

Community Equipment Hire or Loan

Terms and Conditions

Definitions & Interpretation

Definitions

1.1 In this Agreement:

Agreement means the Hire Documents, these Terms and Conditions and any other document incorporated by reference.

Bond means the amount specified in the Hire Documents payable by the Hirer to the Council, which is refundable on the return of the Equipment to Council in a clean, fit and proper condition, and subject to clause 4.

Claim means any claim, action, proceeding, loss, damage, cost, expense or liability whatever and however arising (whether or not presently ascertained, immediate, future or contingent and includes legal costs on a full indemnity basis).

Confidential Information means information of or provided by a party (**Discloser**) to the other party (**Recipient**) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as such; or
- (c) the Recipient knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.

Council means the Lockyer Valley Regional Council A.B.N. 52 673 165 312.

End Date means the date the Equipment is returned to Council.

Equipment means all plant and equipment specified in the Hire Documents (or any substitute equipment), and includes their parts, components, trailer, accessories and contents, signage, operating manuals and user guides supplied by Council.

Hire Charges means the fees and other amounts payable for the hire or use of the Equipment as set out in this Agreement and the Hire Documents and any written and agreed variation, and in the absence of any of those, then the Hire Charges will be as per Council's standard schedule of rates applicable at the time.

Hire Documents means the Community Loan/Hire Equipment Application, the Feral Trap Hire Form, Equipment Checklist and any other application or form relating to hire or use of Equipment entered into by the Hirer with Council and which sets out details of the Equipment hired or loaned to the Hirer and other terms of use or hire.

Hirer means the person named as the hirer, borrower or applicant in the Hire Documents and with whom this Agreement is made.

Land means the location where the Equipment will be used as specified in the Hire Documents.

Permitted Use means the purpose specified in the Hire Documents or if nothing stated, the use or purpose for which the Equipment was designed and intended to be used.

Start Date means the date on which the commencement of the hire/loan under this Agreement starts.

Term means the period from the Start Date to and including the End Date.

Interpretation

1.2 In this Agreement unless the context otherwise requires:

- (a) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership and a trust;
- (b) singular includes the plural and vice versa;
- (c) a gender includes other genders;
- (d) "includes" in any form is not a word of limitation;

- (e) where a party comprises two or more persons, this agreement binds them jointly and severally;
- (f) a reference to "\$" or "dollar" is to Australian currency and an obligation to pay money is an obligation to pay in Australian

2 Scope of Agreement

Supply equipment

2.1 The Council will supply and hire or loan (as the case may be) the Equipment to the Hirer on the terms of this Agreement.

Risk

2.2 All Equipment is at the Hirer's risk, and the Hirer is responsible for all loss, theft, or damage to the Equipment however caused.

Equipment in good condition

2.3 The Hirer acknowledges that the Equipment has been received by the Hirer in clean and good working order and condition.

Hirer to pay charges

2.4 The Hirer must pay Council for the hire or loan of the Equipment in the amounts and in the manner set out in this Agreement.

Ownership

2.5 All Equipment remains the property of Council.

3. Use of Equipment

Hirer's obligations

- 3.1 The Hirer must:-
- (a) Only use the Equipment on the Land;
 - (b) Only use the Equipment for the Permitted Use;
 - (c) Ensure that only persons with appropriate skills, licences, qualifications and experience operate or use the Equipment;
 - (d) not allow any other person, in particular persons under the age of eighteen years, to use or exercise effective control over the Equipment;
 - (e) Ensure there is competent supervision over the use and operation of the Equipment;
 - (f) Operate and use the Equipment strictly in accordance with all Commonwealth and State legislation and regulations and any notice or requirements of any authority, and in accordance with the manufacturers' equipment manual and operating instructions and user guides provided by Council or located on the Equipment;
 - (g) ensure that all appropriate safety signs remain attached to the Equipment and that the operator of the Equipment is wearing suitable clothing, including personal protective equipment required or recommended by Council for the safe operation of the Equipment;
 - (h) Store the Equipment safely, and securely, and protected from theft, seizure, loss or damage;
 - (i) Keep the Equipment, with all parts and accessories, clean and in good order and condition;
 - (j) Comply with any maintenance, service or repairs requirements as directed by Council;
 - (k) Give immediate notice to Council of any damage to, or faults, breakdowns, or safety concerns with, the Equipment;
 - (l) Allow Council access to inspect, examine, and test the Equipment at any reasonable time and for this purpose the Hirer grants Council a licence to enter the Land or any other property where the Equipment is, or may be, located;
 - (m) satisfy yourself prior to delivery that the Equipment is suitable for the Hirer's purposes;
 - (n) Return the Equipment when it is due back or on demand; and
 - (o) Return the Equipment in the same condition as it was at the time of initial delivery to The Hirer.
 - (p) do all things necessary, including permitting the Council to remove the Equipment from the Hirer's possession or control, to ensure that the "loan-for-use" or "hire" character of the Equipment is preserved and made known to the Hirer's creditors if any claim to the Equipment is or might be asserted by a creditor.

Community Equipment Hire or Loan

Terms and Conditions

- (q) ensure that appropriate protective footwear is worn (no thongs or sandals) whilst in the Council Depot. All animals are to be restrained in the Hirer's vehicle and children must remain in the Hirer's vehicle and supervised at all times. No Smoking allowed within the Pest Compound (where trailers are collected and returned).

Negative obligations

- 3.2 The Hirer must not:-
- allow the Equipment to be used for any illegal purpose;
 - allow the Equipment to be used for anything unless that is part of the Permitted Use;
 - operate or use the Equipment if it is faulty, damaged or unsafe;
 - tamper with, repair or modify the Equipment in any way, or interfere with any parts of the Equipment or allow anyone else to do so, without the prior permission of Council;
 - alter the Equipment or deface any identifying number, name or mark upon the Equipment;
 - offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over the Equipment, or lose or part with possession of the Equipment.

Additional obligations for traps/cameras

- 4.2 Where the equipment includes a feral animal trap and or surveillance camera, the Hirer acknowledges and agrees that:
- the Hirer is aware of the need to comply with the *Animal Care and Protection Act 2001*;
 - the Hirer will check all traps set on the Land early every morning and each afternoon/evening, unless alternative arrangements have been made with Council's nominated Authorised Officer;
 - If an animal is trapped, the Hirer will notify the Council Authorised Officer by phone immediately;
 - No animal is to be euthanised unless authorised by Council's Authorised Officer;
 - If the Land is to be left unoccupied overnight, the Hirer must notify Council's Authorised Officer to arrange monitoring or removal of the trap/s;
 - All pets on the Land must be enclosed or restrained to avoid capture in the traps or attacking or stressing a trapped animal;
 - Neighbours should be notified, if possible, that trapping is occurring and warning signs must be displayed in a prominent and easily visible location;
 - the Hirer has received instructions on the operation of the trap and has been issued with an information pack relating to the use, operation and rules and requirements for animal trapping;
 - it is the Hirer's responsibility to deal with pest plants and animals under the Biosecurity Act 2014 and that Council is assisting the Hirer in this process; and
 - the Hirer agrees to Council's Authorised Officer(s) entering the Land at ant time and without further consent being required for the purpose of:
 - *to retrieve traps/cameras;
 - *the Biosecurity Act 2014;
 - *Council's animal management local laws; and
 - *to discharge a licenced firearm.

4. Fees and Charges

Bond

- 4.1 The Hirer must pay the Bond to Council at the time of entering into this Agreement and prior to taking possession of the Equipment.
- 4.2 The Bond shall be held by Council and only returned to the Hirer upon the Equipment being returned to Council in good working order and condition.
- 4.3 Council shall be entitled to deduct from the Bond any costs or loss incurred by Council to repair any damage, breakdown or failure of the Equipment or to replace the Equipment or any part of it where the loss or damage is such that it is not viable or practical to repair it.

Hire Charges

- 4.4 The Hire Charges commence on the Start Date and continue until the End Date.

- 4.5 The Hire Charges may be a fixed hourly, daily, weekly or monthly rate as specified in the Hire Documents.

Payment

- 4.6 The Hirer must pay the Hire Charges in the manner and at the times specified by Council.

Pick-up and Delivery

- 4.7 The Hirer is responsible for all costs associated with the pick-up, transport and delivery of the Equipment to and from the Land, and warrants that:
- the Hirer's vehicle is suitable for towing and or carrying the Equipment; and
 - the Equipment will be attached to, loaded onto or otherwise secured to the Hirer's vehicle in safe and secure manner and in accordance with all laws and requirements for the transport by road of heavy equipment.
- 4.8 Council may refuse to allow pick up of Equipment if it considers the Hirer's mode of transport or method of securing the Equipment to be unsafe

Fines etc

- 4.9 In the event of a fine or other penalty notice relating to the use of the Equipment, the Hirer is responsible for the payment of the fine, penalties and any additional charges plus an administrative cost of \$50 per violation.

Overdue interest and costs

- 4.10 Any Hire Charges or other amounts not paid on the due date will accrue interest at the rate of 12% from the due date until actual payment.

GST, levies etc

- 4.11 The Hirer must pay all stamp duty, goods and services tax and any other tax, duty or impost imposed by any government authority on the hiring or use of the Equipment.

5. Return of Equipment

Return by End Date

- 5.1 The Hirer must return the Equipment to Council by the End Date shown on the Hire Documents.

Early return

- 5.2 In the case of a fixed term Hire, the Hirer may return the Equipment prior to the End Date. Equipment returned by 4pm on a business day will only incur Hire Charges up to the day of return. Equipment returned after 4pm will incur Hire Charges up to and including the whole of the following day.

Non return

- 5.3 If the Hirer does not return the Equipment when it is due back, the Hirer must continue to pay Hire Charges at the same rate and in the same manner as specified in the Hire Documents plus:
- a late fee of \$50 per day for each day or part of a day that the Equipment is overdue;
 - a transport fee of \$50 payable to Council in the event that Council is required to arrange delivery, or collection, of the Equipment to or from the Hirer; and
 - any other costs Council incurs for the period from the due return date to the actual date of return,
- and the Hirer agrees to the Bond being used and applied towards these amounts.

Condition of Equipment

- 5.4 When the Equipment is returned to Council:
- The Equipment must be in a thoroughly clean condition (including rinsing and washing out the tank hose and spray gun, with no residual liquid remaining) and good overall appearance and the same condition and functionality as when it was initially hired; and
 - all gauges and glass must be undamaged.

Community Equipment Hire or Loan

Terms and Conditions

Cost to fix damage

5.5 The Hirer must pay Council all costs to clean, wash, repair and restore the Equipment to the condition in clause 5.4(a).

6 Repairs, service and maintenance

Hirer's obligations

6.1 The Hirer is responsible for normal wear and tear and minor breakdowns. This includes fuel, oils, lubricants, hoses and belts, electric motors and other items not related to normal periodic servicing.

Specific maintenance

6.2 The Hirer must:

- (a) (if applicable) maintain the Equipment's oils and lubricants levels to the manufacturer's specifications, set out in the Equipment operation manual or instruction provided to the Hirer; and
- (b) ensure that daily checks of hoses, swivel-parts, wear and tear parts, consumables supply, general care, cleaning and general adjustment or tightening of bolts and screws is conducted on the Equipment.

Notify breakdowns

6.3 The Hirer must report and provide full details to Council of any major breakdown or malfunction of the Equipment within 24 hours of such breakdown.

Repair or Replace equipment

6.4 Council will endeavour to repair the Equipment or provide substitute or replacement Equipment (if available) as soon as reasonably practical after receiving notice of the breakdown.

Cause of breakdown (responsibility)

6.5 If the breakdown was not caused or contributed by misuse or other neglect by the Hirer, then the Hire Charges will cease during the period that the Equipment is being repaired or until replacement Equipment is provided.

7 Termination

By notice

7.1 Unless otherwise agreed in writing, this Agreement may be terminated by Council or the Hirer on one day's notice after the expiry of any minimum hire period specified in the Hire Documents.

Default

7.2 Council or the Hirer may terminate this Agreement immediately if the other:

- (a) breaches any provisions of this Agreement; or
- (b) becomes bankrupt or insolvent, enters into liquidation, administration, receivership or ceases to carry on business.

Effect of termination

7.3 Termination does not affect Council's right to recover from the Hirer the Hire Charges, and other costs payable by the Hirer under this Agreement or damages for breach of this Agreement.

Repossession

7.4 The Hirer agree that at any time during which any of the circumstances in clause 7.2(a) or (b) exist or if return of the Equipment is overdue, Council is entitled to repossess the Equipment and is authorised by the Hirer to enter any premises where the Equipment is located, which is owned or occupied by the Hirer, to effect repossession.

7.5 If the Hirer is in default of any provision of this Agreement Council may seize the Equipment by any method permitted by law.

8. Legal claims and proceedings

Hirer's obligations

8.1 Where the use of the Equipment by the Hirer or any other person results in an accident or claim, or where damage, loss or injury is sustained to the Equipment, any person or property (including livestock), the Hirer must:

- (a) promptly report such incident to the local police;

- (b) promptly report such incident in writing to Council;
- (c) not, without Council's written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability;
- (d) permit Council or its insurer at its own cost to bring, defend, enforce or settle any legal proceedings against a third party in the Hirer's name;
- (e) permit or ensure that Council may claim in the Hirer's name under any applicable insurance, and assist Council in making such a claim, including assigning any right to claim under any substitute insurance to Council; and
- (f) complete and furnish to Council within a reasonable time any statement, information or assistance which Council or its insurer may reasonably require, including attending at a lawyer's office and at Court to give evidence.

9 Liability and Indemnity

Risk

9.1 The Equipment is transported, stored, used, operated and possessed entirely at the Hirer's risk, and Council has no responsibility or liability for any loss or damage (whether direct, indirect or consequential) to the Hirer or the Hirer's property.

Loss or damage of equipment

9.2 The Hirer is liable for the loss of, and any damage to, the Equipment whilst on hire or in the care, possession or control of the Hirer.

Third party damage

9.3 The Hirer is also liable for all damage to the property of any person and any injury (including death) to a person or livestock which is caused or contributed to by the Hirer or which arises from the Hirer's use or operation of the Equipment.

Associated expenses

9.4 The Hirer's responsibility under clauses 9.2 and 9.3 includes appraisal/assessor fees, towing, storage and recovery costs, reasonable administrative fee reflecting the cost of making arrangements for repairs and towing/collecting and other administrative activities, and a per day loss of use based on the estimated downtime of the Equipment.

No warranty on use

9.5 The Hirer acknowledges that, to the extent permitted by law, no warranty or representation is given by Council of the Equipment's fitness for any particular purpose.

Liability exclusion

9.6 To the maximum extent permitted by the law Council is not liable to the Hirer or any employee or contractor of the Hirer in respect of:

- (a) any damage, breakdown or failure of the Equipment;
- (b) any injury to any person caused by or arising from the use of the Equipment; or
- (c) any economic loss suffered by the Hirer or any other person as a result of the use or operation of the Equipment.

Indemnity

9.7 The Hirer indemnifies Council from and against all claims, liabilities, loss or damage of whatsoever kind and nature arising directly or indirectly from the use or operation of the Equipment (including breakdown, accident, seizure or confiscation of the Equipment).

10 PPSR

Security interest

- 10.1 The Hirer:
 - (a) Acknowledges this agreement is a Security Agreement for the purposes of the PPS Act;
 - (b) Consents to Council registering its security interest on the PPSR;
 - (c) Consents to Council applying any monies received, firstly, against its costs and disbursements in recovering such monies on a full indemnity basis, secondly against any interest accrued and finally against any amount due; and
 - (d) Agrees to the debiting of its account with Council of the cost of registration of Council's security interest and all other associated costs with perfection and enforcement of such security interest on an indemnity basis.

Community Equipment Hire or Loan

Terms and Conditions

Waiver of rights

10.2 So far as permitted by Section 107 of the PPS Act, the Hirer will have no rights under Sections 114, 120 and 113 of the PPS Act including the right to receive any notices. The Hirer waives the Hirer's rights to receive a verification statement in respect of any financing statement or financing change statement registered by Council. The Hirer agrees to Council exercising its rights under Sections 109 and 120 concurrently and to Council retaining any repossessed equipment immediately so that Council's rights under Section 123 of the PPS Act shall become effective immediately upon repossession.

Extinguishment

10.3 The Hirer agree that repossession and retention of the Equipment under Sections 120-123 of the PPS Act will only satisfy so much of the Hirer's debt to Council at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Hirer has in the Equipment.

11 Competition and Consumer Act

Application

11.1 The Competition and Consumer Act 2010, including the Australian Consumer Law (ACL) has the effect of granting certain rights which cannot be excluded, restricted or modified, and neither this clause nor any other provision of this agreement is intended to exclude, restrict or modify any implied terms or rights the Hirer may have under the ACL or any other Federal, State or Territory legislation in Australia

11.2 All express and implied terms, or conditions and warranties on the Hirer's part which might otherwise apply and arise out of the supply of the Equipment are excluded, except to the extent that any law (including the ACL) does not permit them to be excluded, so that Council's liability is limited to any one of the following as determined by it:

- (a) replacement of the Equipment or the supply of equivalent Equipment;
- (b) repair of the Equipment;
- (c) payment to the Hirer of the cost of replacing the Equipment or acquiring equivalent Equipment; or
- (d) payment of the cost of having the Equipment repaired.

12 Credit information

Warranties

12.1 The Hirer represent and warrant that all credit and financial information submitted to Council prior to entry into this Agreement or at any time is and will be true and correct.

Privacy Act

12.2 Pursuant to Section 18E(8)(c) of the *Privacy Act (1988)* Council is allowed to give a credit reporting agency personal information about credit under this Agreement. The information which may be given to an agency is covered by Section 18E(1) of the Act and includes:

- (a) Identity particulars, including name, sex and date of birth, current and two previous addresses, current or last known employer and driver's licence number;
- (b) The fact that the Hirer have applied for credit under this agreement and the extent of its liability;
- (c) The fact that Council is a current credit provider to the Hirer;
- (d) Payments which become overdue for more than 60 days and for which collection action has been commenced;
- (e) Advice that payments are no longer overdue; Cheques drawn by the Hirer which have been dishonoured more than once;
- (f) In specified circumstances where in Council's opinion, the Hirer has committed a serious credit infringement, that such an infringement has occurred; and
- (g) That credit provided to the Hirer by Council has been paid or otherwise discharged.

Consent to obtain credit information

12.3 The Hirer hereby consents and gives Council the authority to obtain from a credit-reporting agency a credit report containing personal information about the Hirer in relation to collecting overdue payments.

- 12.4 The Hirer understands that the information obtained under the preceding paragraph may be used for the following purposes:-
- (a) To notify other credit providers of a default by the Hirer;
 - (b) To exchange information with other credit providers as to the status of this agreement where the Hirer are in default of other credit providers; and
 - (c) To assess the Hirer's creditworthiness.

13 Confidential information

Not disclose

13.1 Subject to this clause, a Recipient will not, during or after this Agreement, disclose Confidential Information directly or indirectly to any third party.

Exceptions

- 13.2 A Recipient may disclose Confidential Information:
- (a) with the Discloser's prior written consent;
 - (b) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
 - (c) to any of its personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (d) to obtain the consent of a third party to a term of, or to an act under, this Agreement; or
 - (e) to enforce its rights or defend a claim or action under this Agreement.

Survival

13.3 This clause 13 survives the expiry or termination of this Agreement.

14 General

Assignment

14.1 Neither party may transfer or assign its rights under this Agreement without the prior consent of the other, which shall not be unreasonably withheld.

Amendments

14.2 This agreement may only be varied by a document signed by or on behalf of each party.

Entire agreement

14.3 This Agreement constitutes the entire agreement between the Hirer and Council in relation to its subject matter.

Governing law

14.4 This Agreement is governed by and must be construed in accordance with the laws of Queensland.

Time is of the essence

14.5 Time is of the essence in this Agreement.

Severability

14.6 If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Agreement.

Waiver

14.7 Failure or omission by a party to require strict or timely compliance with any provision of this agreement will not affect any right of that party to remedies it may have in respect of any breach of a provision.

Assignment

14.8 Neither party may transfer or assign its rights under this Agreement without the prior consent of the other, which shall not be unreasonably withheld.

Notices

14.9 All notices or other communications between the parties under this agreement must be made at the addresses set out in the Hire Document or such other address as a party notifies the other in writing. Such notices or other communications will be deemed to have been received at the time of the delivery by hand or on the third day after posting or on the day of transmission in the case of facsimile or electronic mail unless the sender knows or has reason to know that the communication or notice has not been received.