

**Concept Boiler Hire  
Equipment Hire – Terms and Conditions**

**1 Hire of Equipment and Hire Fees**

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- (a) We agree to hire the Equipment to You for the Term and You agree to pay the Hire Fees, on the terms and conditions set out in this agreement.
- (b) Where We have agreed to any Special Conditions, such Special Conditions shall take precedence over the terms contained in this agreement.
- (c) At any time during the Term, You may request to extend the Term. Subject to payment of any additional Hire Fees by You, You acknowledge and agree that such extension is subject to the availability of the Equipment and We may approve or reject such request in Our sole and absolute discretion.
- (d) All invoices for Hire Fees issued pursuant to this agreement are due and payable within 7 days of the date of issue of the relevant invoice, unless agreed otherwise.
- (e) If You fail to pay any amount owing to Us by the relevant due date, We may:
  - (i) terminate this agreement;
  - (ii) charge interest on any outstanding amount at the rate of 10% per annum, calculated daily and compounded monthly; and/or
  - (iii) retake possession of the Equipment.
- (f) If We charge a bond or security deposit in relation to the Equipment:
  - (i) payment of the bond or security deposit is due at the time of booking and, in any event, prior to delivery of the Equipment to You;
  - (ii) We reserve the right to retain part or all of any bond or security deposit on account of:
    - (A) any unpaid Hire Fees payable by You;
    - (B) any repairs to, or replacement of, the Equipment that are incurred as a result of Your use of the Equipment; or
    - (C) any other loss or damage suffered by Us as a result of Your use of the Equipment.
  - (iii) Subject to clause 1(e)(ii), the balance of any bond or security deposit will be refunded to You within 48 hours of the Equipment being returned to Us.

**2 Delivery and return of Equipment**

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- (a) Unless agreed otherwise, the delivery and pick up location of the Equipment must be the same location and You are prohibited from moving the Equipment to another location (within Your premises or to another premises) without Our prior written consent.
- (b) Upon delivery of the Equipment to You, We will provide You with a list of items provided with the Equipment. You are responsible for checking that the Equipment and all other parts supplied with the Equipment are consistent with what has been disclosed on the item list and You must notify Us immediately if You believe that any items are missing.
- (c) We may use third party couriers or contractors for delivery of the Equipment. Confirmation of successful delivery by the third party courier shall constitute successful delivery of the Equipment to You. Unless You notify Us otherwise in writing within 24 hours of delivery, You acknowledge and agree that:
  - (i) the Equipment has been received by You at the agreed delivery location;
  - (ii) the Equipment is in proper working order, free from any damage; and
  - (iii) You have read and understood the safety and operating manuals in respect of the Equipment.
- (d) You acknowledge and agree that any delivery times are approximate only and We will use reasonable endeavours to deliver the Equipment to You at the agreed time. We shall not be liable to You for any loss or damage suffered by You as a result of any delay in delivery or installation of the Equipment.
- (e) If You are unable or unavailable, for any reason, to take delivery of the Equipment on the agreed date and time and We are charged additional fees, or incur additional costs, in respect of the redelivery, You acknowledge and agree that You are liable to reimburse Us for such fees and costs.
- (f) You acknowledge and agree that You are required to return the Equipment to Us at the end of the Term in the same condition as they were in on delivery, fair wear and tear excepted (as determined by Us, acting reasonably).
- (g) If, at the end of the Term, the Equipment are not returned or available at the agreed location to be picked up by Us:
  - (i) You will be liable for additional Hire Fees until such time as the Equipment are returned or pick up by Us; and

- (ii) You authorise Us to charge any additional Hire Fees to the same account used by You at the time of booking.
- (h) Where We are engaged to install the Equipment at Your premises, the provisions of clause 3 apply.

### **3 Installation terms and conditions**

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- (a) You acknowledge and agree that:
  - (i) where We are engaged by You to install the Equipment at Your premises, the terms of this clause 3 apply; and
  - (ii) if We are not engaged to install the Equipment, You must obtain Our prior written consent to installation of the Equipment by You or any third party, which We may refuse in Our sole and absolute discretion.
- (b) Any fees in respect of the installation of the Equipment by Us shall be disclosed to You in a Quote. For the purposes of this agreement, any installation fees shall be deemed to form part of the Hire Fees payable pursuant to this agreement.
- (c) You acknowledge that We may use third party contractors to carry out any installation services.
- (d) Where the installation of any Equipment requires any permit or approval (including from local council or the occupational health and safety regulator in the jurisdiction in which You conduct Your business), You acknowledge and agree that:
  - (i) it is Your sole responsibility to obtain, and that You have obtained, any such permits or approvals prior to the installation works commencing; and
  - (ii) We are not liable to You under any circumstance for, and You indemnify Us in respect of, Your failure to obtain or comply with any permit and approval.
- (e) Where the Equipment is to be installed on leased premises:
  - (i) You warrant that You have obtained any necessary consents from the landlord of the premises to install and use the Equipment on the premises; and
  - (ii) We are not liable to You, and You indemnify Us, in respect of any failure by You to obtain the necessary consent from the landlord of the premises.

### **4 Events of Default**

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The following constitute an event of default and a material breach of this agreement:

- (a) failure to pay any Hire Fees by the due date, or any other amount due under this agreement;
- (b) the Equipment is damaged while in Your possession or removed from the premises;
- (c) ceasing to operate Your business, or any material change in the nature of Your business;
- (d) any change in control of Your business, as defined in section 50AA of the *Corporations Act 2001 (Cth)*;
- (e) You are insolvent or appoint an external administrator;
- (f) Your breach of any other obligation under this agreement and fail to remedy such breach upon receiving notice from Us and within the time specified in the notice.

### **5 Warranties, Indemnity, Acknowledgements and Obligations**

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- (a) You warrant that:
  - (i) any person using the Equipment is over 18 years old and is suitably qualified, certified and/or experienced (as required) to operate the Equipment;
  - (ii) in selecting the Equipment for hire, You have not relied on any representations made by or on behalf of Us and that You have made Your own enquiries to satisfy Yourself that the Equipment are suitable for the use for which You intend to use them for;
  - (iii) You will only use the Equipment for the purpose which they are intended to be used for;
  - (iv) You will protect and keep the Equipment secure and only use the Equipment as they should be used by a careful and prudent person;
  - (v) You will comply with, and use, the Equipment in accordance with, the manufacturer's specifications or instructions regarding the safe use of the Equipment, hard copies of which are provided with the Equipment and are also available electronically on request. This includes, but is not limited to, using appropriate safety and protective equipment at all times when using the Equipment;
  - (vi) You will not remove or obscure any serial numbers, identification plates, safety notices or other labels or information on the Equipment; and
  - (vii) prior to using the Equipment, either:

- (A) You will undertake the training provided by Us, which will enable You and Your personnel to safely use the Equipment. The cost to You for such training will be disclosed to You when We disclose the Hire Fees to You; or
  - (B) if You have elected not to undertake the training provided by Us, You warrant that You and any personnel operating the Equipment are sufficiently experienced and/or have undertaken the necessary training to safely operate the Equipment in accordance with the manufacturer's instructions and any other health and safety regulations applicable to the use of the Equipment.
- (b) You acknowledge and agree that:
- (i) any information provided by Us regarding the Equipment or their use is general in nature and does not take into account Your specific needs;
  - (ii) other than Your obligation to maintain the Equipment, You must not attempt to repair the Equipment (or engage a third party to do so), regardless of the extent of any actual or perceived damage to the Equipment; and
  - (iii) You must report any damage to, or loss of, the Equipment to Us immediately upon becoming aware of such damage or loss.

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## **6 Insurance**

- (a) You must:
- (i) maintain insurance to provide cover in respect of any theft, loss or damage to the Equipment for an amount not less than the full replacement value of the Equipment (such amount to be provided to You upon request);
  - (ii) maintain public and third-party liability insurance of not less than AUD\$20 million per occurrence;
  - (iii) maintain all necessary insurances relevant to Your use of the Equipment; and
  - (iv) provide evidence of the above insurances to Us upon request.
- (b) You acknowledge and agree that We are not responsible for providing any insurance coverage regarding Your use of the Equipment, including in respect of any loss and damage You may suffer as a result of Your inability to use the Equipment in Your business for any reason.

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## **7 Maintenance obligations**

- (a) Unless agreed otherwise in writing, You acknowledge and agree that a condition of hire is that You must, at Your own cost, engage Us or an appropriately qualified and trained third party to maintain the Equipment in accordance with the maintenance requirements set out in the product manual provided to You. Maintenance includes, but is not limited to, statutory servicing, water treatment and independent annual inspections.
- (b) Failure to satisfy the maintenance obligations in clause 7(a) constitutes a material breach of this agreement.
- (c) If You fail to maintain the Equipment in accordance with clause 7(a), We may, at Our discretion:
- (i) enter Your premises and carry out the necessary maintenance at Your cost (at Our prevailing maintenance rates);
  - (ii) arrange a third party to enter Your premises and carry out the necessary maintenance works, and charge the costs of such maintenance to You; or
  - (iii) terminate this agreement immediately by notice in writing to You.

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## **8 Our Obligations**

We agree to:

- (a) hire the Equipment to You for the Term;
- (b) provide the Equipment to You in good working order;
- (c) install the Equipment at Your premises, if agreed in writing;
- (d) maintain the Equipment, if agreed in writing;
- (e) allow You to exclusively use the Equipment during the Term; and
- (f) provide You and Your personnel with training in relation to the safe use of the Equipment, if agreed in writing.

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## **9 Damage to Equipment**

- (a) Subject to any pre-existing damage to the Equipment, You will be deemed to have accepted the Equipment in good order and condition and without any damage or defect.
- (b) If, during the Term or by the end of the Term, the Equipment become damaged or defective in any way, You must:
- (i) immediately cease using the Equipment;

- (ii) immediately notify Us in writing and provide all relevant particulars of the incident;
  - (iii) take all steps necessary to prevent injury occurring to any person and to prevent any further damage to the Equipment; and
  - (iv) not repair or attempt to repair the Equipment without Our prior written consent.
- (c) Subject to clause 9(a), in the event that the Equipment are damaged at the end of the Term (including early termination), We reserve the right to repair or replace the Equipment at Our discretion and seek reimbursement from You for the reasonable cost of such repairs or replacement.

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**10 No Right to Sub-Hire or Relocate**

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- (a) You acknowledge and agree that You are prohibited from:
  - (i) sub-hiring or sub-renting the Equipment hired under this agreement;
  - (ii) moving the Equipment to a new location, either within Your premises or a new premises.
- (b) Any failure to observe this provision constitutes a material breach of this agreement by You.

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**11 Termination**

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- (a) These rights of termination are in addition to any other rights either party has under the agreement and do not exclude any right or remedy available under law or equity.
- (b) If this agreement is cancelled or terminated by You within 5 business days of the start of the Term, You are liable to pay, or We may retain if prepaid:
  - (i) if the Term is greater than 2 weeks, an amount equal to 2 weeks of Hire Fees; or
  - (ii) if the Term is less than 2 weeks, 100% of the Hire Fees payable for the Term.
- (c) Subject to clause 11(d), We reserve the right to cancel this agreement and Your hire of the Equipment at any time up to the start of the Term if, in Our reasonable opinion, the Equipment are damaged, deemed unsafe or otherwise not suitable for hire.
- (d) If We cancel this agreement and Your hire of the Equipment pursuant to clause 11(c), We will refund You the full amount of the Hire Fees and any bond or security deposit paid by You within 48 hours of such termination.
- (e) If You terminate this agreement, including by returning the Equipment to Us, prior to the end of the Term, You remain liable for termination fees set out in the Quote, and such amount shall, upon termination, become a debt immediately due and payable by You to Us. You acknowledge and agree that such fee payable on early termination is fair and reasonable and is a genuine pre-estimate of the loss and damage suffered by Us as a result of the early termination.
- (f) If an Event of Default occurs, We reserve the right to terminate this agreement immediately by notice in writing to You.

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**12 Repossession and Right of Entry**

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You authorise Us (and Our personnel) to enter onto any premises on which the Equipment are located (or to be located) for the purposes of:

- (a) delivering and installing the Equipment;
- (b) maintaining the Equipment;
- (c) providing general training and support to You regarding the safe and effective use of the Equipment;
- (d) retaking possession of the Equipment at the end of the Term (including upon early termination); and
- (e) retaking possession of the Equipment if You breach any provision of this agreement.

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**13 Consequences of Breach**

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If an Event of Default occurs or You commit any other material breach of this agreement and do not remedy the breach within a reasonable period of time (having regard to the nature of the breach), then, without limiting any other remedy available to Us, We may, at Our sole discretion:

- (a) terminate this agreement;
- (b) recover any loss and damage suffered by Us from You, including the cost to remove the Equipment from Your premises or the costs of any repair or replacement of any Equipment damaged by You; or
- (c) take any action necessary to recover any unpaid amounts from You.

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**14 Liability Limitation**

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- (a) The liability of a party to the other party for breach of contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this agreement will (except to the extent that an exclusion

or limitation of liability is prohibited by law) be the sum of the Hire Fees paid or payable by You during the Term and the bond or security deposit. (**Liability Cap**).

- (b) The Liability Cap applies in the aggregate to all occurrences giving rise to a cause of action.
- (c) This limitation does not apply in relation to liability for:
  - (i) failure to pay the Hire Fees;
  - (ii) personal injury (including sickness and death);
  - (iii) loss of, or damage to, tangible property, including the Equipment;
  - (iv) breach of confidentiality; or
  - (v) breach of any intellectual property rights.
- (d) The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage was caused by the other party's failure to comply with its obligations and responsibilities under this agreement or to the extent that the negligence of the other party contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.
- (e) Nothing in this agreement affects the duty of a party to mitigate its loss and damage suffered after a breach of this agreement by the other party.

## **15 Exclusion of Liability**

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- (a) To the extent permitted by law, in no event will We be liable (whether before or after the expiry or termination of this agreement) for any loss or damage which You suffer arising from, or caused or contributed to by, Your own negligence, Your failure to use the Equipment in accordance with any instructions provided to You or in a manner inconsistent with the way in which the Equipment ought typically to be used.
- (b) Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including, but not limited to, any economic loss or other loss of turnover, profits, business or goodwill.
- (c) For the purposes of this sub-clause, losses of an "*indirect or consequential nature*" includes any loss that does not arise naturally and according to the usual course of things as a result of a breach of this agreement or other event giving rise to such loss, whether or not such loss should reasonably have been in the contemplation of the parties at the time they made this agreement.

## **16 Title to Equipment**

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You acknowledge and agree that:

- (a) We shall at all times retain full ownership and title to the Equipment and that You have a right to possess the Equipment as a mere bailee only during the Term; and
- (b) You will not attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire, create a security interest over, or otherwise part with or attempt to part with the personal possession of, or otherwise deal with, the Equipment and not to conceal or alter the Equipment or make any addition or alteration to, or repair of, the Equipment.

## **17 Disputes**

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- (a) If a dispute arises between the parties in relation to this agreement, the dispute must be dealt with in accordance with this clause.
- (b) Any party claiming that a dispute exists must notify the other party to the dispute (**Second Party**) in writing of the nature of the dispute.
- (c) If the dispute is not resolved by agreement within 10 working days of the Second Party receiving the notice referred to in clause 17(b), either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five working days or failing agreement within that period, as appointed by the president of the Law Institute of Victoria. The costs of the mediator must be borne equally between the disputing parties. The chosen mediator must determine the procedures for the mediation. The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.
- (d) If the parties have not mediated a resolution of the dispute within 15 working days of the selection of a mediator, neither party must be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it thinks fit in relation to the dispute.

## 18 Confidentiality

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- (a) Each party agrees to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under this agreement.
- (b) Confidential Information does not include information which:
  - (i) is generally available in the public domain, otherwise than as a result of a breach of clause 18(a); or
  - (ii) was known prior to the disclosure of the information by the other party.
- (c) Each party indemnifies the other fully against all liabilities, costs and expenses which it may incur as a result of any breach of confidentiality by the other party.
- (d) The obligations of confidentiality under this clause 18 survive termination or expiry of this agreement.

## 19 General

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- (a) Time is of the essence of this agreement, except that no delay by Us in exercising any right or power will operate as a waiver of that right or power, nor will any single or partial exercise of any right or power preclude any other or further exercise of that right or power.
- (b) This agreement takes effect, is governed by, and will be construed in accordance with, the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.
- (c) This agreement constitutes the entire agreement between the parties and supersedes all previous communications or agreements, whether oral or written, relating to the subject matter of this agreement.
- (d) If any provision or part of any provision of the agreement is invalid, illegal or unenforceable, such provision or part thereof shall be severed from the agreement and the remainder shall continue in full force and effect.
- (e) Any waiver of rights will not be deemed a waiver unless it is in writing and signed by an authorised officer of the party waiving such rights and any such waiver will only operate to the extent so specified.
- (f) We may assign this agreement to any third party without Your consent (including to a Related Body Corporate). You are not permitted to assign, novate or otherwise deal with Your rights under this agreement without the prior written consent of Us.
- (g) Force Majeure:
  - (iii) Neither Party has any liability under, or may be deemed to be in breach of, this agreement for any delays or failures in performance of this agreement which result from a Force Majeure Event.
  - (iv) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance.
- (h) Clauses 2, 12, 13, 14, 15, 16, 17, 18 and 19 and any other provisions which expressly or by implication are intended to survive termination or expiry, survives termination or expiry of this agreement.

## 20 Definitions

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In this agreement:

**Confidential Information** means each party's information made available to the other at any time concerning the business, operations, finances, plans or contractors of the disclosing party (or the disclosing party's Related Bodies Corporate, as defined in the *Corporations Act 2001 (Cth)*), including pricing information, and any information that is derived from such information, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this agreement; or
- (b) is independently known to, or developed by, the receiving party as evidenced by the receiving party's written records

**Equipment** means the goods that are to be hired under this agreement and any replacement for those goods and includes all accessories and other equipment disclosed to You in a Quote.

**Event of Default** means the events set out in clause 4 of this agreement.

**GST** has the same meaning as in the *A New Tax System (Equipment and Services Tax) Act 1999 (Cth)*.

**Hire Fees** means the fees for the hire of the Equipment, as disclosed in a Quote or otherwise communicated to You, and includes any delivery and installation fees. Hire Fees are payable at the time, and in the manner, disclosed to You by Us.

**Quote** means the quotation, order form or other order document to which these terms are attached or referred to within.

**Special Conditions** means any additional terms or conditions contained in a Quote or otherwise agreed in writing by the parties.

**Term** means the agreed period of time that the Equipment are hired, as extended or renewed by the parties in writing.

**We, Us, Our** means Concept Boiler Hire Pty Ltd ABN 74 695 869 160, being the entity that owns and hires the Equipment to You.

**You/Your** means the person hiring the Equipment, as disclosed in the Quote.