



METSEL PTY LTD – CONDITIONS OF HIRE

1. Interpretation

Unless the context deems otherwise, in these Conditions of Hire:

a. **Act of Default** means:

- i. the Customer causes the Equipment to be damaged or lost;
- ii. the Customer breaches the Contract, including failing to pay any Rent;
- iii. if Metsel is dissatisfied with the manner that the Equipment has been erected or the condition of the Equipment after it inspects the Equipment pursuant to clause 14;
- iv. a judgement against the Customer for the payment of monies remains unsatisfied for seven days;
- v. the Customer suspends or ceases to carry on all or substantially the whole of its business;
- vi. the Customer is or becomes unable to pay its debts as and when they fall due or is otherwise presumed to be insolvent by the law;
- vii. the Customer suspends or threatens to suspend payment of its debts generally;
- viii. the making of an application or the making of any order, or the passing of any resolution, for winding up or the bankruptcy of the Customer other than where the application or order (as the

case may be) is set aside within 14 days;

- ix. the appointment of a receiver or a receiver and manager or other insolvency official to the whole or a substantial part of the property or assets of the Customer;
 - x. the entry by the Customer into any compromise or arrangement with creditors; or
 - xi. any event occurs with respect to the Customer that has a similar effect to the events mentioned in Clause 1.1.a.vi to 1.1.a.x.
- b. **Conditions of Hire** means this document entitled, “*METSEL PTY LTD CONDITIONS OF HIRE*”.
- c. **Conditions of Sale** means the document entitled, “*METSEL PTY LTD – CONDITIONS OF SALE*”.
- d. **Contract** means the contract for the hire of Equipment by Metsel to the Customer as set out in clause 4.
- e. **Customer** means the person described as “*Customer*” in the Quote.
- f. **Deposit** means the security deposit to be paid by the Customer to Metsel as set out in clause 5, the amount of which is provided for in the Contract.
- g. **Due Date** means the date that the Rent and other charges relating to the hire of the Equipment is payable as set out in clause 6.d.
- h. **Equipment** means any silos and other equipment hired by the Hirer together with any accessories, replacements, renewals or additions to the same.
- i. **Goods** mean any goods to be supplied by Metsel to the Customer pursuant to the Contract.

- j. **Invoice** means a tax invoice issued by Metsel to the Customer for the hire of the Equipment under the Contract as set out in clause 6.c.
- k. **Metsel** means Metsel Pty Ltd ACN 614 056 889.
- l. **Offer** means the offer by the Customer to Metsel for the hire of Equipment as set out in clause 3.a.
- m. **Rent** means the rent payable for the hire of the Equipment at the rates specified in the Contract in addition to any other charges relating to the same as provided for pursuant to clause 6.a.
- n. **Site** means the Customer's nominated location for the delivery of the Equipment.
- o. **Termination Notice** means the written notice provided by the Customer to Metsel terminating this Contract as set out in clause 8.a.
- p. **Quote** means the invitation to treat which Metsel provides to the Customer which sets out the terms Metsel will be willing to consider in an Offer made to it by the Customer for the hire of the Equipment as set out in clause 2.
- q. No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- r. A reference to:
 - i. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority; and
 - ii. a person includes the person's executors, administrators, legal personal representatives,

successors, assigns and persons substituted by novation.

2. Quote

- a. On the request of a Customer, Metsel may provide a Quote to the Customer which will be deemed to incorporate the terms set out in the following documents:
 - i. the document entitled, "Quotation";
 - ii. these Conditions of Hire;
 - iii. if applicable, the Conditions of Sale; and
 - iv. if applicable, the documents providing for any credit account held by the Customer with Metsel.
- b. For the avoidance of doubt, the Quote:
 - i. is an invitation to treat by Metsel on the terms set out in the Quote and has no binding effect on the parties until the Contract is formed; and
 - ii. does not constitute an offer to hire the Equipment on the terms set out in the Quote and cannot be accepted by the Customer.

3. Offer

- a. The Customer may present Metsel with an offer for the hire of Equipment in accordance with the terms set out in the Quote by providing an executed Quote to Metsel (**Offer**).
- b. Metsel will consider all Offers that are presented to Metsel by the Customer within 1 month of the Offer's issue date. Notwithstanding this, Metsel is under no obligation to accept any Offer.

4. Contract

Upon Metsel advising the Customer that it agrees to hire the Equipment to the Customer in accordance with the terms of the Offer, or words to that effect, a contract will be formed between the Customer and Metsel for the hire of the Equipment on the terms set out in the Offer subject to any variations agreed between the parties in relation to the same (**Contract**).

5. Deposit

- a. In consideration of Metsel agreeing to hire the Equipment to the Customer, the Customer agrees to pay Metsel the Deposit, to be held by Metsel during the term of this Contract and to be dealt with in accordance with this clause 5.
- b. Metsel agrees to refund the Deposit to the Customer upon the collection of the Equipment in accordance with the Contract or the Termination Notice, subject to Metsel being satisfied in its sole discretion that the Equipment being in good working order and condition.
- c. The Deposit shall vest absolutely in Metsel without need for any notice to the Customer if:
 - i. an the Customer commits an Act of Default; or
 - ii. at the expiry or termination of this Contract:
 - A. Metsel is unable to collect the Equipment for any reason outside Metsel's control;
 - B. the Equipment is lost; or
 - C. the Equipment is damaged,

and the parties agree that the Deposit is a fair and reasonable pre-estimate of the loss and damage that Metsel

would suffer as a result of the events set out in clauses 5.c.i and 5.c.ii.

6. Invoice and payment

- a. In consideration of Metsel hiring the Equipment to the Customer, the Customer agrees to pay Metsel the amounts set out in the Contract (**Rent**) upon the issue of an Invoice by Metsel to the Customer.
- b. Rent will continue to accrue until such time that the Equipment is collected by Metsel pursuant to this Contract.
- c. Metsel may issue an invoice for all outstanding Rent at any time (**Invoice**).
- d. The Customer agrees that Metsel may increase the Rent to correspond with its current hire charge rates for equipment similar to the Equipment by giving the Customer no less than seven days' written notice.
- e. All Invoices are due and payable to Metsel seven days after the date the Invoice is issued (**Due Date**).
- f. The Customer agrees to pay Metsel interest of 7.5% per annum on all overdue Invoices.

7. Delivery and collection of Equipment

- a. Metsel will deliver the Equipment to the Site at the time and date that is specified in the Contract.
- b. Metsel will collect the Equipment from the Site:
 - i. subject to clauses 7.b.ii and 7.b.iii, at the time and date specified in the Contract;
 - ii. if the Contract is terminated pursuant to a Termination Notice under clause 8.a, at the time and date specified in the Termination Notice; and

- iii. if the Contract is terminated pursuant to 12.a.ii.A, at any time during business hours and on any date to be determined at Metsel's sole discretion.
 - c. The Customer warrants that suitable and safe access to the Site will be provided to Metsel, its employees and agents to enable them to deliver the Equipment to the Site at the delivery dates and times set out in the Contract or otherwise agreed between the parties.
 - d. If Metsel, in its absolute discretion, considers that there is no suitable and safe access to the Site at the agreed Equipment delivery and collection dates and times then Metsel may:
 - i. refuse to deliver the Equipment until the Customer is able to provide Metsel with suitable and safe access to the Site;
 - ii. refuse to collect the Equipment until the Customer is able to provide Metsel with suitable and safe access to the Site; or
 - iii. still to deliver and collect the Equipment.
 - e. In the event that Metsel elects to deliver and collect the Equipment pursuant to clause 7.d.iii, the Customer agrees to indemnify Metsel of any additional costs, including the cost of using specialised vehicles to access the Site, and any loss and damage incurred by Metsel, including any damage to Metsel's vehicles and equipment or increased insurance costs, as a result of Metsel delivering or collecting the Equipment from an unsafe or poorly accessible Site.
 - f. By accepting delivery of the Equipment, the Customer warrants that:
 - i. it has examined the Equipment;
 - ii. the Equipment fully corresponds to the description of the Equipment in the Contract; and
 - iii. as at the time of delivery, the Equipment is in good working order and condition and fit for any purpose for which it may be required.
- 8. Minimum terms of hire and termination by the Customer**
- a. The Customer may terminate the Contract by providing one week's written notice to Metsel and this notice must specify a time and date for collection of the Equipment that is during business hours on a weekday that is not a public holiday (**Termination Notice**).
 - b. Notwithstanding clause 8.a, all Equipment must be hired for a minimum of 2 days, commencing on the date that the Equipment is delivered to the Site and terminating on the date that the Equipment is collected from the Site.
 - c. If the Customer terminates this Contract by way of a Termination Notice, it forfeits all Rent and other amounts it may have already paid to Metsel for the hire of the Equipment even if it relates to a period after the Equipment is collected pursuant to the Termination Notice. The parties agree that these forfeited amounts are a fair and reasonable pre-estimate of the loss and damage that will be suffered by Metsel as a result of the Customer terminating the Contract early.
- 9. Use of Equipment**
- a. The Customer must:

- i. use the Equipment only at the location specified in the Contract:
 - D. in a skilful and proper manner; and
 - E. in accordance with any safety and operating instructions provided by Metsel and good industry practice;
 - ii. do all things necessary to ensure that the Equipment is set, used, cleaned and maintained in a safe manner;
 - iii. maintain records of the Equipment use to the standard required by Metsel;
 - iv. keep the Equipment insured against all risks to a value not less than its full replacement value;
 - v. inform Metsel of any repairs or adjustments needed to be conducted on the Equipment; and
 - vi. allow Metsel to have access to the Equipment at all reasonable times for the purpose of inspecting, testing and maintaining the Equipment.
- b. The Customer must not, without Metsel's prior written consent:
- i. store anything other than Goods in the Equipment;
 - ii. make any alteration, addition or improvement to the Equipment;
 - iii. permit any person to carry out repairs or adjustments to the Equipment;
 - iv. exceed the Equipment manufacturer's stated tolerances; and
 - v. dispose or part with possession of, or deal with the Equipment.
- c. If the Customer makes any alteration, addition or improvement to the Equipment, such alteration, addition or improvement is deemed to be Metsel's property and the Customer shall vest all its right, title and interest in the same to Metsel.

10. Damage and risk to Equipment

- a. The Customer is solely liable for and indemnifies Metsel against:
- i. all claims in connection with or arising out of the hire and use of the Equipment; and
 - ii. any loss or damage caused to the Equipment from the time that the Equipment is delivered to the Customer until Metsel collects the Equipment, calculated with reference to the following agreed replacement values:
 - A. 1.2m³ silo with mixer and control panel:
\$15,000 plus GST
 - B. 6m³ silo with mixer and control panel:
\$30,000 plus GST
 - C. 22m³ silo with mixer and control panel:
\$38,000 plus GST
- b. The Customer must effect the necessary insurances to support the indemnities provided under this clause **Error! Reference source not found.** (including, but not limited to, insurance against any third party or public liability risks of whatever nature and however arising in connection with the hire and use of the Equipment) and produce evidence of the same to the Metsel if required.
- c. If the Equipment is not returned to Metsel after the expiry or termination of this Contract, then the Customer

agrees that Metsel may pass copies of this Contract to the Police or any other governmental or regulatory authority to assist in their investigations.

11. Title to Equipment

- a. The parties agree that Metsel holds all the rights, title and interest in the Equipment at all times subject to the Customer's permitted use of the Equipment pursuant to this Contract.
- b. If the Equipment is to be hired to the Customer for a term exceeding two years, Metsel may register a security interest in the Equipment on the Personal Property Securities Register as security for its interest as the owner of the Equipment.

12. Breach

- a. If the Customer commits an Act of Default, then:
 - i. all sums owed by the Customer in respect of the Equipment will be immediately due and payable; and
 - ii. Metsel may:
 - A. terminate the Contract and all other contracts with the Customer and claim damages for any resulting loss incurred; and
 - B. enter the Site to collect the Equipment. To give effect to this, the Customer grants Metsel with an irrevocable licence to enter upon the Site to take possession of any Equipment.

13. Legal costs

The Customer agrees to pay, on an indemnity basis, all legal and enforcement costs, disbursements and expenses incurred in and incidental to any failure or

default by the Customer in observing or performing its obligations under the Contract, including any Act of Default.

14. Variations

Subject clauses 8.a and 12.a.ii.A, this Contract may only be varied or cancelled by written agreement between the parties and in relation to Metsel, must be executed by its Chief Executive Officer.

15. Security

In consideration of Metsel agreeing to hire the Equipment to the Customer, the Customer charges all of its present and after acquired property as security for the performance of the Customer's obligations under the Contract, including its obligation to pay the Rent, and consents to Metsel:

- a. lodging a caveat or caveats over all its present and after-acquired real property; and
- b. registering a security interest over all its present and after-acquired property (in the form of a general security agreement) on the Personal Property Securities Register as defined under the PPSA in relation to any security interest contemplated or constituted by the Contract; and
- c. registering a specific security interest agreement as defined in the PPSA over any specific property which the Client has agreed in writing with Metsel to be charged.

16. Liability

- a. Metsel shall not be liable for any indirect or consequential loss arising from and in connection with the hire and use of the Equipment under the Contract including:
 - i. loss of profits;
 - ii. loss of production;

- iii. loss of revenue;
- iv. loss of use;
- v. loss of contract;
- vi. loss of goodwill; or
- vii. loss of opportunity,

whether or not that loss or damage was caused by an act, omission or default of Metsel or its agents, arising from:

- viii. the delivery to, or collection of, of the Equipment from the Site;
- ix. the use of the Equipment at the Site; or
- x. any delay in delivering the Equipment to the Site.

- b. The maximum liability of Metsel for any reason, whether arising in common law, tort (including negligence), contract, pursuant to statute or any other cause of action, shall not exceed the Rent.

17. Severance

If any part of the Contract is or becomes void or unenforceable, that part is or will be severed from the Contract to the extent that all parts that are not or do not become void or unenforceable remain in full force and in effect and are unaffected by that severance.

18. Notices

- a. In addition to any lawful means, a notice may be given by:
 - i. being personally served on a party;
 - ii. being left at the party's current address for service;

- iii. being sent to the party's current address for service; or
- iv. emailing to a party's current email address for service.

- b. If a communication is given by:
 - i. post it is taken as received if posted within Australia to an Australian address three business days (in the place of receipt) after posting and in any other case five business days (in the place of receipt) after posting; or
 - ii. email, that communication is taken to be received at the time and date recorded on the send confirmation unless an undeliverable notice is received from the sender's email server.

19. Governing law

- a. The Contract is governed by the laws of Western Australia and if applicable, the Commonwealth of Australia.
- b. Metsel and the Customer irrevocably submits to the non-exclusive jurisdiction to the courts of Western Australia and if applicable, the Commonwealth of Australia.