes the hirer, any amount owed to the owner by the hirer or any amount owed to the owner by any Related Bodies Corporate.

6. THE HIRER OBLIGATIONS

- 6.1 This Hire Agreement is personal to the hirer and the hirer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly informs the owner in writing.
- 6.2 The hirer agrees that before taking delivery of the Equipment, the hirer is satisfied with the condition of the Equipment and will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer.
- 6.3 The hirer must:
 - (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - (b) ensure persons operating the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work.
 - (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by the owner or the manufacturer;
 - (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - (e) conduct a job safety analysis prior to using the Equipment;
 - (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
 - (g) display all safety signs and instructions (as required by law) and

TERMS & CONDITIONS (CONT')

ensure that all instructions and signs are observed by operators of the Equipment.

- (h) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and the owner instructions at its own cost;
 - (i) not in any way alter, modify, tamper with, damage or repair the Equipment without prior written consent of the owner;
 - (j) not deface, remove, vary or erase any identifying marks, plate, serial numbers, notices or safety information, on the Equipment;
 - (k) not remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when the Equipment is returned; and
- 6.4 At all times during the Hire Period, the hirer must store the Equipment safely and securely.
- 6.5 The hirer will allow the owner to enter the hirer premises and inspect and maintain the Equipment from time to time during the Hire Period during normal working hours. If the owner cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply. The hirer can also request to conduct a joint inspection of the Equipment with the owner at the end of the Hire Period.
- 6.6 Whenever the hirer is moving the Equipment, the hirer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The hirer (or any contractor engaged) must observe any safety directions advised by the owner and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- 6.7 The hirer must not remove the Equipment from the State or Territory originally agreed without written consent of the owner.

7. OWNERSHIP OF THE EQUIPMENT

- 7.1 Except as detailed in clause 7.4, the hirer acknowledges that the owner owns the Equipment and in all circumstances the owner retains title to the Equipment. The hirer's rights to use the Equipment are as a bailee only.
- 7.2 The hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over the Equipment, or otherwise deal with the Equipment in any way.
- 7.3 In no circumstances will the Equipment be deemed to be a fixture.
- 7.4 The hirer acknowledges that the owner may hire or lease Equipment from a third party if cannot provide the Equipment ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third-Party Owner.

8. RESPONSIBILITY FOR THE EQUIPMENT

- 8.1 The hirer is responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by the owner's actions.

9. RETURN OF THE EQUIPMENT

- 9.1 The hirer must return the Equipment in the same clean condition and good working order it was in when received it, ordinary fair wear and tear excluded.
- 9.2 If the hirer has asked the owner to collect the Equipment, the hirer must ensure it is kept safe and secure until the time of collection.

10. BREAK-DOWN OF THE EQUIPMENT

- 10.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period the hirer must:
- (a) immediately stop using the Equipment and notify the owner;
 - (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - (c) take all steps necessary to prevent any further damage to the Equipment itself; and
 - (d) not repair or attempt to repair the Equipment without the owner's consent.

11. LOST, STOLEN OR DAMAGED EQUIPMENT

11. If the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the hirer will be liable for:
- (a) any costs incurred by the owner to recover and repair or replace the Equipment; and
 - (b) the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced,

12. TERMINATION OF HIRE AGREEMENT

- 12.1 Either party may terminate the Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- (a) that other party breaches any term of the Hire Agreement (including for breach of payment terms) and fails to remedy the breach within 7 days of written notification of the breach; or
 - (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights the hirer may have under the Corporations Act 2001.
- 12.2 The owner may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.
- 12.3 The owner may terminate the Hire Agreement immediately if the hirer or any third party has made a false statement in or breached any provision of the Relevant Documents.
- 12.4 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

13. RECOVERY OF THE EQUIPMENT

- 13.1 If the hirer is in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated, the owner may, at the hirer's cost, take all steps necessary (including legal action) to recover the Equipment, including entering the hirer's premises to do so and the hirer expressly consents to the owner entering the premises for the purposes of recovering the Equipment.

14. FORCE MAJEURE

- 14.1 Neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

15. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 15.1 Subject to clause 16.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 15.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.
- 15.3 Where the owner is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ("Non-Excludable Provision"), and the owner is able to limit the hirer's remedy for a breach of the Non-Excludable Provision, then the owner's liability for breach of the Non-Excludable Provision is limited to (at owner's election):
- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 15.4 Subject to the owner's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort

TERMS & CONDITIONS (CONT')

(including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.

15.5 The owner will not be liable to the hirer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the hirer has incurred, amounts that the hirer is liable to its customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

15.6 The hirer is liable for and indemnify the owner against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the owner and any environmental loss, cost, damage or expense) in respect of:

- (a) personal injury;
- (b) damage to property; or
- (c) a claim by a third party,

in respect of the hire or use of the Equipment or breach of the Hire Agreement by the hirer. The hirer's liability under this indemnity is diminished to the extent that the owner's breach of the Hire Agreement or the owner's negligence causes the liability, claims, damage, loss, costs or expenses.

15.7 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

15.8 The owner will not be liable to the hirer for any acts or omissions of any person supplied by the owner where that person is acting under the hirer's direction and control during the Hire Period and the hirer indemnifies the owner against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the owner and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

16. INSURANCE

The Hirer, at its own expense, will take out and maintain all appropriate and prudent policies of insurance for the duration of the hire period and provide the Owner with a copy of such insurance policies upon request including:

- 16.1 for damage to or arising out of the hire of Equipment in an amount not less than the full new replacement cost of the Equipment
- 16.2 for all third-party public liability risks in respect of the hire or use of the Equipment by the Hirer in an amount not less than \$10 million.
- 16.3 if special cover is required, this can be negotiated with SWH directly on a case by case basis.

17. PPSA

17.1 The Hirer:

acknowledges that the owner may register any actual or impending PMSI under the PPSA in respect of all Equipment; and

(ii) gives consent to the owner registering PMSI under the PPSA and will do all things reasonably necessary to assist the owner to register the security interest.

17.2 The owner is responsible for:

the preparation and registration of the financing statement or financing change statement; and

(ii) payment of any fees associated with the registration, and the hirer waives the right to receive from the owner verification of the registration pursuant to section 157(3)(b) of the PPSA.

17.3 If the hirer sub-hires the Equipment to an agent, contractor

subcontractor or any third party ("Sub-hire") and the Sub-hire is a security interest under the PPSA, the hirer agrees that will protect the owner's interests in the Equipment by:

- (a) registering a security interest itself; or
- (b) assigning, by this clause, to the owner's all rights as bailor, to enforce against an agent, contractor or subcontractor.

17.4 The hirer has an obligation to give the owner notice if another party with a security interest in the Equipment seizes or otherwise deals with the owner's PMSI in the Equipment.

17.5 If the hirer grants any security interest in the Equipment to another party, that other party must acknowledge the priority of the owner's PMSI.

17.6 The parties agree that neither party is required to give notice to the other under the PPSA unless the obligation to give the notice cannot be excluded.

18. PRIVACY

18.1 The owner will comply with the Australian Privacy Principles in all dealings with the hirer.

18.2 We may need to collect personal information about the hirer, including but not limited to, full name and address, drivers licence details, credit card details, date of birth, and credit or business history.

SPECIAL CONDITIONS OF HIRE

1) HIRE OF MOTOR VEHICLES

When hiring a Motor Vehicle from SWH, these additional Special Conditions of Hire form part of the Hire Agreement. Terms used in these Special Conditions have the same meaning as those used in the Terms & Conditions of Hire unless indicated otherwise:

1.1 "Motor Vehicle" means Equipment that is a Traffic Control Ute, Truck Mounted Attenuator (TMA), Cone Truck or VMS Ute.

1.2 If loss, theft or damage to a Motor Vehicle occurs during the Hire Period, the hirer will be liable for:

- (a) any costs incurred by the owner to recover and repair or replace the Equipment; and
- (b) the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced,

1.3 For the avoidance of doubt, the hirer is liable to pay the cost of repairing or replacing flat or damaged tyres or tubes arising as a result of its use of the Motor Vehicle.

1.4 The hirer warrants that will not allow a person to drive a Motor Vehicle if the person:

- (a) is a learner driver;
- (b) does not hold an appropriate licence to drive that class of Motor Vehicle;
- (c) is under the age of 18 years; or
- (d) is affected by, or under the influence of, drugs and/or alcohol.

1.5 The owner may require the hirer to provide with any information required under relevant legislation for those persons who will operate the Motor Vehicle. The owner is also permitted to request and record the details of the licences of any drivers during the Hire Period.

1.6 The hirer will keep a record of all relevant details of any driver of a Motor Vehicle including: name, licence details, date and time that the driver used the Motor Vehicle.

1.7 It is the hirer's responsibility to supply their own E Toll / E Tag. If the owner has to pay these fees on your behalf, the hirer will incur a 20% fee on top of the cost.

1.8 It is the hirer's responsibility to cover the fuel costs of the vehicle.

1.9 Strictly, NO Smoking in the vehicles.

1.10 All fines for the vehicle will be passed back to the customer for payment whilst it is on the hire contract. These must be paid within 7 days of us passing on to you.

1.11 An inspection to be conducted by both parties and photographs recorded of any known damage or defects at handover

TERMS & CONDITIONS (CONT')

- 1.12 A complete equipment list will be provided at time of handover for vehicles that come with accessories such as signage and fire extinguishers etc. Any items missing at return of vehicle will incur a replacement cost plus any additional labour costs to organise for the replacement items.
- 1.13 Proof to be supplied that the motor vehicle has been added to the customer's insurance policy that covers full replacement cost if required.
- 1.14 Vehicle is only to be used for business purposes.
- 1.15 It is deemed acceptable by the Owner that the hirer does no more than 150 kilometres per day. A fee of \$0.20 per kilometre will apply for any additional kilometres
- 1.16 Drivers of the vehicle must have a current driver's license, be between the ages of 21 and 75 and not be under the influence of drugs or alcohol
- 1.17 It is the hirer's responsibility to maintain the regular nominated log book service schedule, servicing the vehicle at the owners cost. If the owner has a preferred service centre and/or facilities, the hirer must attempt to use those facilities in the first instance.
- 1.18 The hirer must inform the hirer of any damage to the vehicle and get prior consent to performing any repairs
- 1.19 In the event that an accident occurs during the hire period, the hirer must thoroughly record the circumstances of the accident.
- 1.20 The hirer will not load the motor vehicle in excess of its gross vehicle mass at any time during the hire period.
- 1.21 The hirer must return the vehicle to us with a full tank of fuel. You will be liable to pay us a charge specified by us which will include labour fee for filling the tank.
- 1.22 Cleaning and damage charges will apply on return of the vehicle for anything not deemed as fair wear and tear.
- 1.23 The hirer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle during the Hire Period. If the owner pays any such charges on the hirer's behalf the amount will be on-charged in the next invoice
- 1.24 In the event of an accident occurring to the Motor Vehicle during the Hire Period, the hirer will thoroughly record the circumstances of the accident, and fully co-operate with the owner and/or its insurer.
- 1.25 The hirer warrants that will not load the Motor Vehicle in excess of the Motor Vehicle's gross vehicle mass at any time during the Hire Period.
- 1.26 The hirer must return the Motor Vehicle with a full tank of fuel or the hirer will be liable to pay a charge specified by the owner, which will include a labour fee, for filling the fuel tank, and a surcharge on the current market price of the appropriate form of petroleum or diesel
- 1.27 If there is any inconsistency between the Terms of Hire and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency.

IMPORTANT - DAILY INSPECTIONS REQUIRED BY THE HIRER

- Fuel - Please be sure to use the correct fuel for the vehicle.
- Oil's - Brake, Engine, Gearbox and Power Steering.
- Water.
- All lights and indicators functional.
- Tyre Pressures and general assessment of tyre damage.
- Windscreen free of any damage

2) HIRE OF ELECTRONIC TRAFFIC CONTROL EQUIPMENT

When hiring Electronic Traffic Control Equipment, these additional Special Conditions of Hire form part of the Hire Agreement. Terms used in these Special Conditions have the same meaning as those used in the Terms of Hire unless indicated otherwise:

2.1 Definitions

- (a) "Electronic Traffic Control Equipment" means electronic Equipment that is used as part of infrastructure solutions to control / optimize traffic which includes, but is not limited to, portable traffic lights, variable message signs, arrow boards, variable speed limit trailers, SmartGATE, SmartCUBE, SmartEYE, Bluetooth Sensors & radar based speed advisory signs, and vehicle detection / classification devices, this list is not exhaustive.
- (b) "SmartGATE means a portable traffic light with the addition of a boom gate
- (c) "Portable Traffic Lights" means an independently powered, mobile traffic light solution, comprising a pair of units which can be remotely controlled to manage the flow of traffic.
- (d) "VMS Board" means an electronic variable message sign board that may be used to control traffic or used for general advertising purposes.
- (e) SmartCUBE means a hybrid solar diesel lighting / power cube capable of silent operation.
- (f) SmartEYE means a CCTV based solution comprising cameras, modems, solar and being trailer or post mounted.

2.2 The hirer acknowledges that the owner has made the manufacturer's operation manual and guidelines and safety instructions for the Electronic Traffic Control Equipment.

2.3 For the avoidance of doubt, the hirer is responsible for the safe placement, operation and use of the Electronic Traffic Control Equipment or VMS Board hired in accordance with:

- (a) all relevant laws and statutory regulations;
- (b) any applicable Australian Standard(s) or directions issued by any public authority or government agency; and
- (c) the manufacturer's operation manual and guidelines and safety instructions.

In the event that the hirer instructs the owner to place the Electronic Traffic Control Equipment or VMS Board, the hirer warrants that will provide the owner with all information relevant and available for the safe placement of the Electronic Traffic Control Equipment or VMS Board.

2.4 The hirer acknowledges that in the event of a malfunction of:

- (a) Portable Traffic Lights, the failsafe system will revert the Portable Traffic Lights to a flashing amber signal; or
- (b) a SmartGATE, the hirer will implement alternative traffic control operations (if applicable) in accordance with all laws and statutory requirements or as otherwise required by any public authority or government agency (such as engaging traffic controllers with STOP/SLOW bats to perform traffic control for each SmartGATE that has malfunctioned).

2.5 The hirer agrees that will not use Electronic Traffic Control Equipment for advertising, political, personal or marketing purposes or for any other purposes (or in any manner) where such use contravenes any laws, government, local council or statutory regulations and any applicable Australian Standard(s).

2.6 the hirer is liable for, and indemnifies the owner against, all liability, claims, damage, costs and expenses (including any fines that may be issued) arising from:

- (a) any incorrect use or placement of the Electronic Traffic Control Equipment;
- (b) the hirer's failure to comply with special condition 2.5 or any other term of this Hire Agreement; or
- (c) the use or operation of the Electronic Traffic Control Equipment.

2.7 If there is any conflict between Our Terms of Hire and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency.

END OF DOCUMENT