



Air-Met Scientific Pty Ltd  
ACN 006 849 949  
RENTAL / HIRE AGREEMENT – TERMS AND CONDITIONS



**airmet**

## **Rental Agreement**



## STANDARD TERMS AND CONDITIONS FOR RENTAL/HIRE AGREEMENT

In these terms and conditions, unless context otherwise requires:

“**Air-Met**” means Air-Met Scientific Pty Ltd (ACN 055 749 949)

“**Business Day**” means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in Melbourne Victoria.

“**Commencement Date**” means the date of the commencement of this agreement, as set out in the Purchase Order.

“**Corporations Act**” means *Corporations Act 2001* (Cth).

“**Customer**” means the individual or organisation renting or hiring the Equipment.

“**Default Rate**” means the rate equal to 2% above the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic) applicable as at the date of non-payment.

“**Equipment**” or “**Goods**” means the rented or hired equipment supplied by Air-Met to the Customer as listed in the Purchase Order.

“**Force Majeure Event**” means an event beyond the control of a party (the ‘Affected Party’) which may include an act of God, lightning storm, flood, cyclone, fire, earthquake, explosion, act of public enemy or war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, endemic, pandemic, strike, lockout or industrial dispute, where (and to the extent only) the Affected Party was not the cause of (and did not contribute to) the event/cause.

“**Hire Agreement**” means these terms and conditions, and includes the Purchase Order.

“**Insolvency Event**” means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

“**PPSA**” means the Personal Property Securities Act 2009 (Cth).

“**PPSR**” means the Personal Property Securities Register established pursuant to the PPSA.

“**Secured Property**” means all Equipment that is supplied to you by us (whether now or in the future).

“**Security Interest**” means any third party interest or encumbrance of any nature whatsoever including (without limitation):

- (a) a mortgage, charge, pledge, lien, hypothecation or title retention arrangement;
- (b) a security interest as defined in section 12 of the PPSA;
- (c) a right of setoff or right to withhold payment of a deposit or other money;
- (d) a right of any person to purchase, occupy or use an asset (including under an option,

agreement to purchase, licence, lease, or hire purchase);

- (e) an easement, restrictive covenant, caveat or similar restriction over property (except an easement or covenant whose burden is noted on the certificate of title to the land concerned);
- (f) a trust or other third party interest; and
- (g) an agreement to create any of the above or to allow any of them to exist..

“**Term**” has the meaning given to it by clause 4.

“**Purchase Order**” means the Purchase Order given to the Customer with this Hire Agreement, entitled “Sale / Hire Contract”, which sets out the description of the Equipment and its price.

### 1. HIRE AGREEMENT

Air-Met has agreed to hire to the Customer, and the Customer has agreed to hire from Air-Met, the Equipment on the terms and conditions contained in the Hire Agreement. Equipment will only be released or despatched to the Customer after the signing of the Hire Agreement by the Customer or their authorised representative. Signing of the Hire Agreement by the Customer indicates acceptance of these terms and conditions and these terms and conditions shall apply and be deemed to be incorporated in the Hire Agreement and will prevail over any inconsistent terms or documents (including for the avoidance of doubt any terms or documents supplied by the Customer even where they are signed by a representative of Air-Met) unless otherwise agreed in writing by a duly authorised representative of Air-Met.

### 2. PRICES

Unless otherwise stated, all prices quoted are in Australian Dollars and are subject to change without notice.

### 3. RENTAL / HIRE PERIOD

The rental period commences on the Commencement Date and terminates when Air-Met receives the Equipment from the Customer at the nominated Air-Met return delivery address as set out in the Purchase Order (notwithstanding the end date shown in the Purchase Order) (**Term**). It is the Customers responsibility to arrange prompt and timely return of the Equipment following completion of the hire on the end date shown in the Hire Agreement. Should the Customer fail to return the Equipment by 12pm on the end date shown in the Hire Agreement, then additional rental fees apply at the daily hire rates specified in clause 4.

### 4. DAILY HIRE RATES

The minimum charge for the Equipment is for one day and the rental fee shall become payable to Air-Met within 30 days from date of invoice unless otherwise agreed in writing from Air-Met.



## 5. WEEKLY HIRE RATES

The weekly hire rate charged for the Equipment is for a five day week and shall become payable to Air-Met within 30 days from date of invoice unless otherwise agreed in writing from Air-Met.

## 6. MONTHLY HIRE RATES

The monthly hire rate charged for the Equipment is for a four week period and shall become payable to Air-Met within 30 days from date of invoice unless otherwise agreed in writing from Air-Met.

## 7. EARLY TERMINATION

Notwithstanding the rental period as set out in the Hire Agreement, Air-Met expressly reserves the right to early termination of the Hire Agreement, which may be exercised on demand and at the absolute discretion of Air-Met. In the event that Air-Met so demands the Customer shall immediately return the Equipment to Air-Met. In the event of early termination of the Hire Agreement, the applicable rental payable (as set out in the Purchase Order) shall be adjusted and payable on a pro-rata basis. For the purpose of the pro-rata adjustment, a day shall be any day excluding Saturday, Sunday and a public holiday in the state of Victoria. A week shall be seven days and a month shall be 28 days.

## 8. RISK, DELIVERY AND RETURN OF EQUIPMENT

Delivery of Equipment to the Customer shall be effected by collection by the Customer or their nominated carrier at such of the premises of Air-Met as is appropriate and agreed between the parties. Shipment of the Equipment to the Customer shall be to the address specified by the Customer and shown in the Purchase Order and at the expense and risk of the Customer. Equipment must be returned to the same Air-Met premises from which the Equipment was collected or shipped or as set out in the Purchase Order and all cost involved in returning the Equipment shall be borne by the Customer. Upon return of the Equipment to Air-Met, Air-Met shall in its sole discretion identify if Equipment is returned incomplete or not in good working order, at which time the Customer shall pay to Air-Met the cost of repairing or replacing the Equipment. The risk in the Equipment shall pass to the Customer immediately upon delivery of the Equipment to the Customer by Air-Met or the Customer's nominated carrier.

## 9. PPSA

- (a) The Customer acknowledges and agrees that the Hire Agreement may give rise to the creation of a Security Interest in the Equipment pursuant to the PPSA. In these circumstances the Customer consents to Air-Met effecting a registration on the PPSR (in any manner that Air-Met considers appropriate) in relation to that Security Interest and agrees to do anything that Air-Met requires it

to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- i) to provide more effective security over the Equipment;
  - ii) to register in respect of a Security Interest constituted by these terms at any time;
  - iii) to enable us to exercise our rights in connection with the Equipment; and
  - iv) to show us whether you have complied with these terms.
- (b) If Chapter 4 of the PPSA applies to the enforcement of that Security Interest the Customer agrees:
- i) to the extent that section 115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 130 to the extent that it requires Air-Met to give notice to the Customer, paragraph 132(3)(d); subsection 132(4) section 142 and section 143 (reinstatement of security agreement; and
  - ii) to the extent that section 115(7) of the PPSA allows this, section 95 to the extent that it requires Air-Met to give a notice to the Customer, section 96, section 121(4), section 125 (obligation to dispose of or retain collateral the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 127, section 129(2) and (3), section 132, section 134(2), section 135, section 136(3), (4) and (5) and section 137.

## 10. OVERDUE ACCOUNTS

Air-Met may charge the Customer bona fide reasonable costs including the cost of any bank fees for dishonoured cheques, collection agency, solicitor or other legal or accounting costs incurred in the collection of monies overdue (on a full indemnity basis). These costs are to be in addition to any award of costs by a court of competent jurisdiction. Air-Met reserves the right to suspend shipments to the Customer if its account is overdue. Any monies owing under these terms which are not paid when due shall bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such moneys first become due to and including the date of payment to us in full.

## 11. CUSTOMER COVENANTS

- (a) The Customer agrees with Air-Met that:
- i) the Equipment shall remain the property of Air-Met and the Customer has no proprietary right or interest in the Equipment or any part of it except to use the Equipment during the Term and otherwise as expressly set out in the Hire Agreement.



- ii) the Customer shall not sell, charge, pledge or part with possession of or create or permit the creating of a Security Interest in the Equipment.
- (b) The Customer shall use the Equipment in a careful and proper manner and not interfere or tamper with the Equipment or let any other person / persons do so.
- (c) The Customer shall notify Air-Met immediately if any judgement or order is levied against the Customer or the property of the Customer or if a petition is presented for the liquidation of the Customer or a receiver is appointed or a scheme of arrangement is proposed.
- (d) The Customer shall permit Air-Met or its agents or servants to enter the Customers premises where the Equipment is located at all reasonable times in order to inspect the Equipment and carry out repairs to the Equipment. In the event that Air-Met identifies that the Equipment requires a repair or service, and the repair or service is in the reasonable opinion of Air-Met required as a direct or indirect result of the Customer's act, omission or negligence the cost of the repair will be borne by the Customer, otherwise all repair/service costs will be borne by Air-Met.
- (e) The Customer requires and will use the Equipment for business purposes only.
- (f) The Customer accepts full responsibility to guard the Equipment against theft, damage or negligence until it has been returned to Air-Met. In respect of theft, damage or loss of Equipment the Hire Agreement shall continue until the item has been repaired by Air-Met or the replacement cost has been paid by the Customer to Air-Met.

## 12. INSURANCE

- A. Obligation to take out and maintain insurance
  - (a) At its own expense, the Customer must take out and maintain for the Term all insurances required by law to be obtained and maintained and all insurances that would be reasonably be expected to be obtained and maintained from a person using equipment similar to the Equipment, consistent with ordinary business practice, including but not limited to:
    - i) insurance for physical and material damage to the Equipment, for not less than its replacement value; and
    - ii) insurance for public risk of not less than \$20m per occurrence, including liability for sudden and accidental pollution.
- B. Other obligations
  - (a) The Customer must ensure:
    - i) they give to Air-Met all relevant policies of insurance whenever Air-Met requests the Customer to procure a copy;

- ii) all insurance policies are taken out with an independent and reputable insurer;
- iii) all insurance policies are taken out in the name of the Customer for its rights obligations and interest under the Hire Agreement, providing a principal's indemnity extension in favour of Air-Met;
- iv) it pays all premiums, policy deductible on any claims and other money payable in respect of any policy when they are due and payable; and
- v) it applies all premiums, proceeds of claim and other money payable in respect of any policy first towards the repairs or replacement of the Equipment.

## 13. WARRANTY, LIMITATION OF LIABILITIES AND INDEMNITY

- A. Implied Terms
  - (a) It is acknowledged by Air-Met that under applicable State, Territory and Commonwealth law(s) (including, without limitation, the Competition and Consumer Act 2010 (Cth) ("**Competition and Consumer Act**"), certain statutory implied guarantees and warranties (including, without limitation, the statutory guarantees under the Competition and Consumer Act will be implied into these terms ("**Non-Excluded Guarantees**").
  - (b) Air-Met further acknowledges that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.
  - (c) Except as expressly set out in these terms or in respect of the Non-Excluded Guarantees, Air-Met and its employees or agents makes no warranties or other representations under any contract with the Customer or these terms. Air-Met's liability in respect of these warranties is limited to the fullest extent permitted by law
- B. Guarantees

Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, you are entitled:

  - (a) to cancel your service contract with us; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.



C. Warranties

Subject to clause 13, Air-Met warrants that for the Term, each item of Equipment is of merchantable quality and fit for purpose for which it was designed and Air-Met undertakes to repair or replace Equipment, which has failed due to defects in materials or workmanship. Subject to this clause 13, we warrant that the Goods and Services supplied will be free from defects in material and workmanship for a period of twelve (12) months from date of delivery of the Goods or performance of the Services unless the original manufacturer offers a greater or lesser period in which case that manufacturer's warranty period will apply.

Without limiting the generality of the foregoing the aforesaid warranty does not extend to repair or replacement of Equipment occasioned by:

- (a) The failure of the Customer to comply with any instructions or literature supplied with the Equipment (including but not limited to information relating to the storage, installation, operation or servicing of the Equipment);
- (b) Faulty installation or workmanship by a third party, which causes damage to the Equipment;
- (c) The misuse, neglect or alteration in any manner by the Customer, its agents or employees or any third party of the Equipment.

The warranty given by Air-Met in these terms and conditions is given by Air-Met Scientific Pty Ltd (ACN 006 849 949), of 7-11 Ceylon Street, Nunawading VIC 3131, Australia. Ph –1300 137 067. E: sales@airmet.com.au. All Goods subject to warranties must be returned to us or our nominated representative for inspection and assessment at your cost.

D. Limitation of Liability

- (a) Subject to clause 13(A), the Customer acknowledges that it has not relied upon any statement, skill or judgment by Air-Met in respect of the Equipment including whether it is fit for purpose.
- (b) Subject to this clause 13 and so far as may be permitted by law, if a failure of Air-Met to comply with the Non-Excluded Guarantees cannot be remedied or is a major failure, the Customer's right to recover damages is limited to the reasonably foreseeable loss or damage suffered as a result of that failure. However Air-Met is not liable for loss or damage that results from a failure of Air-Met to comply with the Non-Excluded Guarantees if that failure was caused independent of human control and occurred after the Equipment left the control of Air-Met.

E. Indemnity

In circumstances where the Non-Excluded Guarantees do not apply, Air-Met, its employees and/or agents shall not be liable for any loss, damages, claims, liabilities and costs (including any consequential loss or damage which includes

without limitation, loss of profit and loss of revenue) of any kind arising as a result of or in connection with the Hire Agreement, even if due to the negligence of Air-Met, its employees and/or agents. Air-Met's rights under this clause 13(E) continue notwithstanding the Hire Agreement expiring, terminating, being repudiated or any other matter, fact or thing.

14. SEPARATE ITEMS OF AGREEMENT

Where more than one item of Equipment is supplied under the Hire Agreement in interpreting the Hire Agreement the singular shall be read as the plural where appropriate and the rental shall be apportioned to each item of Equipment as set forth in the "Equipment Details" section of the Purchase Order and the herein conditions set forth shall apply separately to each individual item of Equipment as though each item of Equipment were subject to a separate agreement.

15. LONG TERM HIRE

The Customer agrees that if a hire rate discount has been provided for long term hires and the Customer returns the Equipment prior to the nominated end date Air-Met reserves the right to charge the Customer full value for the period of hire without discount.

16. ENTIRE AGREEMENT AND VARIATION

This Hire Agreement constitutes the entire agreement between Air-Met and the Customer with respect to the Equipment and shall not be amended except by prior written notice from Air-Met (acting reasonably).

17. GOVERNING LAW AND JURISDICTION

- (a) These terms are governed by the law in force in the state of Victoria, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the state of Victoria, and any court that may hear appeals from any of these courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.

18. SEVERABILITY

Any provision of the Hire Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of the Hire Agreement.

19. OUR RIGHTS

Any right that Air-Met may have under the Hire Agreement is in addition to, and does not replace or limit, any other right that Air-Met may have.



## 20. ASSIGNMENT

The Customer must not assign its rights or obligations under the Hire Agreement without the prior written consent of Air-Met.

## 21. TERMINATION AND DEFAULT

- A. The following shall constitute an event of default:
- (a) if the Customer fails to pay any money payable under this agreement when due and payable;
  - (b) a representation or warranty made by the Customer in connection with this Agreement is found to be incorrect or misleading;
  - (c) if the Customer stops paying, or ceases to carry on its business or a material part of it, or threatens to do either of those things other than with the prior written consent of the other party;
  - (d) if an Insolvency Event occurs in respect of the Customer;
  - (e) if an order is made or an effective resolution is passed for the winding up of a the Customer or a meeting is called to consider a resolution to wind up or dissolve the party or to place it in administration or receivership, or if the Customer proposes or enters into any arrangement with its creditors or otherwise is unable to pay its debts as and when they fall due; or
  - (f) if the Customer fails to observe any other material obligation under this agreement.
- B. Upon an event of default under clause 21.A Air-Met shall be entitled to (in addition to any other rights to terminate this Agreement) and require the payment by the Customer of the unpaid balance of all work performed to the termination date, plus a payment equal to 25% of the balance of the cost for the remainder of the Term.
- C. Air-Met's rights under this clause 21 are in addition to the rights under clause 7 (Early Termination).

## 22. FORCE MAJEURE

- D. If Air-Met becomes aware of a Force Majeure Event that is or is likely to prevent it either partially or wholly from complying with its obligations (except payment obligations) under this Agreement, it must as soon as reasonably practicable notify the Customer:
- (a) the Force Majeure Event;
  - (b) the obligations that Air-Met is prevented from performing; and
  - (c) the expected duration of the period during which the Air-Met will be prevented by the Force Majeure Event from performing the obligations.
- E. If Air-Met is prevented from performing its obligations under this Agreement by a Force Majeure Event:
- (a) Air-Met are not liable for failure to comply with these terms, any contract or an agreement for sale of Goods and/or Services if the failure (directly or indirectly)

arises out of any circumstances that are as a result of the Force Majeure Event;

- (b) it may suspend the Agreement indefinitely; and
- (c) if the Force Majeure Event continues for the period of 60 Business Days, it may terminate the Agreement by 30 days written notice to the Customer.

## 23. INTELLECTUAL PROPERTY

- (a) Air-Met retains the copyright in all materials, drawings, diagrams, specifications, and illustrations provided in connection with the Equipment ("Intellectual Property"). In no circumstances shall any Intellectual Property be copied, disclosed to third persons, or used for any purpose other than the purpose for which it is supplied (without prior written consent).
- (b) Any invention or improvement made by the Customer and attributable in whole or in part to the Intellectual Property shall be the property of Air-Met.
- (c) Any Intellectual Property must be returned to Air-Met upon termination of this Agreement or at its request.

## 24. NOTICE

- (a) A Notice to Air-Met under this Agreement must be in writing and left at or sent by registered post to the address of Air-Met.
- (b) A notice, demand, or certificate to the Customer under this Agreement must be either:
  - i) left at or sent by pre-paid post to the Customer's last known address; or
  - ii) sent by email to the Customer's email specified in the Schedule.
- (c) Any notice is deemed to have been served in the case of delivery on the day it is delivered, in the case of posting, on the third Business Day following the date of posting, and if transmitted by email, on the day that transmission was completed.