

HIRE TERMS & CONDITIONS

1. **Entire Agreement**
These terms and conditions together with any credit application, contract/delivery docket, guarantee and indemnity, and direct debit authority form the terms and conditions upon which (a) TOTAL BUILDING SYSTEMS PTY LTD agrees to hire Equipment to the Customer. Any marketing material published by TOTAL BUILDING SYSTEMS PTY LTD is purely for the information of the Customer and does not form part of this Agreement. This Agreement cannot be cancelled or terminated except in accordance with this Agreement.
2. **Ownership of Equipment**
TOTAL BUILDING SYSTEMS PTY LTD is the owner of the Equipment specified in the Schedule and the Customer only has the right to use the Equipment and does not have any proprietary rights to the Equipment. The Customer must not sell, on-hire, deal with, modify or dispose of the Equipment in any way.
3. **Hire Period**
The Hire Period is calculated monthly after a minimum hire of 3 months commencing on the Start Date of Hire shown on the "Contract/Delivery Docket".
4. **Payment of Hire Fees and Other Charges**
The Customer shall pay the first three months Hire Fees in advance (or total Hire Fees if hiring for less than three months), and the off depot and transport charges specified prior to the Equipment being dispatched if the Customer does not have an approved credit account with TOTAL BUILDING SYSTEMS PTY LTD. The Customer shall pay further Hire Fees on a monthly invoice in advance where the Customer does not have a credit account. Hire Fees shall continue on each calendar month anniversary thereafter until the Equipment is returned. The Customer shall be responsible for the payment of all costs, taxes, charges, imposts and expenses which arise by virtue of the Agreement including depot charges, cleaning, lifts, power; transport to & from site; GST and safe keeping of the Equipment.

If the delivery is more than 50kms from the TOTAL BUILDING SYSTEMS PTY LTD depot a transport surcharge may be payable prior to the delivery of the Equipment.

The Customer is unconditionally bound to pay all amounts due under this Agreement in full without set off or counterclaim and without deduction on any account whatsoever. This obligation continues despite any event which may occur including but not limited to the Equipment being lost, damaged, destroyed, stolen or defective or dysfunctional. Refer TOTAL BUILDING SYSTEMS PTY LTD Terms of Trade and/or Payment Options for payment methods.
5. **Delivery & Return of Equipment**
 - (a) The Customer will return a signed copy of quotation and/or sign the Contract/Delivery Docket on delivery and/or provide an order number to TOTAL BUILDINGS SYSTEMS PTY LTD.
 - (b) The Equipment shall be delivered to the Delivery Address provided at the expense and risk of the Customer.
 - (c) Return of the Equipment shall be to the TOTAL BUILDING SYSTEMS PTY LTD depot and at the expense of the Customer. The Customer must provide sufficient space for truck access, flat ground for storage.
 - (d) The Equipment shall be returned to TOTAL BUILDING SYSTEMS PTY LTD depot clean and in the same condition as when delivered to the Customer. A fee for cleaning/repair may be charged without notice. TOTAL BUILDING SYSTEMS PTY LTD will not be liable for any failure to deliver the Equipment or perform services under this Hire Agreement if the failure arises as a consequence of natural disaster, road block, embargo, strike, inability to secure Equipment, unsafe site conditions or any other matters beyond the control of TOTAL BUILDING SYSTEMS PTY LTD.
6. **Disclaimer of Warranties**
 - (a) Upon delivery of the Equipment the Customer must inspect the Equipment and then satisfy him or herself that it is in good operating order and condition. The Customer must rely on the Customers own judgment as to the quality and condition of the Equipment and its fitness and suitability for any particular purpose.
 - (b) No warranties are given in relation to the Equipment or any services other than those implied by law or where the Australian Consumer Law applies and the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
 - (c) Where the Australian Consumer Law applies and the Equipment is not of a kind ordinarily acquired for personal domestic or household use or consumption the liability of TOTAL BUILDING SYSTEMS PTY LTD in respect of any guarantee is limited to replacement or repair of the Equipment and the cost of having the Equipment repaired or replaced.
 - (d) To the extent that the Australian Consumer Law or any other law which cannot be excluded does not apply TOTAL BUILDING SYSTEMS PTY LTD makes no representations and gives no warranties other than those set out in this Agreement and will not be liable to the Customer for any damages, costs or other liabilities (including for consequential loss, loss of income, loss of profit, loss of any product or produce or interruption of business, loss of trade or damage caused to property and or contents of the

Equipment) whatsoever in relation to the hiring of the Equipment by the Customer.

7. Overdue Payments

The Customer agrees with TOTAL BUILDING SYSTEMS PTY LTD that:

- (a) if any Hire Fees or any other amount due is not paid in full on time the Customer is in default and TOTAL BUILDING SYSTEMS PTY LTD is entitled to recover liquidated damages on the overdue amount which the Customer agrees is a genuine pre-estimate of the actual loss that TOTAL BUILDING SYSTEMS PTY LTD will suffer as a result of the late payment(s);
- (b) for each failure to make a payment in full and on time the amount of liquidated damages payable will be the greater of \$50 or 0.1% per day on the overdue amount until paid in full;
- (c) in addition the Customer shall agree to reimburse TOTAL BUILDING SYSTEMS PTY LTD for any bank charge TOTAL BUILDING SYSTEMS PTY LTD incurs in respect of any dishonoured payment(s);
- (d) in the case of unpaid hire fees, TOTAL BUILDING SYSTEMS PTY LTD reserves the right to remove ALL equipment on hire to the Customer;
- (e) all liquidated damages are payable on demand which TOTAL BUILDING SYSTEMS PTY LTD may demand by written demand or by debiting the amount of any liquidated damages from the Customer's nominated bank account or credit card on any date at the election of TOTAL BUILDING SYSTEMS PTY LTD without notice to the Customer;
- (f) upon and after termination of this Agreement as a separate and independent obligation which survives termination of this Agreement the Customer shall pay liquidated damages at the rate of 0.1% per day on any overdue amount, capitalised monthly, until all amounts owing under this Agreement are paid in full.

8. Termination for Convenience

Notwithstanding the Hire Period, TOTAL BUILDING SYSTEMS PTY LTD reserves for itself the right to terminate this Agreement for convenience to be exercised on demand and at the absolute discretion of TOTAL BUILDING SYSTEMS PTY LTD.

9. Maintenance

TOTAL BUILDING SYSTEMS PTY LTD may at its discretion provide basic maintenance of the Equipment by servicing and inspecting the Equipment at scheduled intervals. The Customer must pay all associated labour costs for maintenance carried out at a location more than 100kms from the Adelaide GPO.

Where the Customer has notified TOTAL BUILDING SYSTEMS PTY LTD in writing that the Equipment is defective and TOTAL BUILDING SYSTEMS PTY LTD in its sole discretion considers that the Equipment has become defective during the Hire Period through no fault of the Customer TOTAL BUILDING SYSTEMS PTY LTD may at its absolute discretion replace or repair the Equipment. Any Equipment substituted at the discretion of TOTAL BUILDING SYSTEMS PTY LTD shall be subject to this Agreement. Where any maintenance or repair work is required due to a breach of this Agreement by the Customer including but not limited to vandalism or damage caused by negligence that maintenance and/or repair work will be carried out at the Customer's cost.

10. Safekeeping

The Customer is responsible for the safekeeping of the Equipment during the Hire Period and shall bear the risk of any loss, theft, damage or destruction of Equipment. If the Equipment shall require repair or replacement as a result of the Customer's use of the Equipment, the Customer shall bear the cost of any such repair.

The Customer shall pay to TOTAL BUILDING SYSTEMS PTY LTD the liquidated damages in accordance with clause 7(b) for any Equipment which is lost, stolen, destroyed or damaged beyond repair together with any other amounts due pursuant to clause 13 and this Agreement.

11. Default

The Customer will be considered to be in default and to have repudiated this Agreement if the Customer:

- (a) does not pay in full the Hire Fees or any other amounts due in accordance with this Agreement;
- (b) sells, disposes or encumbers the Equipment or attempt to do any of those things;
- (c) fails to insure the Equipment; or
- (d) becomes insolvent, bankrupt or become subject to any arrangement, enters administration, receivership, liquidation or external administration.

12. Termination

This Agreement will terminate upon the occurrence of any of the following events:

- (a) TOTAL BUILDING SYSTEMS PTY LTD gives the Customer notice terminating this Agreement after the Customers default and or repudiation of this Agreement;
- (b) the Customer returns the Equipment to TOTAL BUILDING SYSTEMS PTY LTD at any time prior to the expiry of the Hire Period where TOTAL BUILDING SYSTEMS PTY LTD have permitted the Customer to do so in writing; and/or
- (c) TOTAL BUILDING SYSTEMS PTY LTD sell any Equipment repossessed pursuant to this Agreement.

13. Termination Due to Default

If this Agreement is terminated the Customer must immediately pay to TOTAL BUILDING SYSTEMS PTY LTD:

- (a) all overdue Hire Fees; plus
- (b) all remaining Hire Fees for the balance of the Hire Period; plus
- (c) any liquidated damages payable under clause 7(b) and any other amounts payable under this Agreement which amount the Customer agrees is a genuine pre-estimate of the loss that TOTAL BUILDING SYSTEMS PTY LTD will suffer because of the early termination of this Agreement; and
- (d) at its expense return the Equipment to TOTAL BUILDING SYSTEMS PTY LTD if it has not already been returned.
- (e) If the Customer fails to comply with paragraph 13(d), the Customer must pay to TOTAL BUILDING SYSTEMS PTY LTD on demand liquidated damages equal to the present value of the estimated fair market retail value of the Equipment as at the end of the Hire Period (assuming that the Equipment will be in the condition required under this Agreement) which amount the Customer agrees is a genuine pre-estimate of the actual loss that TOTAL BUILDING SYSTEMS PTY LTD will suffer as a result of the failure to return the Equipment to TOTAL BUILDING SYSTEMS PTY LTD.

14. Repossession

- (a) If the Customer fails to pay any Hire Fees or if the Customer fails to return the Equipment when required to do so under this Agreement in addition to the other rights of TOTAL BUILDING SYSTEMS PTY LTD, TOTAL BUILDING SYSTEMS PTY LTD or its authorised agents may, subject to complying with any applicable law, take all necessary steps to enter any premises in which or where TOTAL BUILDING SYSTEMS PTY LTD believe the Equipment may be located and repossess the Equipment.
- (b) Subject to complying with any applicable law, TOTAL BUILDING SYSTEMS PTY LTD may sell any repossessed Equipment at any time.
- (c) If TOTAL BUILDING SYSTEMS PTY LTD has not terminated this Agreement the Customer may have the Equipment redelivered at the discretion of TOTAL BUILDING SYSTEMS PTY LTD if the Customer has paid all amounts payable under this Agreement including a redelivery fee.

15. Indemnity

The Customer indemnifies TOTAL BUILDING SYSTEMS PTY LTD against all claims, costs, liabilities, losses and expenses incurred by TOTAL BUILDING SYSTEMS PTY LTD arising from:

- (a) the Customer (or any officer, employee, agent, subcontractor or representative of the Customer) causing damage to any property or injury or death to any person in connection with the use or movement of the Equipment;
- (b) the Equipment causing damage to any property or injury or death to any person; and
- (c) any breach of this Agreement (including any failure of the Equipment to comply with any warranty) or any negligent act or omission of the Customer.

16. Liability for Insurance

The Customer must insure the Equipment and provide a Certificate of Insurance confirming such insurance to TOTAL BUILDING SYSTEMS PTY LTD on demand.

17. Variation to Terms and Conditions

The terms and conditions of this Agreement can be changed and varied by TOTAL BUILDING SYSTEMS PTY LTD by providing the Customer with 14 days written notice of the change or changes.

19. TOTAL BUILDING SYSTEMS PTY LTD Obligations

TOTAL BUILDING SYSTEMS PTY LTD will:

- (a) allow the Customer to use the Equipment for the Hire Period;
- (b) provide the Equipment to the Customer in good repair and condition; and
- (c) collect the Equipment within 7 days of being requested to do so by the Customer

20. Obligations of the Customer

The Customer will:

- (a) keep the Equipment at the Delivery Address specified in the Schedule unless prior written permission has been obtained from TOTAL BUILDING SYSTEMS PTY LTD;
- (b) keep the Equipment in good repair and condition;
- (c) provide TOTAL BUILDING SYSTEMS PTY LTD and or its authorised agents with reasonable access to inspect the Equipment and confirm its existence, condition and proper maintenance. If the Customer fails to give TOTAL BUILDING SYSTEMS PTY LTD and or its authorised agents reasonable access subject to compliance with any applicable law TOTAL BUILDING SYSTEMS PTY LTD has the right to enter any premises where TOTAL BUILDING SYSTEMS PTY LTD reasonably believe the Equipment to be kept or located to confirm its existence, condition and proper maintenance;
- (d) return the Equipment to TOTAL BUILDING SYSTEMS PTY LTD in a good state of repair and condition;

- (e) satisfy itself prior to the hire of the Equipment that the Equipment is suitable for the Customer's purpose;
 - (f) use the Equipment in a careful and proper manner strictly in accordance with the law and only for its intended use;
 - (g) indemnify TOTAL BUILDING SYSTEMS PTY LTD for all injury and/or damage caused or contributed to or by the Customer to persons and property in relation to the Equipment and have adequate insurance to cover all liabilities included as a result of the use of the Equipment;
 - (h) ensure that any person collecting or taking the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person did not have such authority;
 - (i) conduct a risk assessment before using the Equipment and comply with all Occupational, Health and Safety laws relating to the Equipment and its operation;
 - (j) safely secure the Equipment if in the Customer's vehicle and indemnify TOTAL BUILDING SYSTEMS PTY LTD in respect of any injury or damage caused by the Equipment from any vehicle or trailer operated by or on behalf of the Customer;
 - (k) report and provide full details to TOTAL BUILDING SYSTEMS PTY LTD of any accident or damage to the Equipment within one business day of the accident or damage occurring;
 - (l) not tamper with, damage or repair the Equipment or allow anyone else to do so; and
 - (m) utilise the Equipment only for business purposes of the Customer;
 - (n) be responsible for loss and theft of the Equipment and:-
 - (i) all costs incurred as a consequence of such loss and theft including replacement cost of the Equipment;
 - (ii) the full cost of repairing any damage to the Equipment during the Hire Period whether caused or contributed to by the Customer or not;
 - (iii) all costs and government imposts arising from the Customer's use of the Equipment;
 - (iv) all costs incurred by TOTAL BUILDING SYSTEMS PTY LTD in delivering and recovering possession of the Equipment;
 - (v) additional hire charge;
- (vi) any expenses and legal costs incurred by TOTAL BUILDING SYSTEMS PTY LTD in enforcing this Contract due to the Customer's default (including commission payable to a commercial agent);
21. **Privacy**
- TOTAL BUILDING SYSTEMS PTY LTD will comply with the Australian Privacy principles when dealing with the Customer.
22. **PPS Law**
- (a) This clause applies to the extent that this Agreement provides for a security interest for the purposes of the Personal Property Securities Act 2009 (PPS Law) and references to PPS Law in this Agreement include references to any amendments to the PPS Law.
 - (b) If TOTAL BUILDING SYSTEMS PTY LTD does not at the Start Date of Hire specified in the Contract/Delivery Docket have registration ensuring a perfected first priority security interest in the Equipment the Hire Period and including an extension to the Hire Period or the aggregate or consecutive Hire Periods during which the Customer has substantially uninterrupted possession may not and despite anything in this Agreement be longer than:
 - (i) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
 - (ii) a year in any other case.
 - (c) TOTAL BUILDING SYSTEMS PTY LTD may register its security interest. The Customer must do anything such as obtaining consents and signing documents which TOTAL BUILDING SYSTEMS PTY LTD requires for the purposes of:
 - (i) ensuring that TOTAL BUILDING SYSTEMS PTY LTD has a security interest which is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling TOTAL BUILDING SYSTEMS PTY LTD to gain first priority (or any other priority agreed to by TOTAL BUILDING SYSTEMS PTY LTD in writing) of its security interests; and
 - (iii) enabling TOTAL BUILDING SYSTEMS PTY LTD to exercise its rights in connection with the security interest.
 - (d) The rights of TOTAL BUILDING SYSTEMS PTY LTD under this Agreement are in addition to and not in substitution for the rights of TOTAL BUILDING SYSTEMS PTY LTD under any legislation (including the PPS Law) and TOTAL BUILDING SYSTEMS

- PTY LTD may choose whether to exercise rights under this Agreement or under such other law as it deems fit. The security interest of TOTAL BUILDING SYSTEMS PTY LTD attaches to proceeds.
- (e) To the extent that chapter 4 of the PPS Law applies to any security interest under this Agreement the following provisions of the PPS Law do not apply and for the purposes of section 195 of the PPS Law are contracted out of this Agreement in respect of all goods to which that section applies:
- collateral);
- Section 79 and Section 95 (Notice of removal of accession to the extent it requires TOTAL BUILDING SYSTEMS PTY LTD to give a notice to the Customer);
 Section 96 (Retention of accession);
 Section 121(4) (Notice to grantor);
 Section 125 (obligations to dispose of or retain
- Section 130 (Notice of Disposal to the extent it requires TOTAL BUILDING SYSTEMS PTY LTD to give a notice to the Customer;
 Section 129(2) and 129(3), Section 132(3) (Contents of Statement of Account after disposal);
 Section 132(4) (Statement of Account if no disposal);
 Section 135 (Notice of Retention);
 Section 142 (Redemption of Collateral); and
 Section 143 (Reinstatement of Security Agreement).
- (f) The following provisions of the PPS Law (namely Section 123 (Seizing collateral), Section 126 (Apparent Possession), Section 128 (Secured Party may Dispose of Collateral), Section 129 (Disposal by Purchaser) and Section 134(1) (Retention of Collateral) confer rights on TOTAL BUILDING SYSTEMS PTY LTD. The Customer agrees that in addition to those rights TOTAL BUILDING SYSTEMS PTY LTD should have the right to seize, purchase, take possession or apparent possession retain, deal with or dispose of any Equipment not only under those sections but also as additional and independent rights and the Customer agrees that TOTAL BUILDING SYSTEMS PTY LTD may do so in any manner that it deems fit in respect of the dealing and disposal by private or public sale, lease or licence.
- (g) The Customer waives its rights to receive a verification statement in respect of registration events in respect of the Equipment under Section 157 of the PPS Law.
- (h) TOTAL BUILDING SYSTEMS PTY LTD and the Customer agree not to disclose information of the kind that can be requested under Section 275(1) of the PPS Law and the Customer must do everything necessary to ensure that Section 275(6)(a) of the PPS Law continues to apply. This Agreement was made solely for the purpose of allowing TOTAL BUILDING SYSTEMS PTY LTD to have the benefit of Section 275(b)(a) and TOTAL BUILDING SYSTEMS PTY LTD shall not be liable to pay damages for any compensation which may be subject to injunction in respect of the actual or threatened breach of this clause.
- (i) The Customer must not dispose or purport to dispose or purport to create or permit to be created. any security interest as defined in the PPS Law in the Equipment other than the expressed written consent of TOTAL BUILDING SYSTEMS PTY LTD.
- (j) The Customer must not lease, hire or give possession of the Equipment to anyone else unless TOTAL BUILDING SYSTEMS PTY LTD consents in writing and TOTAL BUILDING SYSTEMS PTY LTD shall be under no obligation to provide such consent. Such sub hire must be in writing in a form acceptable to TOTAL BUILDING SYSTEMS PTY LTD and must be expressed to be subject to the rights of TOTAL BUILDING SYSTEMS PTY LTD under this Agreement.
- (k) The Customer must ensure that TOTAL BUILDING SYSTEMS PTY LTD is provided at all times with up to date and accurate information about the sub hire including the identity of the sub hirer and the terms and state of accounts and payment under the sub hire arrangements and location and condition of the Equipment.
- (l) The Customer must take steps including registration under the PPS Law as may be required to:
- (i) ensure that any security interest arising under or in respect of the sub hire is enforceable, perfected or otherwise effective under the PPS Law;
- (ii) enable the Customer to gain but subject to the rights of TOTAL BUILDING SYSTEMS PTY LTD first priority or any other priority agreed by TOTAL BUILDING SYSTEMS PTY LTD in writing for the security interest;
- (iii) enabling TOTAL BUILDING SYSTEMS PTY LTD and the Customer to exercise their respective rights in connection with the security interest;
- (m) to ensure performance of its obligations under this Agreement the Customer gives TOTAL BUILDING SYSTEMS PTY LTD irrevocable power of attorney to do anything TOTAL BUILDING SYSTEMS PTY LTD considers needs to be done pursuant to this Agreement by the Customer and TOTAL BUILDING SYSTEMS PTY LTD may recover from the Customer those costs of doing anything under this clause including registration fees.