

# Terms and Conditions Equipment Rentals

The Customer (which for the purpose of the Rental Agreement includes its employees, servants and agents) hereby rents from Megavar Pty Ltd the Equipment referred to in the Rental Quotation which includes all items, articles, accessories, documents (including operating manuals) or things supplied with Equipment upon the following terms and conditions:

## 1. Rental Terms

**1.1** The Rental Agreement comprises the Megavar Rental Quotation and these Terms and Conditions.

**1.2** The rental period commences on the "Rental Start Date", shown on the Rental Quotation, and terminates at 5:00 p.m. on the "Rental Return Date" as shown on the Rental Quotation.

**1.3** If the Equipment is not returned by the return date specified in the Rental Quotation then rental charges will continue to accrue until the Equipment is returned (complete with all accessories and undamaged). The Megavar Schedule of Hire Rates shall determine the additional rental charge, at the time.

**1.4** In the event of early return before the expiry of the term of the Rental Agreement, then Megavar, at its sole discretion, may adjust the rental charge to reflect the shorter rental duration.

**1.5** The rental period may be extended beyond the period stated on the rental Quotation and will be invoiced thereafter every 7 days for rental charges accrued until the equipment is returned (complete with all accessories and undamaged).

**1.6** Equipment returned to the Megavar office (complete with all accessories and undamaged) from which it was dispatched to the Customer before 9:00 am on any business day will be deemed to have been received on the previous calendar day. Equipment received after 9:00 am on any business day will be recorded as received on that business day.

## 2. Debit Authority

When the Customer has given a credit card or account debit authority, Megavar is hereby authorised to debit all fees and charges payable under the Rental Quotation to the Customer's card or account, whether owing now or in the future.

## 3. Other Charges

**3.1** The Customer shall be responsible for the payment of all costs, taxes, charges, imposts and expenses that arise or are incurred by virtue of the Rental Agreement including:

(a) Any Stamp Duty or like or similar duty applicable to rental transactions or rental business.

(b) Any Goods or Services Tax or taxes in the manner or nature of a Goods and Services Tax.

(c) Any Value Added Tax or a tax in the manner or nature of a Value Added Tax.

(d) Any Sales Tax or tax of a similar manner or nature.

(e) Any Rental Tax or tax on rentals.

(f) Any customs duties and tariffs.

If any of the above taxes or duties apply in the country of rental then the Customer will pay such applicable tax and/or duty in addition to the rental fee.

**3.2** In certain instances equipment may need to be sourced outside the country of rental. In those circumstances Megavar reserves the right to adjust any rental fee if there is any adverse currency fluctuation between the country of rental and the country of source. The Customer indemnifies Megavar in respect of any claims for such costs, charges, imposts and expenses applied or incurred.

## 4. Overdue Payments

**4.1** If any amount is due and unpaid, the Customer agrees to pay interest on the overdue amount at the rate of 18% calculated in daily rests from the date on which such default arose until payment in full is received and the Equipment has been returned.

**4.2** The Customer is liable for all additional costs Megavar may incur, including legal, administrative and collection costs, to recover unpaid amounts.

**4.3** These terms and conditions shall be governed by the law in the state of Tasmania, unless otherwise agreed, and the parties submit to the exclusive jurisdiction in the courts of that state.

**4.4** Credit is provided subject to the provisions of the Security of Payments Act in the jurisdiction where the work was done.

## 5. Delivery and Return of Equipment

**5.1** Delivery of Equipment to the Customer shall take place at the premises as set forth in the Rental Quotation at the expense and risk of the Customer.

**5.2** Return of the Equipment by the Customer is solely at the Customer's expense and risk, even if arranged by Megavar, and shall be to the premises of Megavar from where the Equipment was dispatched. The Customer agrees to ship the Equipment by freight and not by post.

## 6. Customer Covenants

The Customer agrees with Megavar that:

*(a)* The Equipment shall remain the property of Megavar and the Customer is only a bailee of the Equipment on the terms and conditions set out in the Rental Agreement.

*(b)* The Customer shall not sell, transfer, assign, underlet, lend, charge, pledge or part with possession of the Equipment.

*(c)* The customer shall not grant any encumbrance over or in connection with the Equipment or otherwise offer or use the Equipment as security. For the purpose of these Conditions, encumbrance means any mortgage, lien, charge, bill of sale, option, title retention, pledge, claim, restriction, condition, over-riding interest, or security interest pursuant to the Personal Property Securities Act 2009 (Cth) ("PPSA") or other encumbrance.

*(d)* The Customer will not remove any sticker or label giving notice of Megavar ownership of the Equipment.

*(e)* The Customer shall keep the Equipment at the delivery address specified in the Rental Quotation unless prior written permission has been obtained from Megavar to relocate the Equipment elsewhere.

*(f)* The Customer shall use the Equipment in a careful and proper manner and not interfere or tamper with or let anyone else do so.

*(g)* The Customer shall notify Megavar immediately if any judgment or order is levied against the Customer or property of the Customer or if a petition is presented for the liquidation of the Customer or an Administrator or Receiver is appointed or a scheme of arrangement is proposed.

*(h)* The Customer shall permit Megavar its agents or servants to enter the premises where Equipment is located at all reasonable times in order to inspect the Equipment or carry out repairs to the Equipment.

*(i)* The Customer requires and will use the Equipment for its business purposes.

*(j)* The Customer shall keep the Equipment in a safe and proper location.

*(k)* The Customer shall not alter or modify the Equipment without the prior written consent of Megavar.

*(l)* The Equipment shall at all times, whilst in the care, custody or control of the Customer, be at the risk of the Customer.

*(m)* The Customer accepts full responsibility for all equipment rented, including its use in accordance with any operating instructions provided or Government Regulations. Where the Customer is using communications frequencies that are licensed or arranged by Megavar these frequencies are for use only on the dates, at the places and during the times expressed on the Rental Quotation. Use of the frequencies outside the dates, places and times indicated might result in fines from the relevant licensing authority, which are all payable by the Customer.

*(n)* The Customer will in respect of the Equipment comply with all State, Territory and Federal Laws.

*(o)* The Equipment when returned to Megavar will not have any information contained in or associated with it which would if received by Megavar or any other person be in breach of State, Territory or Federal privacy laws.

## 7. Warranty

**7.1** Megavar warrants that the Equipment rented is of merchantable quality.

**7.2** Nothing in these terms and conditions shall restrict, modify or exclude any conditions, warranties, rights or liabilities which may at any time be implied in the Rental Agreement by any State, Territory or Commonwealth law including the conditions or warranties implied by the Trade Practices Act 1974 as amended, where to do so would render any provisions of the Rental Agreement void or unenforceable.

**7.3** Other than expressly provided for in this Rental Agreement, the Customer acknowledges that it has not relied on any statement or representation by Megavar in respect of the Equipment or the use of the Equipment by the Customer.

**7.4** Irrespective of whether or not the Customer's purpose for the use of the Equipment is known to Megavar, the Customer acknowledges that under no circumstances is Megavar responsible or liable for any failure or unsuitability of the Equipment to perform the purpose required by the Customer.

## 8. Maintenance

**8.1** Megavar shall, at its expense when it deems necessary, provide maintenance and recalibration for Equipment and shall use its best endeavour to expeditiously repair or replace Equipment, which may become defective during the rental period through no fault of the Customer.

**8.2** If the Equipment does not operate properly the Customer shall notify Megavar and request instructions before taking any action. The responsibility for advising Megavar of any need for recalibration rests with the Customer.

**8.3** Megavar may at its sole and absolute discretion and for such length of time as it deems expedient, replace Equipment with another of such type or model as shall be available, and Equipment substituted shall be subject to these conditions.

## 9. Early Cessation

Notwithstanding the rental period Megavar expressly reserves the right to require early cessation, which may be exercised on demand and at the absolute discretion of Megavar. If Megavar so demands the Customer shall forthwith return Equipment to Megavar. The applicable rental fee shall be adjusted and payable on a pro-rata basis. For the purpose of the pro-rata a week shall be seven days and a month shall be thirty days.

## 10. Safekeeping

**10.1** The Customer is responsible for the safekeeping of the Equipment and shall bear the risk of any loss, theft, damage or destruction of Equipment.

**10.2** The Customer shall pay to Megavar the new replacement cost as assessed by Megavar of Equipment which is lost, stolen, destroyed or damaged beyond repair.

**10.3** If the Equipment shall require repair or recalibration or replacement as a result of the Customer's use of the Equipment the Customer shall bear the cost of any such repair or recalibration or replacement including any freight charges there occasioned.

**10.4** The Customer shall pay to Megavar a reasonable calibration and refurbishing fee in the event that ownership labels, calibration seals or anti-tamper notices affixed to Equipment are removed or defaced.

**10.5** Any item, article, accessory, document or thing supplied in conjunction with the Equipment (including operation manuals) not returned to Megavar upon cessation of the rental period shall be paid for by the Customer with a fee determined by Megavar being charged to the account of the Customer.

**10.6** In respect of damage or loss of Equipment, or failure to return all of the Equipment, which may render the Equipment unusable, the rental period shall continue, and the Customer shall continue to pay rental until the Equipment has been returned or repaired, or the Customer has paid the replacement cost of new Equipment or accessories. The Customer indemnifies Megavar for all loss or damage suffered as a consequence of such damage or loss to, or failure to return the Equipment and accessories.

## 11. Customer Default, Termination and Repossession

**11.1** If the Customer is in breach of the Rental Agreement then Megavar shall be entitled to treat the Rental Agreement as breached and repudiated by the Customer and with or without notice accept the repudiation and terminate the Rental Agreement whereupon the Customer shall immediately, at its own cost and expense, return the Equipment to Megavar.

**11.2** Failing such return Megavar may repossess the Equipment and charge the Customer for all of its costs and expenses incurred in doing so. Any such termination shall not prejudice any right to recover any unpaid rental and the rights and obligations under clause 10. Further Megavar shall be entitled to recover all damages including any consequential damages incurred.

**11.3** Where the Rental Agreement is terminated under clause 11 the Customer consents to Megavar, its servants and agents, entering its premises, or any other premises where the Equipment is located, using such force as is necessary to repossess the Equipment. The Customer must provide Megavar with all reasonable assistance in order to locate and collect the Equipment. If the Equipment is not available for collection at the nominated time and or place the Customer will be liable for any additional costs Megavar incur. Megavar will not be liable for any damage to property caused by any person in collecting the Equipment.

## 12. Indemnity

The Customer agrees to indemnify Megavar and be responsible for all costs, charges and other liabilities incurred by Megavar as a result of the Customer's breach of any of these terms and conditions or as a result of Megavar enforcement of any of these terms and conditions or arising out of or in any way connected with the use of the Equipment.

## 13. Separate Items of Equipment

Where more than one item of Equipment is supplied under the Rental Agreement, in interpreting the Rental Agreement, the singular shall be read as the plural where appropriate and the rental shall be apportioned to each item of Equipment as set forth in the Rental Agreement. The conditions herein set forth shall apply separately to each individual item of Equipment as though each item of Equipment was subject to separate Agreement.

## 14. Liability

**14.1** If the Equipment does not function as warranted or in the event of any breach by Megavar of the Rental Agreement then to the extent permitted by law Megavar's liability (if any) for any loss, damage or injury whatsoever shall be restricted to the amount of the rental for the duration of the monthly rental period in which the breach occurs and Megavar shall not be liable for any item of so called consequential loss.

**14.2** If the Rental Agreement constitutes a supply of goods or services to a consumer, as defined in the Trade Practices Act, as amended, or relevant State or Territory legislation, nothing in the Rental Agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to the Rental Agreement and the goods or the services to be supplied, where to do so would be unlawful. In such case, Megavar's sole liability for breach of any such condition, warranty or other obligation, including consequential loss, shall be limited to:

- (a) Replacement of goods; or
- (b) Supply of equivalent goods; or
- (c) Refund of the invoiced value of the goods; or
- (d) The repair of the goods; or In relation to the services:
- (e) The supply of the services again; or
- (f) The refund of the original fee.

**14.3** If the Equipment is returned or repossessed, Megavar is not liable to the Customer for any consequential damage or other damage arising out of or by reason of any Customer data or information being contained in the Equipment.

**14.4** Megavar will not be liable for any failure to deliver the Equipment or perform services under the Rental Agreement if the failure arises as a consequence of fire, embargo, strike, inability to secure materials or labour, or any other matters beyond the control of Megavar. In addition, Megavar will not be liable for any delay or failure to deliver by any freight company or delivery service to deliver the Equipment to the Customer or any consequential loss or damage arising in respect of delivery of the Equipment.

## 15. Property

The property in the Equipment remains with Megavar unless the Customer purchases the Equipment and the Customer is not in breach or in default of the Rental Agreement. The property in the Equipment shall not pass to the Customer until and unless all monies owing including rental and purchase price have been received by Megavar and the payments received shall be applied first in reduction of any outstanding rental and interest and second on account of the purchase price.

## 16. Security Interest

Expressions used in this clause 16 and in the PPSA have the same meanings as when used in the PPSA.

**16.1** If Megavar already has a prior registered security interest in the Equipment supplied or leased, that security interest continues in this Equipment. The Customer acknowledges that this Agreement may be a PPS Lease and create a security interest in favour of Megavar for the purposes of the PPSA, and:

(a) Megavar may register this security interest with the Registrar of Personal Property Securities pursuant to the PPSA in order to perfect its security interest;

(b) The Customer agrees the security interest granted to Megavar pursuant to this Agreement is also a purchase money security interest for the purpose of the PPSA;

(c) If requested, the Customer must pay or reimburse the costs of registering the security interest, and provide Megavar with all assistance reasonably required in order for Megavar to register the security interest; and

(d) For the purpose of section 115 of the PPSA, the following sections of the Act do not apply to the Rentals Agreement: sections 95, 118, 121(4), 125, 130, 132(3) (d), 132(4) and 135.

**16.2** The Customer authorises Megavar to search the Personal Property Securities Register at any time for any information about the Customer.

**16.3** The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest granted under the Rentals Agreement in relation to commercial property.

## 17. Intellectual Property Rights

**17.1** All rights pertaining to industrial or intellectual property including but not limited to copyrights patents and trademarks are expressly reserved.

**17.2** The Customer shall not make any copies or authorise any copying of anything supplied such as software programs and operating manuals except with the prior written authority of Megavar and the owner/licensor and in accordance with the license terms as applicable. All copies must be delivered up with the Equipment.

## 18. Consumables

Megavar is entitled to separately charge for consumables including but not limited to pens, paper, toner cartridges, drum developer, fuser, ink jet cartridges and ribbons supplied by Megavar for the operation of the Equipment.

## 19. Damage Waiver

**19.1** Megavar has available and may offer at its discretion an optional rental equipment damage waiver facility ("Waiver") for certain items of equipment. The Waiver limits the Customer's liability for some loss and damage to the Equipment.

**19.2** The Waiver is not available for, and the Customer will be entirely responsible for, the return of all accessories and manuals in good order and condition.

**19.3** If the Customer seeks the Waiver and it is available, the rental rate will be increased by a fee ("Waiver Fee").

**19.4** If the Waiver Fee has been paid by the Customer, Megavar waives its rights against the Customer for loss and damage to the Equipment if:

(a) the Customer notifies Megavar of the loss or damage within 2 business days;

(b) the Customer pays to Megavar an amount calculated by multiplying the daily rental rate by 30 ("Waiver Excess") within 14 days of the date of invoice;

(c) the loss or damage is not due to a circumstances set out in clause 19.5.

**19.5** The Waiver does not cover loss or damage to the Equipment in the following circumstances:

- (a) the theft of the Equipment
- (b) misuse or use contrary to Megavar or the manufacturer's instructions
- (c) malice or any deliberate act
- (d) negligent acts or omissions or want of care
- (e) an act or omission by any person who is not the Customer or in the Customer's direct employ
- (f) damage by any cause at or from a place which has not been approved as a rental location
- (g) the Customer breaches any item or condition of the Rental Documents
- (h) is caused by vandalism
- (i) is caused by the overloading of the Equipment.

**19.6** The Waiver option does not apply to any item comprising the Equipment which is noted as being excluded on the accessory list provided with the Equipment. The cost for repair or replacement of these items of the Equipment will be invoiced to and payable by the Customer.

## **20. Attorney**

The Customer appoints Megavar as its attorney to do all things, execute all documents, and otherwise act in place of the Customer, for the purposes of giving effect to these conditions, including to recover possession of the Equipment, recover amounts due under the Rental Agreement, or for other purposes incidental to the Rental Agreement.

## **21. Sundry**

These Terms and Conditions together with the Quotation constitute the entire Rental Agreement between Megavar and Customer with respect to the Equipment and shall not be amended except in writing by Megavar. The Rental Agreement shall be governed in all respects by the laws of Tasmania and the jurisdiction of Tasmania shall apply to any dispute arising out of this Rental Agreement, except for claims under Security of Payment Acts which will be made under the relevant Act for the state or territory in which the Equipment was used.