

1. DEFINITIONS

Company/Owner:	means Aquatic Engineering Australia Pty Limited - ABN 47 083 962 163.
Renter:	means the person/entity renting the Equipment as named in the Rental Schedule.
Equipment:	means the items for rent listed in the Rent Schedule/Quotation.
Fees:	means the fees and charges payable by the Renter under these Terms for the rent of the Equipment.
Force Majeure	means a circumstance beyond the control of the Owner which results in the Owner being unable to observe or perform on time an obligation under this Rental Contract, including without limitation, acts or omissions or the failure to cooperate by any third party, fire, epidemic or pandemic, quarantine restrictions, acts of God, natural disasters, strikes, war or other violence, civil disturbances, or any other law, order, or requirement of any governmental agency or authority.
Rental Contract:	means the Terms together with the Rent Schedule, Quotation and any Special Conditions.
Rent Schedule/Quotation	means the document provided by the Company to the Renter which includes details of the Equipment rented, the Fees, the rent period, and other administrative details.
Minimum Rent Period.	means the minimum period for which rental charges must be paid regardless of the actual rent period.
Operator:	means an employee or agent of the Company supplied to the Renter to install, operate or maintain the Equipment.
PPSA:	means the <i>Personal Property Securities Act 2009</i> , as amended, and any other legislation and regulations in respect of it
Special Conditions:	means the special conditions detailed as Schedule 1 to these Terms.
Terms:	means these Rental Terms and Conditions, as amended from time to time.
Uncertified Design:	means any design, calculation, specification, drawing or sketch that has not been accompanied by a certificate from an engineer or agent engaged by the Company.

2. RENTAL OF EQUIPMENT

- 2.1 The Company agrees to rent the Equipment to the Renter subject to the Rental Contract.
- 2.2 The Rental Contract sets out the terms of the rental agreement between the Company and the Renter. The provision or acceptance of a Rent Schedule/Quotation shall not form a separate agreement, but shall constitute part of this Rental Contract.
- 2.3 Unless expressly agreed otherwise by the Company in writing, these Terms override and supersede any agreement or understanding between the parties and any other documents, including any terms and conditions contained in a Renter's purchase order.

3. RENT PERIOD

- 3.1 The Renter is entitled to use the Equipment for the period of time specified in the Rent Schedule. Any variation to this period must be agreed by the Company. Under no circumstances, and despite anything else in these Terms, can the rent period, including any option or extension of it, be longer than 2 years.
- 3.2 The rent period commences when the Renter takes possession of the Equipment or when the Company delivers the Equipment in accordance with the Renter's instructions.
- 3.3 The rent period ends when the Equipment is returned to the Company or when the Company issues the Renter with an off-rent notice.

4. TITLE TO EQUIPMENT

- 4.1 The Renter acknowledges that in all circumstances the Company owns the Equipment and in all circumstances the Company retains title to the Equipment (even if the Renter goes into liquidation or becomes bankrupt during the rent period). The rights of the Renter to use the Equipment are as a bailee only. In no circumstances will the Equipment be deemed to be a fixture.
- 4.2 The Renter will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Company as owner of the Equipment.
- 4.3 The Renter must not, without the Company's written permission, move the Equipment out of position or move the Equipment to another site. Any expense of moving will be an additional charge to the Renter.
- 4.4 The Renter acknowledges that the Company may rent or lease Equipment from a third party ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third Party Owner.

5. PPSA

- 5.1 Under no circumstances, and despite anything else in these Terms, can the rent period, including any option or extension of it, be longer than 2 years.
- 5.2 This clause applies only to the extent that this Rental Contract provides for a 'security interest' for the purposes of the PPSA.
- 5.3 The Owner may register any actual or impending security interest in any manner it considers appropriate.
- 5.4 The Renter must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of ensuring that the Company's security interest is enforceable, perfected, first priority and otherwise effective under the PPSA.
- 5.5 The Owner may recover from the Renter the cost of doing anything under this clause, including but not limited to registration fees.
- 5.6 The rights of the Owner under this Rental Contract are in addition to and not in substitution for the Owner's rights under other law (including the PPSA) and the Owner may choose whether to exercise rights under this Rental Contract, and/or under any

other law, as it sees fit.

- 5.7 To the extent that Chapter 4 of the PPSA applies to the security interest under this Rental Contract, and the PPSA requires the Company to give a notice or allow time or provide any account to the Renter, the Renter and Company agree that to the extent allowable under the PPSA that requirement does not apply and, for the purposes of s.115 of the PPSA it is "contracted out" of this agreement in respect of all goods to which that section can be applied. Provisions of the PPSA confer rights on the Company. The Renter agrees that in addition to those rights, the Company will, if there is default by the Renter, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under these Terms and the Renter agrees that the Company may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 5.8 The Renter waives its rights to receive a verification statement in relation to registration events in respect of commercial property under s.157 of the PPSA. The Company and the Renter agree not to disclose information of the kind that can be requested under s.275(1) of the PPSA. The Renter must do everything necessary on its part to ensure that s.275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing the Company the benefit of s.275(6)(a) and the Company will not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.
- 5.9 The Renter must not create, purport to create, or permit to be created any security interest in the Equipment other than with the express written consent of the Owner.
- 5.10 The Renter must not lease, hire, rent, bail or give possession (sub-rent) of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing.

6. FEES AND OTHER CHARGES

The Renter agrees to pay the following Fees to the Company:

- 6.1 **RENT:** The rental charges set out in the Rent Schedule/Quotation. The Renter is not entitled to any discount or refund if the Equipment is not used by the Renter for the entire rent period. Additional rental charges will apply if the Equipment is used in excess of the nominated running hours as set out in the Rent Schedule/Quotation.
- 6.2 **CONSUMABLES:** Unless otherwise specified in the Rent Schedule/Quotation, the reasonable cost of consumables, including without limitation hoses, attachments, chemicals, and fuel provided by the Company and/or used by the Renter during the rent period.
- 6.3 **TAX AND GOVERNMENT CHARGES:** GST and all other applicable taxes, duties, levies, penalties and any other government charges arising out of the Rental Contract. This includes any fines or penalties arising out of the Renter's use of the Equipment.
- 6.4 **CREDIT CARD PAYMENTS:** Any charges for accepting payments by credit card.
- 6.5 **DELIVERY & INSTALLATION:** If the Renter requires the Company to deliver, collect or install the Equipment, the Renter shall be liable for the cost of delivery, collection or installation.
- 6.6 **LATE RETURN OF EQUIPMENT:** If the Equipment is not in readiness for collection by the Company, or has not been returned to the Company, by the end of the rent period, the Renter will be charged a minimum of an additional full day's rent.
- 6.7 **PAYMENT DUE DATE:** The Renter is required to pay all Fees, within 30 days of the invoice date.
- 6.8 **CLEANING & REPAIRS:** If the Renter does not return the Equipment in clean and good working condition, the Renter will be charged for the cleaning and repair of the Equipment.
- 6.9 **LABOUR & SERVICES:** Any additional labour charges for overtime, loadings, penalties, allowances, shift work, weekends, standby, public holidays, meals, travel and accommodation, payable to Operators in accordance with their terms of engagement or applicable award.
- 6.10 **ENVIRONMENTAL CHARGE:** Applicable to any item of Equipment as detailed in the Rent Schedule.
- 6.11 **LATE PAYMENT:** If a Renter does not pay the amount of invoiced Fees by the payment due date, an administrative fee of 10% per annum on outstanding Fees may be imposed to cover the costs incurred by the Company from the late payment. In addition, the Renter will be liable to indemnify the Company for all expenses and legal costs incurred by the Company as a result of the Renter's failure to pay the Fees by the payment due date.

7. OBLIGATIONS OF THE PARTIES

- 7.1 **POSSESSION AND USE BY RENTER:** The Rental Contract is personal to the Renter and the Renter will not allow any other person or entity to use or have possession of the Equipment at any time during the rent period. The Renter must not create, purport to create or permit to be created any "security interests" (as defined in the PPSA) in the Equipment other than with the express written consent of the Owner. The Renter must not sub-rent or cross rent the Equipment to a third party, without the express written consent of the Owner, which may be given or withheld at its absolute discretion.
- 7.2 **OPERATION OF EQUIPMENT BY RENTER:** The Renter agrees that at all times it will, at its own cost:
- Operate the Equipment safely, strictly in accordance with all laws, including environmental laws, only for the purpose for which it was designed by the manufacturer, and in accordance with the manufacturer's instructions and manuals.
 - Ensure persons operating the Equipment are suitably trained or instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use it.
 - Display, maintain and draw attention to safety signs and instructions (as required by law), ensure that instructions are observed and signs are not removed or defaced.
 - Maintain appropriate records of any servicing or maintenance carried out on the Equipment and a weekly running sheet of the Equipment in a form acceptable to the Company which shows the level of usage by the Renter. The Renter is responsible for performing daily pre-starts on the Equipment and reporting any faults to the Company prior to using the Equipment and in any event within 24 hours.
 - Ensure all persons operating the Equipment wear suitable clothing and protective equipment.
 - Ensure that no persons operating the Equipment are under the influence of drugs or alcohol.
 - Conduct a site hazard assessment prior to using the Equipment at a site.
 - Re-fuel and re-oil the Equipment at least on a daily basis and in accordance with the manufacturer's instructions and the

adhesive signage on the Equipment.

- 7.3 **INSTALLATION AND OPERATION OF EQUIPMENT BY COMPANY:** If the Company installs the Equipment, or supplies an Operator with the Equipment, then for that relevant part of the rent period:
- (a) The Operator will work in co-operation with the Renter who must consult with and fully brief the Operator on the proposed task, the site, site conditions, matters affecting the health and safety of the Operator and other relevant matters including information requested by the Company.
 - (b) The Renter will not allow any other person to operate the Equipment without the Company's prior written consent.
 - (c) The Company will ensure that its Operators are appropriately trained and possess all required licences to operate the Equipment.
 - (d) The Company will not be liable to the Renter for any acts or omissions of the Operator where they are acting under the Renter's direction or control.
- 7.4 **SAFEKEEPING:** The Renter must ensure that during the rent period (and until the Equipment is collected by the Company) the Equipment is stored safely and securely and is protected from theft or seizure. The Renter must also ensure, at its own cost, that the Equipment is kept clean, fuelled, lubricated and in generally good condition in accordance with the manufacturer's and Company's instructions.
- 7.5 **ALTERATION AND IDENTIFYING MARKS:** The Renter must not:
- (a) Alter, modify, or tamper with the Equipment without the Company's prior written consent;
 - (b) Alter, remove, deface or erase any identifying mark, plate, number, notices or safety information on the Equipment.
 - (c) Remove fuel or oil tank caps, bund plugs or seals from the Equipment.
- 7.6 **SUITABILITY:** The Renter is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Equipment unless the Company is otherwise notified within 24 hours of the commencement of the rent period.
- 7.7 **INSPECTIONS:** The Renter consents to the Company inspecting the Equipment from time to time during the rent period. In addition, the Renter may arrange a joint inspection with the Company at the end of the rent period.
- 7.8 **SAFE LOADING:** The Renter will safely secure all Equipment (or items loaded in or on the Equipment) loaded in or on the Renter's vehicle.
- 7.9 **ELECTRICAL TESTING & TAGGING:** Any electrical Equipment will be tested and tagged before it is rented to the Renter. During the rent period, the Renter is responsible, at its own expense, for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standards and Regulatory Authority requirements. The Renter will be liable for any damage caused to the Equipment resulting from incorrect testing or tagging during the rent period.

8. LOST, STOLEN OR DAMAGED EQUIPMENT

If the Equipment is lost, stolen or damaged during the rent period (and until the Equipment is collected by the Company), the Renter shall be liable for:

- (a) Any costs incurred by the Company in recovering, repairing or replacing the Equipment;
- (b) Any other costs whatsoever incurred by the Company as a result of the loss, theft or damage to the Equipment; and
- (c) The Fees, and all rental fees outside the rent period, for the period that the Equipment is being recovered, repaired or replaced.

9. EQUIPMENT BREAKDOWN

- 9.1 **OBLIGATIONS OF RENTER:** in the event that the Equipment breaks down or becomes unsafe to use during the rent period the Renter shall:
- (a) Immediately stop using the Equipment and notify the Company;
 - (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;
 - (d) Not repair or attempt to repair the Equipment without the Company's written consent.
- 9.2 **OBLIGATIONS OF THE COMPANY:** in the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Renter, the Company:
- (a) Will take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Renter; and
 - (b) Will not impose a rental charge for that portion of the rent period for which the Equipment was broken down or unsafe.

10. TERMINATION

- 10.1 The Company may terminate the Rental Contract immediately by notice to the Renter, if:
- (a) The Renter breaches any term of the Rental Contract; or
 - (b) The Renter becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- 10.2 The Company may terminate the Rental Contract for any other reason by 24 hours' notice.
- 10.3 The Renter indemnifies the Company in respect of any breach by the Renter of any provision of this Rental Contract.

11. RECOVERY OF EQUIPMENT

If the Renter is in breach of the Rental Contract or if the Company has terminated the Rental Contract with the Renter pursuant to clause 10 above, the Company may take all steps necessary (including legal action) to recover the Equipment, including entering the Renter's premises to do so.

12 INDEMNITIES AND LIABILITY

- 12.1 Subject to clause 12.2, and except as expressly provided to the contrary in the Rental Contract all guarantees, terms, conditions, warranties, undertakings, inducements or representations, whether express or implied, statutory or otherwise, relating to the Company's obligations under the Rental Contract are excluded, to the maximum extent permissible by law.
- 12.2 Where any Act of Parliament implies a term, condition or warranty in this Rental Contract and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement provided that the liability of the Company for breach of the term, condition or warranty is limited to (at the Company'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.
- 12.3 The Renter agrees that the use of the Equipment and the Consumables shall be at the Renter's sole risk and the Owner will not be liable for any damage, loss, or injury that the Renter may incur, or that may arise from any cause whatsoever, except the negligence of the Owner.
- 12.4 Subject to the Company's obligations under clause 12.2, and to the maximum extent permitted by law, the Company's maximum aggregate liability for all claims under or relating to this Rental Contract or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the net fees paid by the Renter under this Rental Contract.
- 12.5 The Company shall not be under any liability whatsoever to the Renter for consequential, indirect or special loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Rental Contract, whether or not such loss or damage was foreseeable.
- 12.6 Except to the extent caused by the negligence of the Company, the Renter is liable for and indemnifies the Company against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Company) arising from or incurred in connection with the Renter's rent and use of the Equipment or its breach of the Rental Contract.
- 12.7 Each indemnity in this Rental Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Rental Contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Rental Contract. The Renter must pay on demand any amount it must pay under an indemnity in this Rental Contract.
- 12.8 The Renter indemnifies the Company for any damage or break down caused by its failure to operate or maintain the Equipment in accordance with clause 7.2, or in accordance with the manufacturer's or Company's instructions.
- 12.9 Where the Owner gives advice, information, assistance and/or service to the Renter regarding the suitability or purpose of the Equipment, or in connection with the design, delivery times, dimensions, installation or use of the Equipment, then it is given in good faith and the Owner shall not be liable in any way for any damages, losses or costs however arising resulting from the Renter relying on any such advice, information, assistance and/or service.
- 12.10 The Company is not responsible for the accuracy of any Uncertified Design. Any Uncertified Design is indicative only and has been prepared for the sole purpose of assisting the Renter in assessing and comparing options. The Renter acknowledges and agrees that the Company is not liable for any loss or damage arising from the use of any Uncertified Design.

13 FORCE MAJEURE

The Owner shall not be liable for any delay or failure to perform its obligations under the Rental Contract if such delay is indirectly or directly due to Force Majeure. Any actual or anticipated delay or non-performance by the Owner due to Force Majeure may result the suspension of the Owner's obligations until the Force Majeure has abated.

14 GENERAL

- 14.1 This Rental Contract is the entire agreement between the parties. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between the parties in relation to its subject matter.
- 14.2 The Renter acknowledges that neither the Company, nor any person acting on the Company's behalf, has made any representation or other inducement to it to enter into this Rental Contract and that it has not entered into this Rental Contract in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained in the Rental Contract
- 14.3 If any part of the Rental Contract is invalid, illegal, unlawful or otherwise incapable of enforcement, that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 14.4 A waiver by one party of a breach by the other party of any term of this Rental Contract does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Rental Contract.
- 14.5 The rights and remedies in this Rental Contract are cumulative and not exclusive of any rights or remedies provided by law.
- 14.6 Termination of this Rental Contract will not affect any of the conditions that are expressed or implied to operate or have effect after termination.
- 14.8 If the Renter comprises more than one person, the obligations of those persons as the Renter are joint and several.
- 14.9 The Company may assign this Rental Contract to any third party or related body corporate without the Renter's consent.
- 14.10 This Rental Contract is governed by the laws of NSW and each party submits to the exclusive jurisdiction of the courts of NSW.

15 PRIVACY

- 15.1 The Company will comply with the Australian Privacy Principles in all dealings with the Renter.
- 15.2 The Company may need to collect personal information about the Renter, including but not limited to, full name and address, drivers licence details, credit card details, date of birth, and credit or business history. The Renter consents to the Company using its personal information in order to:

- (a) Fulfill functions associated with the rent of Equipment, including assessing the Renter's credit worthiness;
- (b) Provide services to the Renter;
- (c) Prevent theft of the Company's Equipment;
- (d) Enter into contracts with the Renter or third parties, and
- (e) To market to, and maintain a client relationship with, the Renter.

15.3 The Renter also consents to the Company disclosing the Renter's personal information:

- (a) To any credit provider or credit reporting agency for the purposes of obtaining information about its consumer or commercial credit or business history or its commercial activities or credit worthiness; and
- (b) To the Company's service providers, contractors and affiliated companies from time to time to help improve and market the Company's services to the Renter.

16 VARIATION

The Company may vary these Terms from time to time by giving the Renter 28 days' written notice of the varied Terms. If the Renter has reasonable grounds to believe that the variation will be detrimental to their rights, the Renter may terminate this Rental Contract without penalty by giving the Company written notice within 28 days of receiving the Company's written notice.