



TCS for SURVEYS - HIRE CONTRACT CONDITIONS

TCS for Surveys, herein after referred to as **TCS**, agrees to hire **Equipment** to the Customer on terms set out in this document. If the Customer wishes to hire **Equipment**, the Customer must acknowledge and sign the **TCS Quotation**, or otherwise accept in the manner required by TCS such other documents as TCS may require. Each **Quotation** is not a separate contract but forms a part of this hire agreement between TCS and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. TCS may in its absolute discretion decline to hire **Equipment** to the Customer at any time.

These Hire Contract Conditions may be changed by TCS from time to time by TCS giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when TCS does any of the following: (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website www.TCSforSurveys.com.au; or (c) displays the amended terms at premises from which TCS conducts hire operations.

1. Interpretation of Words in this Contract

Commencement – The date when the Customer takes possession of the **Equipment**.

Customer – The company, business or person(s) hiring the **Equipment** from TCS and shown on the **Quotation**.

Equipment – Means any kind of equipment or tools including but not limited to the following kinds of goods suitable for traffic surveys including instruments, counters, data loggers, and radar guns and includes tools and parts and accessories for any of the foregoing.

Hire Charge – The amounts shown on the **Quotation** to the Customer to hire the **Equipment**.

Hire Period – Means from **Commencement** until the end of the period shown on the **Quotation**. The **Hire Period** may only be extended if TCS agrees and TCS may issue and require the Customer to sign an amended **Quotation** for any extension of the **Hire Period**.

Quotation – Means a document which TCS may require the Customer to accept in a way TCS requires.

TCS for Surveys – The business listed on the **Quotation** and referred to as TCS in this document.

2. TCS Obligations

TCS will:

- 2.1 Allow the Customer to take and use the **Equipment** for the **Hire Period**;
- 2.2 Provide the **Equipment** to the Customer clean and in good working order;

3. Obligations of the Customer

The Customer must:

- 3.1 Satisfy itself at **Commencement** that the **Equipment** is suitable for its purposes;
- 3.2 Deliver the **Equipment** to TCS when it is due back, at Customer's expense except if the return expense is already included in the **Hire Charge**;
- 3.3 Return the **Equipment** to TCS clean and in good repair;
- 3.4 Operate the **Equipment** safely, strictly in accordance with the law, only for its intended use, and in accordance with any

manufacturer's instructions whether supplied by TCS or posted on the **Equipment**;

3.5 Indemnify TCS for all injury and/or damage caused to persons and property in relation to the **Equipment** and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the **Equipment**;

3.6 Ensure that any person collecting or taking delivery of **Equipment** on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;

3.7 Ensure that all persons operating the **Equipment** are suitably instructed in its safe and proper use and where necessary hold a current **Certificate of Competency** and/or are fully licensed;

3.8 Conduct a thorough hazard and risk assessment before using the **Equipment** and comply with all **Workplace Health and Safety** laws relating to the **Equipment** and its operation;

3.9 Safely secure the **Equipment** in or on the Customer's vehicle, and indemnify TCS in respect of any injury and/or damage caused by the **Equipment** falling from any vehicle operated by or on behalf of the Customer;

3.10 Report and provide full details to TCS of any accident or damage to the **Equipment** within 2 business days of the accident or damage occurring.

The Customer must **NOT**:

3.12 Tamper with, damage or repair the **Equipment**;

3.13 Lose the **Equipment**;

3.14 Rely upon any representation relating to the **Equipment** or its operation other than those contained in this Contract;

4. Payments by the Customer to TCS

4.1 On or about **Commencement** or as otherwise agreed with TCS, the Customer will pay the **Hire Charge**.

4.2 If requested by TCS, the Customer will immediately pay:

(a) the new list price of any **Equipment** which is for whatever reason not returned to TCS.

(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the **Equipment**),

(b) all costs incurred in cleaning the **Equipment**;

(c) the full cost of repairing any damage to the **Equipment**, unless expressly agreed otherwise in this Contract;

(d) stamp duties, GST, any other taxes or duties, and fines, penalties, levies or charges payable in respect of this Contract or arising from TCS supply or the Customer's use of the **Equipment**;

(e) all costs incurred by TCS in delivering and recovering possession of the **Equipment**;

(f) a late payment fee calculated daily at 10% per month on all amounts owing by the Customer not paid on time;

(g) any expenses and legal costs (including commission payable to a commercial agent) incurred by TCS in enforcing this Contract;

(h) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

4.3 Without limiting the ability of TCS to recover all amounts owing to it, the Customer authorises TCS to charge any amounts



owing by the Customer to any credit card or account details of which are provided to TCS.

5. Damage and Theft Waiver

5.1 Damage Waiver and Theft Waiver are not insurance, but are an agreement by TCS that the Customer's liability for damage to or theft of the Equipment can be limited in some circumstances only, at the absolute discretion of TCS, to an amount called the Damage Waiver Fee and Theft Waiver Fee.

5.2 The Damage Waiver Fee is the actual recovery and repair cost of the Equipment, or 10% of the replacement cost of the Equipment, whichever is the lesser amount.

DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances:

- (a) where the Equipment is lost or stolen;
- (b) where the Customer has breached any clause of this Contract;
- (c) where the damage is caused by the negligence of the Customer or the Customer's agent;
- (d) where the damage is caused by vandalism, or in TCS' reasonable opinion in any way whatsoever other than by the ordinary use of the Equipment by the Customer;

5.3 The Customer may pay a Theft Waiver Fee in addition to the Damage Waiver Fee in relation to theft of the Equipment, as determined by TCS in its absolute discretion from time to time. The Theft Waiver Fee is the same amount as the Damage Waiver Fee.

THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances:

- (a) where, in the case of theft, the Customer has failed to submit to TCS a Police Report on the theft within 7 days of the theft allegedly occurring;
- (b) where the Customer has breached any clause of this Contract;
- (c) where the theft is caused by the negligence of the Customer or the Customer's agent;

5.4 Where TCS determines that one or more of the circumstances in clauses 5.2, or 5.3 applies, the relevant Damage or Theft Waiver will **NOT** apply unless the Customer is able to establish otherwise to the reasonable satisfaction of TCS.

6. Customer not to Claim Damages

The Customer cannot recover from TCS compensation for any damages (including for consequential loss) arising in respect of this Contract or the hiring or the use of the Equipment. This clause does not affect any rights the Customer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not be lawfully excluded or modified under this Contract.

7. Breach of Hire Contract by Customer

If the Customer breaches any clause whatsoever of this Contract, or becomes bankrupt, insolvent or ceases business then;

7.1 TCS shall be entitled to:

- (a) terminate this Contract, and/or
- (b) sue for recovery of all monies owing by the Customer, and/or
- (c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.

7.2 The Customer indemnifies TCS in respect of any breach by the Customer of any provision of this Contract.

8. No Warranties

All warranties and conditions are excluded to the full extent permitted by law and TCS' only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Equipment again or to the repair of the Equipment. This clause does not affect any rights the Customer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not be lawfully excluded or modified under this Contract.

9. Disputes

9.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to TCS in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.

9.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to TCS), the parties agree to negotiate to settle the dispute before litigation.

10. Governing Law

10.1 TCS and the Customer agree that this Contract is governed by the law of the state of New South Wales, and the parties submit to the jurisdiction of the courts of that State.