

IKM TESTING AUSTRALIA PTY LTD
TERMS AND CONDITIONS
RENTAL EQUIPMENT



1. **Application**
Unless otherwise agreed in writing, these terms and conditions will apply to all rental supplies where IKM Testing Australia Pty Ltd has agreed to rent its Equipment to the Customer. Each a Party and collectively referred to as the Parties.
2. **Definitions**
Contractor – IKM Testing Australia Pty Ltd will be the owner and supplier of the Equipment.

Customer – is the company, firm, person, corporation or public authority requesting to rent the Contractor's Equipment, including the Customer's employees or representatives.

Contract means the Rental Agreement consisting of the Purchase Order, these Terms and Conditions and any special conditions detailed in the Purchase Order and explicitly accepted by the Contractor.

DAP means Delivered at Place under Incoterms 2020.

DPU means Delivered at Place Unload under Incoterms 2020.

Equipment includes that IKM Testing agrees to rent to the Customer and all such other Equipment as the Customer may require from time to time.

Force Majeure means any occurrence beyond the Contractor's control, including but not limited to any strike, lockout, labour dispute, civil unrest or disturbance, any act of God, war, national emergency, storms, pandemic, epidemic, fire and so forth.

Purchase Order means an individual Purchase Order or other written order or contract including documents issued by the Customer for the procurement of the Contractor's provision of Service Work. Provided that in all cases the Purchase Order as defined herein must necessarily be accepted in writing by the Contractor.
3. **Basis of Contract**
Customer accepts that only the Contract as defined in clause 2 shall be the basis for the rental agreement, and that any use of or reference to other general or special terms and conditions by Customer shall be deemed not to apply. Customer will hire rental Equipment only, without any operators from Contractor, hence Customer will assume the full responsibility for operating the Equipment.

Each Party confirms that this Rental Agreement constitutes the entire Agreement between the Parties for the provision of Rental Equipment and further supersedes all previous proposals, agreements, understandings and other communications whether written, oral or otherwise, in relation to the Rental Equipment for which this Agreement is entered into.
4. **Prices**
Unless otherwise specified in Contractors quotation, the prices will not include GST or other taxes, e.g., related to import and export of goods, freight and forwarding charges or any other additional charges of any nature. Unless otherwise explicitly agreed, the daily rental rates apply for each day or part of each day as the case may be, 7 (seven) days a week, including holidays.
5. **Rental Period**
The Rental Period shall commence when the Equipment is delivered by Contractor Ex-Works Contractor's base, and shall continue until the Equipment is returned and received by Contractor, DAP Contractor's base. Return of the Equipment shall take place during normal opening operating business hours. All transport between the Contractor's base and the Customer's site shall be solely at the Customer's risk and account.
6. **Payment**
Rental charges will start to accrue at the commencement of the Rental Period as per Clause 5 above. All prices are quoted and payable in AUD. Unless otherwise agreed, the Contractor will submit monthly invoices after the expiry of each month. Payment must be made by the Customer within 30 days from receipt of invoice. In the event of overdue payment, interest will be charged from the due date of the invoice until payment is effected by the Customer.

In the event that the Customer disputes any amounts invoiced by the Contractor, the Customer shall pay to the Contractor the undisputed portion of the invoice and upon the resolution or determination of the dispute, the Customer shall pay the Contractor the agreed upon balance with the addition of interest due as outlined in this Clause 6.
7. **Contractor's Responsibilities**
The Contractor will provide suitable Equipment based on the information and specifications received from the Customer.

The Contractor shall provide operation manuals, maintenance instructions and certificates in order for Customer to operate and conduct regular maintenance for the Equipment.

The Contractor is not liable for any faults or discrepancies resulting from normal wear and tear, use of non-approved parts including but not limited to any parts not provided by or belonging to the Contractor, incorrect handling or usage by the Customer as well as inadequate maintenance or overload by the Customer. Any changes or modifications made by the Customer to the Equipment, which have been made without the Contractor's express written permission, shall be considered damage for which the Customer is solely and fully liable. The Contractor reserves all its rights and remedies provided by law in relation to the damages made by the Customer as outlined in this Clause 7.
8. **Customer's Responsibilities**
The Customer undertakes to check the Equipment as soon as it is received at DAP Contractor's base, including calibration made by the Contractor. Any complaints concerning the Equipment shall be made by the Customer within two (2) business days to the Contractor. Final determination of the suitability of the Equipment for the specific use is solely the Customer's responsibility.

The Customer shall take reasonable care of the Equipment and keep it properly maintained and shall only use the Equipment for its proper purpose in a safe and correct manner in accordance with the instructions provided to it by the Contractor. The Customer must not attempt to repair the Equipment without prior written authorisation in writing from the Contractor and shall also not interfere with the Equipment, its working mechanisms or any other parts of the Equipment. Routine maintenance, (including oil level, water level including antifreeze protection, battery charging, greasing, along with any other specific instructions intimated to the Customer) is solely the responsibility of the Customer. If or when the Equipment requires fuel, oil and/or electricity, the Customer shall ensure that the proper type and/or voltage is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person.

The Customer shall take all reasonable steps to keep itself acquainted with the state and condition of the Equipment. If such Equipment be continued at work or in use in an unsafe, unsatisfactory state or environment, the Customer shall be solely responsible for any and all damages, losses or accidents whether directly or indirectly arising therefrom.

The Customer shall provide formal proof that the person engaged to conduct the maintenance is duly qualified in his

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profession. Provided further that in any case including where the person conducting the maintenance of the Equipment is qualified as required under this Clause 8, the Customer remains liable for all damages, losses or claims resulting from failure, omission or negligence on the part of the Customer and its obligations under this Clause 8.

The Customer shall take adequate and proper measures to protect the Equipment from theft, damage and/or other risks. The Customer shall keep the Equipment at all times in own possession and control and shall not move the Equipment across borders without the Contractor's express prior written consent. The Contractor shall be permitted at all times to inspect the Equipment including access to any site where the Equipment is situated. The Customer shall not deny the Contractor access to assess the Equipment in this regard.

The Customer must return the Equipment together with all parts belonging to the Contractor in good working order and condition (with the exception of fair wear and tear) in a clean condition together with all licences, registration and other documents relating to the Equipment. Spare parts purchased by the Customer cannot be returned unless agreed to in writing by the Contractor.

The Contractor reserves all rights provided under law in respect of any and all damages, losses or claims caused by the Customer under this Clause 8.

9. Delay – Mobilisation

Unless otherwise agreed, the following will apply:

If the Contractor finds that it cannot deliver Equipment within the agreed mobilisation time, or if a delay on the Contractor's part seems inevitable, the Contractor shall inform the Customer of this without undue delay, giving the reasons for the delay, and if possible, advise when new revised mobilisation time is scheduled to take place.

Provided that the Customer indemnifies the Contractor against any and all damages, expenses, losses, liabilities or claims by or against the Contractor arising out of or in connection with any delay of mobilisation under this Clause 9, including a delay resulting from Force Majeure.

10. Taxation – Export/ Import

If Customer plans to ship the Equipment abroad, the Contractor shall be notified for prior approval by the Customer. The Customer will be solely responsible for all costs incurred under this Clause 10 and all handling related to export/import of the Equipment across borders. The Contractor will in all circumstances under this Clause 10 provide to the Contractor all necessary documentation (including commercial and legal documentation) as required for the import/export process.

11. Title and Passing of Risk

The Equipment shall remain the property of the Contractor at all times. Risk in the Equipment will pass to the Customer upon delivery when the Equipment is loaded onto the truck or other similar means of transport at the Contractor's base and will remain with the Customer until the Equipment is unloaded and received by the Contractor, and the Customer shall be liable for any loss of or damage to the Equipment while under Customer's risk, however caused, including but not limited to theft, accidents, fire, and so forth. The Customer has no right, title or interest in the Equipment except the right of use during the Rental Period in accordance with the Contract.

12. Guarantee

The Contractor guarantees that the Equipment will be delivered ready for operation and will to the best of its ability ensure that the Equipment is calibrated in accordance with Customer's

specific instructions which the Customer must provide to the Contractor a minimum of seven (7) business days prior to the date of mobilisation as agreed to in writing by the Parties. However, the Contractor does not guarantee the results of any operation or service conducted by the Customer. If the Equipment is found to be defective on receipt by the Customer, or if any fault occurs during the Rental Period, the Customer shall immediately notify the Contractor of such condition. The Contractor will investigate accordingly and it is within the Contractor's discretion to determine whether the fault represents a defect covered by the Contractor's guarantee. The Contractor shall decide how to remedy the fault, including whether to repair or replace the Equipment. In the event that any repair or replacing of the Equipment is required outside of the Contractor's workshop, all extra charges associated with freight, travel and subsistence will be charged to the Customer. Full deduction of the rental charges will be made to the Customer for the stoppage period due to inherent defects in the Equipment for which the Contractor is responsible solely for said inherent defects.

13. Breakdown, repairs and adjustment

If the Equipment sustains any breakdown, damage or loss in the Rental Period and this is not covered by the Contractor's guarantee, the Customer shall reimburse the Contractor for the repair, cost or the actual replacement cost, including damage suffered by the Contractor arising from any breakdown of the Equipment due to the Customer's negligence, misdirection and/or misuse of the Equipment, whether by the Customer or its Representatives, The Customer shall also be fully liable for the payment of rental at the idle time rate during such breakdown, loss or damage.

Furthermore, the Customer shall be responsible for the cost of spares and/or repairs due to loss or vandalism of the Equipment.

The Customer shall always notify the Contractor immediately of any accidents related to the Equipment resulting in death, personal injury to any personnel, or severe damage to the Equipment.

14. Other Stoppages

No Equipment off-hire will be admitted (other than those allowed for under Clause 12 "Guarantee"), for stoppages through causes outside the Contractor's control, including Force Majeure (Clause 23), bad weather, craneage delays or ground conditions and the like.

15. Loss of other equipment due to breakdown

Each item of the Equipment specified in the Contract is rented as a separate unit and the breakdown or stoppage of one (1) or more units (whether the property of the Contractor or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by other units of Equipment working in conjunction therewith, unless two (2) or more items of Equipment are expressly hired together as a unit. Such items shall be deemed a unit for the purpose of breakdown.

16. Re-hiring

Customer shall not re-hire, sub-let, or lend the Equipment to any third party without the express written consent of the Contractor.

17. Contractors' name plates

The Customer shall not remove, mark, deface or cover up the Contractor's name plates etc, indicating that the Equipment is any other Parties' property.

18. Manuals and documentation

All manuals and documentation enclosed with the Equipment will remain the property of the Contractor.

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19. **Indemnity**
The Customer shall indemnify the Contractor from and against all costs, expenses and claims resulting from any loss of or damage to the Equipment for which the Contractor or its Representatives is liable for in accordance with the Contract, including repair costs or replacement costs as the case may be.
- The operation of the Equipment must be in accordance with the Contractors' specifications, recommendations and instructions and any liability arising from the Customer's failure to comply with such specifications, instructions and recommendations or from negligence on the part of the Contractor or its Representatives in any form in the operation of the Equipment, shall be the sole responsibility and liability of the Customer and the Customer shall fully indemnify and hold the Contractor harmless from any and all claims made by any person or party arising directly or indirectly from such failure and/or negligence.
- The Customer shall fully indemnify the Contractor in respect of any and all claims made by any person whatsoever for injury to person or property caused by or in connection with the storage, transit, transport, unloading, loading or use of the Equipment during the Rental Period, and in respect of all costs and charges in connection therewith.
20. **Insurance**
Subject to the second paragraph below, the Customer is liable for and must determine at its own risk and expense whether to take out any insurance against damage to the Equipment during the Rental Period. The Equipment replacement value can be obtained from the Contractor should the Customer so request. In the event that the total value of the rented Equipment exceeds AU \$ 1 million, the Customer shall have an obligation to take out insurance covering the full Equipment value. The Contractor will inform the Customer if this is the case and the Customer must verify that sufficient insurance cover has been arranged, prior to the mobilisation of the Equipment. The Customer shall ensure that their insurance company shall waive any and all rights of subrogation against the Contractor.
21. **Pollution**
The Customer shall defend, indemnify and hold harmless the Contractor from and against all claims, losses, damages, costs, expenses and liabilities, arising from pollution whether or not originating from the Equipment or related to the Equipment.
22. **Consequential loss**
Subject to clause 8, neither Party shall be liable to the other for any consequential losses or indirect losses, including without limitation, loss of profit, loss of goodwill, loss of revenue or turnover, loss of opportunity arising out of or in connection with the Contract.
23. **Force Majeure**
The Contractor shall not be considered in breach of any obligation under the Contract to the extent that fulfilment of the obligation has been prevented by Force Majeure. Force Majeure means any occurrence beyond the Contractor's control, provided that he could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.
24. **Limitation of liability**
Notwithstanding any of the provisions herein, the Contractor's total liability for breach of Contract shall be limited to the total rental charges paid by Customer, but shall in no event exceed AU \$500,000.
25. **Governing Law and Jurisdiction**
The Contract shall be governed by and construed in accordance with the laws of Western Australia.
Any dispute between the Parties that cannot be solved amicably shall be settled by court proceedings according to Western Australian law at the Perth District Court, which the Parties accept as their legal venue.