

## Hydroflux Utilities Terms and Conditions of Equipment Hire

### 1. Definitions

**Client** means an individual, corporation or other legal entity that undertakes a Hire Agreement with Hydroflux.

**Commencement** means the date from which the Client took possession of the Equipment.

**Completion** means the date from which the Equipment is back in the possession of Hydroflux after termination of the Hire Agreement or otherwise as agreed in writing between the Client and Hydroflux.

**Equipment** means any type of equipment including but not limited to treatment plant, pieces of machinery, separation devices, dewatering equipment, chemical make-up systems, chemical storage systems, pumps, pipework, scientific instruments, any other associated accessory made available by Hydroflux to the Client as part of the Hire Agreement.

**Hire Agreement** means the agreement between Hydroflux and its Client for the hire of Equipment. The Hire Agreement includes the Clients credit application to Hydroflux, Hydroflux Utilities Standard Terms and Conditions of Sale, and Hydroflux Utilities Terms and Conditions of Equipment Hire.

**Hire Charges** means the rates and costs payable by the Client for the hire of Equipment.

**Hire Deposit** means the initial non-refundable payment made on execution of the Hire Agreement to reserve the Equipment for hire (see clause 6).

**Hire Period** means the period of time counted in days from Commencement to Completion.

**Hydroflux** means Hydroflux Utilities Pty Ltd (ABN 68 166 065 461) and includes all agents, contractors and employees of Hydroflux.

**Security Bond** means the security payment made before Commencement that is refundable less any costs incurred to cover damages and other incidental costs [see clause 5(c)].

### 2. Hire of Equipment

- (a) Hydroflux agree to hire the Equipment to the Client for the Hire Period and the Client agrees to pay the Security Bond, Hire Deposit, the Hire Charges, and any other charges (see clause 8) as applicable.
- (b) Hydroflux agree to provide the Equipment free from defects, in a good and clean condition, and in good working order.
- (c) The Client agrees not to allow any other person, corporation or other legal entity to use, re-hire or take possession of the Equipment unless agreed in writing with Hydroflux.

### 3. Ownership of Equipment

- (a) Except as detailed in clause 3(b), the Client acknowledges that title and ownership of the Equipment remains with Hydroflux (even if the Client goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will the Equipment be deemed to be a fixture. The Clients rights to use the Equipment are as a bailee only.
- (b) If the Equipment or part of the Equipment has been leased or hired by Hydroflux from a third party then title to the Equipment or that part of the Equipment remains with the third party owner.
- (c) If clause 3(b) applies, Hydroflux warrants to the Client that Hydroflux has the power and right to hire the third party owned Equipment or that part of the Equipment to the Client.

### 4. Minimum Hire Period

- (a) Unless agreed in writing prior to Commencement, the minimum Hire Period for the Equipment is 60 days.
- (b) When a Commencement date occurs the Client will be liable to pay the Hire Charge for the minimum Hire Period even if the Hire Agreement is terminated before the minimum Hire Period has passed unless clause 4(c) applies or unless agreed otherwise in writing with Hydroflux.
- (c) If the Client terminates the Hire Agreement before the minimum hire period and Commencement begins with a new Client before the original minimum hire period has passed, then the original Client will only need to pay the hire charges up to the date of Completion.

### 5. Security Bond

- (a) The Client must pay a Security Bond, due immediately and before Commencement, at the value as agreed in writing between the Client and Hydroflux. This bond is refundable on Completion subject to claims under clause 5(c).
- (b) Interest does not accrue on the security bond.
- (c) The Client agrees that any bond paid to Hydroflux for the hire of the Equipment can be used by Hydroflux for the following reasons:
  - (i) to cover the cost of any loss or damage to the equipment during the Hire Period (see clause 16);
  - (ii) to cover the cost of returning the Equipment back to its condition before its initial release to the Client (see clause 17);
  - (iii) to cover the cost of any cleaning or debris removal;
  - (iv) for payment of any outstanding Hire Charges.
  - (v) for any charges incurred as outlined in clause 9(a).

### 6. Hire Deposit

- (a) On execution of the Hire Agreement, the Client will make an initial and non-refundable hire deposit payment to the value of 30 days at the agreed daily hire rate.
- (b) On receiving the Hire Deposit, Hydroflux will secure the Equipment for hire to be available on the expected Commencement date.
- (c) Unless agreed in writing with Hydroflux, the expected Commencement date is not negotiable after execution of the Hire Agreement.
- (d) The Hire Deposit will be used as payment for the first 30 days of hire.

### 7. Hire Charges

- (a) Hire Charges will be agreed in writing between the Client and Hydroflux before Commencement begins. The Hire Charge will be calculated as a daily hire rate.
- (b) All time is chargeable including after-hours, weekends and public holidays unless agreed in writing with Hydroflux prior to commencement.
- (c) Unless agreed in writing otherwise, Hire charges will begin within 7 days of Commencement or on that date of Equipment start-up after Commencement, whichever comes first.
- (d) Hire charges will not be payable for those days in which the Client is unable to use the Equipment due to a breakdown in the Equipment for which Hydroflux is responsible for.

- (e) The Client will be invoiced on a monthly basis equal to the number of applicable days of hire during that month multiplied by the calculated daily hire rate. Payment for that month's hire will be due 14 days from invoice unless agreed in writing with Hydroflux prior to commencement.
- (f) Hydroflux will invoice the Client during the last week of each hire month for the number of applicable days of hire for that month unless clause 7(g) applies.
- (g) If Completion of the Hire Agreement occurs prior to the last week of the month, then Hydroflux will invoice the Client on the date of Completion for the number of applicable days of hire for that month.

**8. Other charges**

- (a) The cost to deliver, install, commission, uninstall or collect the Equipment will be agreed in writing with Hydroflux before Commencement and these costs will be additional to the Hire Deposit, Hire Charge and Security Bond.
- (b) The Client is responsible for the replacement and cost of any consumable items including but not limited to pH probes, chemicals, lubrication oil, pre-filters etc.

**9. Delivery and collection of Equipment**

- (a) When Hydroflux is responsible for the delivery or collection of the Equipment to or from the Client's nominated site, access must be granted to enable timely delivery and collection. The Client will be responsible for any demurrage, delay or futile delivery or collection costs incurred.
- (b) The Client must inspect all Equipment and notify Hydroflux within 24 hours of Commencement if the Equipment is damaged or broken, else Hydroflux will assume that the Equipment was delivered in good condition.
- (c) The Client must notify Hydroflux within 24 hours of Equipment start-up if the Equipment is faulty, else Hydroflux will assume that the Equipment was delivered in good working order.

**10. Termination of Hire Agreement**

- (a) The Client can terminate this Hire Agreement by giving 7 days written notice to Hydroflux.
- (b) If the Hire Agreement is terminated by the Client before the minimum Hire Period then in relation to Hire Charges, the Client will be charged for the Minimum Hire Period (subject to clause 4). Other charges may still apply (see clause 5 and clause 8).
- (c) Hydroflux can terminate the Hire Agreement and may retake possession of the Equipment at any time if the Client is in clear breach of any of the conditions within these Terms and Conditions of Equipment Hire.
- (d) If the Hire Agreement is terminated by Hydroflux prior to completion of the agreed Minimum Hire Period, then in relation to Hire Charges, the Client will only be invoiced for the number of applicable days of hire for that month in which termination occurred. Other charges may still apply (see clause 5 and clause 8).

**11. Insurance**

The Client must:

- (a) have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment,

- (b) must have valid and current insurance policies that insure the Equipment for all loss and damage for its full replacement value, and the insurance must remain current for the duration of the Hire Period,
- (c) indemnify Hydroflux for all and any injury and/or damage to persons and property by the Client's possession, use, maintenance, repair, storage, transport or operation of the Equipment.

**12. Fit for purpose**

- (a) The Client agrees that it has satisfied itself that the Equipment hired is suitable in size and throughput and fit for purpose for the role for which it was hired.
- (b) If Commencement occurs, the Client is responsible for paying Hire Charges even if the Equipment is not suitable in size or throughput or fit for purpose.

**13. Performance**

Hydroflux does not guarantee any performance limits unless such limits are expressly guaranteed by Hydroflux separately in writing and regardless any estimates of power, labour, maintenance, chemical usage, sludge quantities, water discharge quality, discharge costs and disposal costs are not guaranteed.

**14. Use of Equipment**

The Client must:

- (a) agree that the use of the Equipment carries with it risks and dangers and the Client agrees to accept all risks and dangers,
- (b) conduct a thorough hazard and risk assessment before using the Equipment,
- (c) use the Equipment in a responsible and safe manner,
- (d) ensure the Equipment is located in a suitable, secure and safe position and has been erected and positioned by suitably qualified persons, and that ongoing access is limited to properly trained and authorised personnel only,
- (e) when applicable, ensure the Equipment is connected to services such as electricity and water by suitably qualified trades people,
- (f) ensure all persons commissioning, operating or accessing the Equipment are suitably qualified and/or trained to do so,
- (g) comply with all occupational health and safety laws applicable to the use and operation of the Equipment,
- (h) use the Equipment only for the purpose for which it is intended, and for legal purposes only,
- (i) operate, maintain and store the Equipment in accordance with any written specifications provided by Hydroflux,
- (j) only use the Equipment in conjunction with the use of chemical supplied by Hydroflux. Unless agreed in writing by Hydroflux, use of any chemical supplied by others may be detrimental to the Equipment and will constitute a breach of this agreement,
- (k) comply with all relevant legislation including environmental legislation and immediately rectify any breach of any environmental or other legislation caused by the use of the Equipment,
- (l) during the Hire Period, and when requested by Hydroflux, allow us to enter the location where the Equipment is being used so we can inspect and maintain the Equipment.

**15. Responsibility for the Equipment**

- (a) The Client is responsible for all liability arising out of the use, handling, storage or operation of the Equipment during the Hire Period. The Client indemnifies Hydroflux for any such liability unless due to negligence by Hydroflux. The indemnity in this clause survives termination of this agreement.
- (b) During the Hire Period, the Client is responsible to undertake normal servicing of the Equipment in accordance with instructions provided by Hydroflux. The Client will be responsible for any loss or damage to the Equipment for failure to undertake normal servicing.
- (c) The Client agrees that any loss, theft or damage will be immediately reported to Hydroflux.
- (d) During the Hire Period the Client is responsible for any loss, theft or damage of the Equipment in all circumstances including but not limited to fire, storm, collision, or accident, unless the loss, theft or damage is caused due to actions by Hydroflux.
- (e) In the event of damage to the Equipment, the Client will not attempt to repair the Equipment unless expressly authorised to do so by Hydroflux.
- (f) The Client will not tamper with the Equipment in any way unless expressly authorised by Hydroflux.
- (g) The Client will not deface or destroy any part of the Equipment, including not altering or removing any sticker(s) or other identification tags or markings that:
  - (i) show ownership of the Equipment by Hydroflux;
  - (ii) identify individual pieces of machinery & equipment;
  - (iii) provide equipment nameplate, inspection, maintenance and other relevant information.
- (h) The Client will not reset or erase any electronically held data.

**16. Equipment that is broken, lost, stolen, or damaged**

If the Equipment has been broken, lost, stolen, or damaged beyond normal wear and tear during the Hire Period, the Client will be liable for:

- (a) any costs incurred by Hydroflux to fix or repair or replace the Equipment,
- (b) the Hire Charges during the Hire Period when the Equipment is being recovered, repaired or replaced.

**17. Return of Equipment**

- (a) Except for normal wear and tear, the equipment must be returned to Hydroflux in the same condition as it was when the Equipment was first released to the Client. Any cost to return the Equipment to its condition before its initial release to the Client will be at the Clients expense. Any cost borne by Hydroflux to return the Equipment to its initial release condition will be charged to the Client and will be in addition to the Hire Charges.
- (b) Where applicable, and before returning the Equipment to Hydroflux, the Equipment must be cleaned and free of any debris. Any cost to clean the Equipment will be at the Clients expense. Any cost borne by Hydroflux to clean the Equipment to its initial release condition will be charged to the Client and will be in addition to the Hire Charges.

**18. Retake possession of Equipment**

If the Client goes into liquidation or becomes bankrupt during the Hire Period, or Hydroflux terminates the Hire Agreement under clause 10(c), the Client grants Hydroflux the unrestricted right to enter the premises where the Equipment is located without liability for any resulting damage or trespass to retake possession of the Equipment.