

GEOFABRICS®

EQUIPMENT HIRE AGREEMENT

THIS AGREEMENT made on _____ 20____ between:

GEOFABRICS AUSTRALASIA PTY LTD ABN: 23 005 479 961 ("the Owner") AND

_____ ("the Hirer")

Address _____

ABN _____

for the hire of _____ ("The Equipment")

Item 1. Contact details of Hirer:

Phone: _____ Email: _____ Fax: _____

Item 2 The Hirer's Premises (where Equipment is to be used) _____

Item 3 Hire Fee: \$ _____ per week (excl gst)

Item 4 Bond \$ _____

Item 5 Term _____ days (or as otherwise agreed in writing by the parties)

Item 6 Commencement Date _____

Item 7 Payment Date _____

Item 8 Interest Rate: 1.5% per month

Item 9 Certification Fee _____

Item 10 The agreement shall be governed by the laws of the State of Victoria, Australia

Item 11 Additional Information _____

Item 12 IFS number (for internal office purposes only) _____

EXECUTED AS AN AGREEMENT

I have read the Equipment Hire Agreement including the schedule (Schedule) and I am authorised to sign and agree to this agreement. I agree to forward a copy of this agreement to the Site Manager of the Hirer where the Equipment will be used and ensure that all relevant staff will be made aware of the obligations of the Hirer in all respects including staff safety and damage to equipment. I understand that we, as the Hirer, will be charged from the day the Owner dispatches the equipment until the day it is returned to the Owner's premises less 1 day for transportation allowance. I further understand that the Equipment will only be dispatched after this agreement has been signed in duplicate by both parties.

SIGNED FOR AND ON BEHALF OF HIRER

Signature

Print Name and Position (Authorised Personnel)

**SIGNED FOR AND ON BEHALF OF
OWNER (GEOFABRICS AUSTRALASIA)**

Signature

Print Name and Position

OPERATIVE PROVISIONS

1. Interpretation

In this agreement, unless the context otherwise requires, the following terms shall have the following meanings:-

“**Commencement Date**” means the date set out in Item 6

“**Certification Fee**” means the amount set out in Item 9 as the fee for the Owner to have the Equipment certified on return from the Hirer as being clean, in good repair and working order.

“**Bond**” means the sum, referred to in Item 4.

“**Equipment**” means the equipment, the box in which it may be delivered to the Hirer, and all accessories and other items accompanying the equipment.

“**Hire Agreement**” means this agreement between the Owner and the Hirer.

“**Hire Fee**” means the fee per day set out in Item 3

“**Payment Date**” means the date set out in Item 7

“**Premises**” means the premises as set out in Item 2

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

“**Term**” means the term set out in Item 5

2. Hiring of Equipment

2.1 Subject to this Hire Agreement the Hirer agrees to hire the Equipment from the Commencement Date for the Term for the Hire Fee.

3. The Owner's Obligations

The Owner will:

3.1 Allow the Hirer to take and use the Equipment until the expiration of the Term (Freight is the responsibility and cost of Hirer);

3.2 Provide the Equipment to the Hirer clean and in good working order; and

3.3 Re-supply or repair the Equipment if it fails to operate properly.

4. Deposit

4.1 Immediately upon signing of this Hire Agreement the Hirer must pay the Owner the Bond.

4.3 In the event that the Equipment is returned to the Owner having sustained damage (fair wear and tear excepted) the Owner shall be entitled at its option to appropriate the Bond (or such part thereof) as shall be necessary to effect any repairs to or maintenance of the Equipment which the Owner shall deem reasonably necessary to restore the Equipment to good working order and condition. If the Bond is insufficient to meet the repair costs, the Owner shall be entitled to recover any shortfall from the Hirer.

5. Hire Fee and Other Moneys

5.1 On the Payment Date, or such other date as may be agreed in writing by the parties, the Hirer shall pay to the Owner the Hire Fee, the Bond and the Certification Fee.

5.2 The Hirer's obligation to pay the Hire Fee, the Bond and the Certification Fee is absolute and unconditional under any and all circumstances whatsoever.

6. Title

6.1 The Hirer acknowledges that from the Commencement Date the Equipment will be and will remain the sole property of the Owner and the Hirer shall only have a right to possess the Equipment as a mere bailee only.

6.2 The Hirer shall:

- (a) Allow the Owner to take all such steps (at the Hirer's expense) as may be necessary to safeguard and protect the title and rights of the Owner as the owner of the Equipment; and
- (b) If requested by the Owner attach to the Equipment a notice to the effect that the Equipment is the property of the Owner.

7. Quiet Enjoyment

7.1 Subject to the terms of this Agreement, for so long as the Hirer complies with the terms and conditions of this Hire Agreement and the Owner is not otherwise entitled to terminate this Hire Agreement, the Hirer may possess and use the Equipment during the Term without interruption from the Owner.

7.2 Notwithstanding the provisions of clause 7.1 the Owner shall have the right at any time without prior notice to enter upon any premises where the Equipment is believed to be stored to inspect, observe and/or test its use and to exercise any of its other rights arising under this Hire Agreement.

8. Use, Storage and Maintenance

8.1 The Hirer shall:

- (a) Ensure that the Equipment is properly used and used for the purpose for which it was designed and in accordance with any manufacturer's instructions and ensure that it does not constitute a health and safety risk to personnel or the public;
- (b) Use only appropriately qualified and experienced personnel to operate the Equipment and ensure that all persons operating and/or erecting the Equipment are suitably trained, supervised and instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed (e.g. plant operators);
- (c) Use the Equipment with proper accessories and in conditions suitable for the use of the Equipment;
- (d) Operate and maintain the Equipment in a proper and workmanlike manner and in accordance with all applicable laws, rules and regulations;
- (e) Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- (f) Operate the Equipment with an adequate motor vehicle and/or power source (where relevant).
- (g) Safely secure all items loaded in or on the Equipment or in or on the Hirer's vehicle and indemnify the Owner in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicles or trailer operated by or on behalf of the Hirer in relation to the Equipment; and
- (h) Keep the Equipment in the Hirer's possession and control at the Premises, store the Equipment in a secure place at the Premises; and promptly inform the Owner of the location of the Equipment whenever requested by the Owner;
- (i) At its own cost, maintain and keep the Equipment in good and substantial repair and on termination of this Hire Agreement return the Equipment to the Owner in such repair;

9. Repairs

The Hirer shall:

- a) Notify the Owner immediately if there is any damage to, or malfunction or loss of the Equipment and immediately return the Equipment to the Owner upon request to enable the Owner to replace or repair (at the Owner's option) any damage to, or malfunction or loss of the Equipment;
- b) Not make or authorise any repair, replacement, alteration or addition to the Equipment.

10. General Safety

The Hirer must comply with the safety requirements outlined in Schedule 1.

11. Visual Inspection Condition Report

The Hirer must check the Visual Inspection Condition Report contained in Schedule 1 on receipt of the Equipment.

12. Assignments and Mortgages

The Hirer shall not without the prior written consent of the Owner sell, transfer, assign, create any interest in, or authorize any lien over, sub-let, part with possession of or otherwise dispose of or encumber all or part of the Equipment or its interest in the Equipment either absolutely or by way of security, or agree, offer, attempt or purport to do any such thing. The Owner may assign, mortgage, encumber, charge and deal in any way whatsoever with its interest in the Equipment subject to this Hire Agreement.

13. Loss and Damage

13.1 Subject to the other provisions of this Agreement, all risk of theft, damage or destruction to the Equipment or any part thereof, however incurred or occasioned, shall be borne by the Hirer and the Hirer hereby indemnifies the Owner in respect of such theft, damage or destruction of the Equipment. It is the responsibility of the Hirer to have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment.

13.2 The Hirer cannot recover from the Owner compensation for any damages (including consequential loss) arising in respect of this Hire Agreement or the hiring or the use of the Equipment.

14. Assumption of Risk and General Indemnities.

14.1 The Hirer agrees to use, operate, maintain and possess the Equipment at the risk of the Hirer.

14.2 To the fullest extent permitted by law, the Hirer releases, discharges and indemnifies the Owner, its employees and agents, from and against all liabilities, expenses, claims and demands made against the Owner, its employees or agents, and for any loss or damage caused to the Hirer or any third party, whether by way of death of or personal injury to any person, damage to property, delay, or consequential loss or loss of profit arising from or incidental to:

- (a) The use, operation, repair, maintenance or storage of the Equipment or a breakdown of, or defect in, the Equipment or any accident involving the Equipment (whether caused by the negligence or otherwise);
- (b) Any failure by the Hirer to observe or comply with any one or more of its obligations expressed in or implied by this Hire Agreement.
- (c) The Hirer acknowledges and agrees that the Equipment is designed specifically for use on products sold by the Owner and the Owner shall not be liable for any loss arising from use of the Equipment on products not sold by the Owner and the hirer specifically acknowledges and agrees that the Equipment is designed specifically for use only on products sold by the Owner.

14.3 The Hirer shall be liable for any breach of the conditions of This Agreement by the Hirer, or its employees, servants, contractors or agents.

15. NOTE: EXCLUSION OF IMPLIED WARRANTIES UNDER THE COMPETITION AND CONSUMER ACT (2010) AND FAIR TRADING LEGISLATION

15.1 The Competition and Consumer Act (2010) (formerly the Trade Practices Act (1974) and the fair trading legislation in each State and Territory in Australia imply certain terms and warranties into this Agreement. Some of those terms and warranties cannot be excluded or modified or can only be excluded or modified to a limited extent. Nothing in this Agreement is intended to exclude, restrict or modify any statutory obligation of The Owner if that cannot lawfully be affected under the Competition and Consumer Act or relevant fair trading legislation.

15.2 To the fullest extent permitted by law, the liability of the Owner in relation to goods and Equipment the Owner supplies is limited at its option to:

- (a) Replacement of the goods or the supply of equivalent goods;
- (b) Repair of the goods; or
- (c) Payment of the cost of replacing the goods or of acquiring equivalent goods; or payment of the cost of having the goods repaired.

15.3 The Owner is not otherwise obliged to compensate the Hirer for loss suffered by the Hirer due to breakdown or need to repair the Equipment.

16. Return, Certification and Repossession of the Equipment.

16.1 Upon the expiry or sooner termination of the hiring granted under this Hire Agreement or of any renewal or extension of such hiring the Hirer shall at its own expense (freight is Hirer's responsibility), immediately return the Equipment to the Owner or at the Owner's direction to the person charged with certifying that the equipment is clean and in good repair. Hirer will not attempt to repair or certify the equipment.

16.2 The Owner shall arrange for the Equipment to be checked and certified as being clean and in good repair. The Hirer is charged for this certification by way of the Certification Fee noted in Item 9.

16.3 To the extent that the equipment needs to be repaired, the Owner is entitled to retain the Bond or part thereof to repair the Equipment. If the Bond is insufficient to meet the repair costs, the Owner shall be entitled to recover any shortfall from the Hirer.

16.4 If the Hirer fails to return the Equipment:

- (a) The Owner may, directly or by its agent, take possession of the Equipment and for that purpose the Owner directly or by its servants or agents and with the authority of and as agents of the Hirer may enter upon any land or premises where the Equipment is or is reasonably suspected of being. This permission is irrevocable and the Hirer agrees that the Owner, its employees or agents, so entering are not trespassing.
- (b) The Hirer must pay the Owner the Hire Fee on a daily basis until the Equipment is returned to or repossessed by the Owner.
- (c) If the Hirer fails to return the Equipment, the Owner shall be entitled to recover the replacement cost of the Equipment from the Hirer.

17. Termination

17.1 The Owner may terminate this Agreement immediately where the Hirer commits a breach of this Hire Agreement which is not capable of being remedied or, where the breach is capable of being remedied is not remedied within 2 days of the Owner notifying the Hirer of the breach.

17.2 On termination the Hirer shall pay to the Owner all monies outstanding under this Agreement.

17. Warranties of the Hirer

18.1 The Hirer warrants that:

- (a) In deciding to enter into this Agreement the Hirer has relied on its own skill or judgement and has not relied on any statements, representations or warranties made by The Owner;
- (b) The Hirer has selected and examined the Equipment and has satisfied itself as to its compliance with its description as well as its condition, suitability and fitness for the Hirer's purpose;
- (c) Upon hiring the Equipment the Hirer has satisfied itself the Equipment is in good and substantial working order and condition and constitutes the Equipment the subject of this Agreement;
- (d) The details set out herein are correct in every respect and are not misleading in any way, including by omission.

19. Stamp Duty and other Taxes

19.1 The Hirer will pay to the Owner any stamp duty or like imposts or duties that may be imposed in relation to this agreement, the hire of the Equipment or the receipt of the Hire Fee and reduced Hire Fee.

19.2 The Hirer shall pay to the Owner an amount equal to the GST payable by the Owner in respect of the supply of the Equipment at the same time as the Hirer pays the Hire Fee or reduced Hire Fee.

20. Notices

In addition to effecting notice pursuant to any statute any statement, demand or notice to any party may be validly served (notwithstanding that the demand or notice is returned to the party giving the notice for any reason) for the purpose of this Agreement by being sent by prepaid post to the address of the party or by facsimile to the number of the party in this Hire Agreement. Service will be deemed to be valid service if made to the address or facsimile number of the party specified in this Agreement unless the recipient has notified the sender in writing of a change of address.

21. Without limiting anything otherwise mentioned herein the Hirer must NOT:

- (a) Tamper with, modify, damage or repair the Equipment;
- (b) Lose or part with possession of the Equipment;
- (c) Rely upon any representation relating to the Equipment or its operation other than those contained in this Hire Agreement
- (d) Exceed the recommended or legal load and capacity limits of the Equipment; or
- (e) Use or carry any illegal, prohibited or dangerous substances in, on or around the Equipment.

22. Security

- (a) Unless the context indicates otherwise the terms used in this clause 22 are as defined in the PPSA.
- (b) The Hirer hereby grants to the Owner a Purchase Money Security Interest in the Equipment until the Hirer has returned the Equipment undamaged to the Owner and made full payment of any monies owing to the Owner and that this document constitutes a Security Agreement for the purposes of the PPSA.
- (c) The security interest held by the Owner includes an interest in Equipment that become an accession to other goods.
- (d) The Hirer must do all things necessary to assist the Owner to perfect and enforce its security interest to the fullest extent available at law, including enabling the Owner to gain first priority for its security interest. Accordingly, the Hirer must not grant a security interest in the Equipment to any other party.
- (e) The Hirer irrevocably and unconditionally waives its rights to receive any notice from the Owner under the PPSA.
- (f) Notwithstanding any part of the PPSA the parties agree to keep the contents of a Hire Agreement and related material confidential.

23 General

23.1 Whole Agreement: The provisions contained in this Hire Agreement and Schedule 1 cover and comprise the whole of the Agreement between the parties to this Agreement with respect to the hiring of the Equipment.

23.2 No waiver: The rights of the Owner shall not be prejudiced or restricted by any indulgence or forbearance extended to the Hirer and no waiver by the Owner shall operate as a waiver of any subsequent breach.

23.3 Costs and Expenses: The Hirer must on demand pay to or reimburse the Owner for all costs, charges and expenses in connection with the contemplated enforcement, enforcement or preservation of any of the Owner's rights under this Hire Agreement.

23.4 Overdue interest: The Hirer shall pay interest on any monies from time to time due and unpaid by the Hirer under this Hire Agreement at the rate specified in Item 8 of the Schedule, from the date when such moneys fall due for payment or are expended by the Owner.

23.5 Severance: If any provision of this Hire Agreement is found by a court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Hire Agreement and the remaining provisions of this Hire Agreement shall continue in full force and effect.

23.6 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State as set out in Item 10 and the Hirer submits to the non-exclusive jurisdiction of its Courts.

23.7 Variation: Any variation of this Agreement must be agreed in writing by the parties.

MELBOURNE (03) 8586 9111 Fax: (03) 8586 9186	SYDNEY (02) 8785 8800 Fax: (02) 9821 3670	NEWCASTLE (02) 4950 5845 Fax: (02) 4950 5895	COFFS HARBOUR (02) 6653 5706 Fax: (02) 6653 5706	PERTH (08) 9249 5411 Fax: (08) 9249 5447	ADELAIDE (08) 8162 5855 Fax: (08) 8162 5755
HOBART (03) 6273 0511 Fax: (03) 6273 0686	BRISBANE (07) 3279 1588 Fax: (07) 3279 1589	TOWNSVILLE (07) 4774 8222 Fax: (07) 4774 8655	BUNDABERG (07) 4155 9968 Fax: (07) 4155 9968	GOLD COAST (07) 5594 8600 Fax: (07) 5563 3727	DARWIN 0407 523 669 Fax: (08) 8162 5755

SCHEDULE 1 Visual Inspection Condition Report and Operating & Safety Instructions [attach]