

## TERMS AND CONDITIONS FOR HIRE OF EQUIPMENT

**1. DEFINITIONS**

In these terms and conditions the following words and expressions shall have the following meanings:

"**The Company**" means Coda Octopus Products Pty Ltd, a company registered in Australia, with registration number 167 233 749 whose registered office is located in Springwood, QLD 4127.

"**The Customer**" means the customer of the Company who is hiring the equipment pursuant to the Contract;

"**The Contract**" means the Contract between the parties for the hire of the Equipment, evidenced by a Quotation or an Order and acceptance of the Company as the case may be and including these terms and conditions;

"**The Equipment**" means the equipment hired by the Company to the Customer under the Contract;

"**A Quotation**" means a quotation of the Company; and

"**An Order**" means an order of the Customer.

**2. GENERAL**

- 2.1. The Company agrees to hire the Equipment as the case may be in accordance with the Contract and these terms and conditions.
- 2.2. All Quotations and the acceptance by the Company of any Order is on the understanding that the Customer accepts these terms and conditions. These terms and conditions shall form the basis of the Contract notwithstanding anything to the contrary in any other terms and conditions of or referred to by the Customer and unless expressly varied in writing by an authorised representative of the Company.
- 2.3. Subject to sub-clause 2.2 hereof no employee, agent or other representative of the Company shall be empowered to waive the rights of the Company hereunder or vary these terms and conditions orally or otherwise.
- 2.4. Orders whether received as a result of a Quotation or otherwise are subject to acceptance by the Company in writing.

**3. HIRE OF EQUIPMENT**

- 3.1. The period of hire shall commence from the time and date when the Equipment is delivered in accordance with clause 4 and shall terminate when the Equipment is returned to the Company's premises.
- 3.2. Hire Charges
  - (a) Hire charges shall be at the rates shown in the Company's Quotation.
  - (b) There is a minimum hire charge of the equivalent to 3 (three) days hire of the Equipment.
  - (c) Quotations are subject to confirmation upon receipt of an Order and the Company reserves the right to amend any accidental errors and/or omissions and Quotations or invoices.
  - (d) Hire charges are at the discretion of the Company. The Company will not, however, alter the hire charge quoted on a Quotation provided that an Order is received within thirty (30) days from the date of Quotation unless the Company has specified in writing to the contrary.
  - (e) The Company reserves the right to revise hire charges where conditions change between the date of Quotation and the date of delivery.
  - (f) Hire charges quoted "FOB Foreign Port" shall not include CIF, clearance charges, Value Added Tax or any other taxes or duties or delivery which shall be charged in addition.
  - (g) The Customer waives any and all existing and future claims and rights of set off against hire charges or other payment (including interest) due hereunder and agrees to pay the hire charges and any other amounts payable hereunder regardless of any set off or cross claim on the part of the Customer against the Company.
- 3.3. Ownership
 

The Equipment shall remain the property of the Company and is provided to the Customer solely on a rental basis.
- 3.4. Customer's Obligations
 

During the continuance of the Contract the Customer shall:

  - (a) Keep the Equipment at the delivery address as specified in the Contract and in its own possession and not remove the same from such address without first giving written notice to the Company of its destination and in any event, not allow the equipment to be transferred to any country prohibited by the Department of Trade and Industry.
  - (b) Not assign the benefit of the Contract without the prior written consent of the Company.
  - (c) Permit an authorised representative of the Company at all reasonable times to enter upon premises or vessel where the Equipment may be inspected, maintained, repaired or tested.
  - (d) Repay the Company on demand all costs, charges and expenses incurred in any way by reason of its breach of any of these terms and conditions

including but not limited to all costs, charges and expenses incurred in ascertaining the location of the Equipment.

- (e) Take all reasonable and proper care of the Equipment, keep the Equipment in good condition and not subject the same to any misuse (normal wear and tear excepted) and indemnify the Company against any loss or damage to the Equipment.
- (f) Ensure that any instructions or manuals supplied by the Company for use of the Equipment will be fully observed.
- (g) Take all necessary steps to ensure that the Equipment will be safe and without risks to health and safety when properly used by it.
- (h) Ensure that the Equipment is operated in a skilful and proper manner and by persons who are competent to operate the same.
- (i) Permit the Company on reasonable notice to inspect and/or repair the Equipment.
- (j) Preserve on the Equipment the Company's and any manufacturer's identification number or mark or any nameplate that is or should be upon the Equipment.
- (k) Arrange and maintain at its expense adequate insurance for the Equipment satisfactory to the Company. Such insurance shall cover all loss and damage to the Equipment and also all risks to third parties in connection therewith. Such insurance shall commence from the time and date of delivery for the period of hire up to and including the date when the Equipment is delivered back to and received by the Company and acknowledged by it in writing.
- (l) Notify the Company in writing of any loss, damage or claim relating to the Equipment and on demand, reimburse the Company in respect thereof within thirty (30) days of the occurrence. The Company shall continue to charge the Customer the full hire charge for the Equipment until such payment is received. The Customer shall be liable under this clause for the full cost of replacing the Equipment.
- (m) Not sell, assign, sub rent, transfer or charge the Equipment or any part thereof or the benefit of the Contract or part with possession of the Equipment or any part thereof at any time during the period of hire.
- (n) Not make any alterations, modifications or technical adjustments or do, or, subject to sub-clause 3.6, attempt any repairs to the Equipment without the prior written consent of the Company and the Customer acknowledges that any items or non-expendable material not returned to the Company will be charged to it at full replacement cost.
- (o) Not by any act or default render the Equipment liable to any distress, execution or other legal process or suffer the appointment or presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act 1986.
- (p) Punctually pay all duties and taxes concerning the Equipment.
- (q) Procure that by the terms of any mortgage, charge or debenture of or in respect of its assets or any premises or vessel in which the Equipment may be installed or stored no rights whether present, future or contingent are created or become exercisable in respect of the Equipment notwithstanding that the Equipment may be or have become a fixture thereof. The Customer acknowledges the right on the part of the Company to notify any mortgagee or chargee from time to time of the Equipment and of such of these terms and conditions as the Company shall consider appropriate.
- (r) Upon expiry of the period hire, return the Equipment at its expense to the Company unencumbered and in good repair and condition.

**3.5. Cancellation**

The Customer shall not cancel the Contract or any part thereof prior to commencement of the hire of the Equipment unless the Company gives written consent including terms which fully indemnify it against any loss, damage or claim in respect thereof.

**3.6. Maintenance**

The Customer shall notify the Company if any maintenance of the Equipment is required. The Customer shall undertake routine maintenance but shall first obtain the Company's written consent in respect thereof. Other maintenance and repairs shall be undertaken by the Company provided that the Customer at its expense returns the Equipment to the Company.

**4. DELIVERY AND RISK**

Delivery shall be deemed to take place when the Equipment leaves the Company's premises and is placed in transit to the Customer when the whole risk shall pass to the Customer. The Company shall endeavour to adhere to delivery dates but time shall not be deemed to be of the essence and the Company shall not be liable for any loss, damage or claim occasioned by or

**TERMS AND CONDITIONS FOR HIRE OF EQUIPMENT**

consequential on the non-delivery on the expected date or for delayed delivery. Deliveries offered ex-stock are subject to the Equipment being available at the date of receipt of the Order. In case of unforeseen delay in delivery, the Company will notify the Customer as soon as reasonably practicable.

**5. CARRIAGE**

In addition to hire charges or sale prices, the Company may make a separate charge for outward delivery and/or collection as the case may be. The Company's packaging materials are chargeable in full if not returned upon completion of hire. All carriage and packing charges will be invoiced at cost plus fifteen (15) per cent unless agreed in writing to the contrary.

**6. PAYMENT**

Unless otherwise specified in writing in the Quotation, all invoices for hire charges are payable within thirty (30) days of the invoice date. Hire charges are net and no deduction or settlement discounts are allowed. The Company may charge and the Customer shall pay interest on any overdue payment at a rate of 4 per cent above the base rate of the Bank of Scotland.

**7. DEFECTS AND LIABILITY**

7.1. When the Customer is hiring the Equipment, it shall notify the Company of any defects in the Equipment within twenty-four (24) hours of receipt by it. Failing such notification, it shall be conclusively presumed as between the Company and the Customer that the Equipment has been received in good condition and in every way satisfactory for the Customer's purposes. The Company does not give any warranty as to the quality of the Equipment nor as its fitness for the purposes of the Customer. The Company does not warrant that the Equipment corresponds with any description or specifications either contained in catalogues or given verbally. The Company accepts no responsibility whatsoever (except such as cannot by law be excluded) for any claims of any kind resulting from the use, nature or condition of the Equipment during the period of hire irrespective of negligence on the part of the Company. The Company shall in no circumstances be responsible for any loss of use, loss of profits or any consequential loss of any kind suffered by the Customer or any other party in any way connected with the Contract or the use, nature or condition of the Equipment.

7.2. The liability of the Company including that for breach of contract, negligence, strict liability, in delict or otherwise for the Equipment and the Customer's remedy in respect thereof is limited as follows. The Company will repair or replace the Equipment or any part thereof (excluding installation) provided that the Equipment or any part thereof is returned by the Customer at its expense to the Company's premises for inspection and provided further that such of the Equipment or any part thereof is accepted by the Company as defective from the time of delivery.

**8. FORCE MAJEURE**

The Company shall not be liable to the Customer for any loss, damage or claim suffered by the Customer directly or indirectly as a result of the Company's failure or delay in performing any of its obligations under these terms and conditions where such failure or delay is caused by an occurrence beyond the reasonable control of the Company. In the event that the Company is unable to fulfil its obligations because of such force majeure it shall give written notice to that effect to the Customer stating the particulars and the period of time that it is likely to be unable to perform its obligations.

**9. SEVERANCE**

If any provision is or becomes illegal, invalid or unenforceable in any respect, the remaining provisions hereof shall in no way be affected or impaired thereby.

**10. WAIVER**

No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions.

**11. TERMINATION OF CONTRACT**

If the Customer shall make default in payment, or commit any breach of the Contract or if any distress or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or become apparently insolvent or commit any act of bankruptcy, or if any petition of bankruptcy shall be presented or made against him or her, or if the Customer is a limited company, a resolution or petition to wind up such company (other than for the purposes of amalgamation or reconstruction) shall be passed or presented, or if a liquidator or receiver or administrator of such company's undertaking property, assets or any part thereof shall be appointed, the Company shall have the

immediate right to terminate the Contract and to declare all sums due and to become due hereunder either for the full term of the rental period or the sale price of the Equipment as the case may be immediately due and payable. The Company may demand that the Customer returns all Equipment in the same condition as delivered, ordinary fair wear and tear excepted, at the Customer's risk and expense to such location as the Company may designate. The Company may enter upon any premises where the Equipment is located and take immediate possession of and remove the same, all without court order or other process of law and all without any liability but without prejudice to all rights or remedies available to the Company in respect of the non-payment or any other breach of the Contract of these terms and conditions by the Customer.

**12. HEADINGS**

The headings in these terms and conditions are inserted for convenience only and shall not affect the construction hereof.

**13. NOTICES**

Any notice required to be given hereunder shall be in writing addressed to the other party as its registered office or principal place of business or such other address as may have from time to time been notified for this purpose.

**14. ARBITRATION**

Any dispute or difference arising out of or relating to the Contract, its interpretation or the breach thereof, shall be settled by arbitration before an arbitrator selected and appointed by the President or Vice-president for the time being of the Law Society of Scotland from the panel of arbitrators maintained by the Law Society of Scotland and conducted in accordance with the Arbitration Rules of the Law Society of Scotland current at the date of the appointment of the arbitrator.

**15. LAW**

These terms and conditions and the Contract shall be governed by the laws of Australia and the parties submit to the jurisdiction of the Australian courts insofar as not already subject thereto.