



Ryan Gregory McEwan trading as

Test & Tag Karratha

(A.B.N. 34 904 331 363)

Phone: 0439 969 239

Email: testandtagkta@gmail.com

Web: <https://testandtagkarratha.com.au/>

Hire Agreement

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|------------------|
| Date: | | Reference: | |
| Client details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other: | | | |
| Client Name: | | | |
| Address: | | State: | Postcode: |
| Email: | | Phone: | |
| Details of Equipment Hired | | | |
| Description: | | Serial No: | |
| Hire Period (e.g. daily, weekly, etc) | | Price Per Hire Period: | |
| Commencement Date: | | Termination Date: | |
| Place where equipment will be used/held: | | | |
| Payment terms: | | | |
| Notes: | | | |

Execution

I, the entity named above as the Client hereby requests and, if this document is executed by Us, accepts the hire to the Client of the Equipment referred to above (**Equipment**) from Us and agrees that the information provided by it herein is true and correct. The Client warrants and represents that its representative has read and understood the terms of the Hire Agreement consisting of this document (including the terms and conditions beginning on the following page) (together, the Hire Agreement) and agrees to be bound by the Hire Agreement. The Client and its representative executing this High Agreement for it authorises the use of personal information of the Client and of personal information of any other person connected with the Client in accordance with Test and Tag Karratha's Privacy Policy. Any person executing this Hire Agreement as or for the Client agrees that if they are a director of the Client or a shareholder owning at least 15% of the shares of the Client, they will also personally guarantee the Client's performance of its obligations under this Hire Agreement. If the Client is a company and has 2 directors but only one person signs this agreement as a director for the Client and the Equipment is provided to the Client, that person warrants that the Client is a sole director company and personally guarantees performance by the Company of its obligations under the High Agreement.

Executed by the Client (if an individual or a partnership)

Signature: ← **Name and (if applicable) Position in the Client (print)** ←

Executed by the Client (if a company) under section 127 of the Corporations Act 2001 by the signature of 2 directors or if it is a sole director company then by one of its directors

Director's Signature ← **Director's Signature** ←

Name (print) ← **Name (print)** ←

Executed by Test and Tag Karratha

Ryan Gregory McEwan ←

Hire Agreement

CONDITIONS OF HIRE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth).

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

Claims means actions, suits, proceedings, judgements, orders, claims, demands, costs, damages, losses and all liability whatsoever, including all legal costs on a solicitor and own client basis.

Client means any party hiring the Equipment including their representatives, agents, staff, and permitted assigns.

Termination Date means the Termination Date stated in the Details of Equipment Hired.

Equipment means all Equipment including any accessories supplied on hire by Us to the Client.

Fair Wear and Tear means wear and tear which would be normal for similar equipment operating in an environment applicable to the normal use of the Equipment and includes superficial scratches and scuffing to bodywork and minor chipping to paintwork of the Equipment. It does not include wear to parts of the Equipment which are sacrificial.

Hire Period means the period stated as such on the first page of this document.

Hire Period Charge means the hiring charge per Hire Period as specified on the first page of this document or as reasonably specified by Us.

The Client is **Insolvent** if it is bankrupt, has a liquidator, administrator, receiver or other external administrator without limitation appointed to it or any of its assets or cannot pay its debts as and when they become due.

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

PPSR means the Personal Property Securities Register maintained under the PPSA.

We/Us/Our means Ryan Gregory McEwan trading as Test & Tag Karratha (A.B.N. 34 904 331 363).

1.2 Interpretation

- (a) A reference in this document to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all other genders;
 - (iii) another grammatical form of a defined word or expression has a corresponding meaning;
 - (iv) a statute includes all amendments for the time being in force and the regulations, by-laws or other instruments for the time being made under that statute; and
 - (v) a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (b) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- (c) Any agreement, representation, warranty, indemnity, obligation or without limitation other provision binding on two or more persons (including where two or more persons are included in the same defined term) binds them jointly and each of them severally.
- (d) The fact that We were responsible for the preparation of this document or any part of it is not a reason to prefer the Client's interests when interpreting it.

2. GENERAL TERMS

2.1 Ownership

All Equipment remains Our property at all times.

2.2 Collection of Equipment

The Client must collect the Equipment from Our premises, unless otherwise agreed by the parties.

2.3 Condition of Equipment

The Equipment must be returned to Us at the end of the term of this agreement in the same condition as that in which it was when collected by the Client as agreed between the Client and Us. In the case of any dispute between Us and the Client about the condition of Equipment at the date of

collection, a written statement from Us as to that condition is conclusive in the absence of proof to the contrary.

2.4 Use of Equipment

- (a) The Client is responsible for inspecting the Equipment and ensuring it is safe prior to any use.
- (b) The Client must use the Equipment in a safe way and in accordance with all applicable laws and any manufacturer's instructions of which it is aware or reasonably ought to be aware or of which We notify the Client.
- (c) The Client must ensure the Equipment is not contaminated with any hazardous substances.
- (d) The Client must only use the Equipment as directed, and must not use, or allow to be used, the Equipment in such a way which will damage or impair the Equipment or in such a way that would permit an insurer (either Ours or the Client's) to reject any claim in respect of the Equipment.
- (e) The Client must only use the Equipment or permit its personnel to use the Equipment if they are appropriately skilled or knowledgeable in the use of the Equipment and possess any requisite licence and/or training (if applicable) and capability.
- (f) The Client is responsible for supplying all personal protection equipment for use of the Equipment.
- (g) The Client uses the Equipment at their own risk and indemnifies Us and must keep Us indemnified and hold Us harmless against and from any liability, damage, injury, or loss of Us or the Client arising out of or in connection with such use.
- (h) The Client must use the Equipment only in accordance with the requirements of the site in which the Equipment is used. In the event that a site requirement is inconsistent with this Hire Agreement, then the terms of this Hire Agreement will prevail to the extent of the inconsistency.

2.5 Inspection of Equipment

- (a) We will inspect the Equipment before it is delivered or collected and when it is returned to Us. We can provide a copy of Our inspection reports upon request.
- (b) The Client agrees that the Equipment was hired in good working condition and without damage which adversely impacts its appearance, other than normal ageing for its age.
- (c) The Client agrees to return the Equipment to Us clean and in the condition it was provided to it except for Fair Wear and Tear.

2.6 Passing of Risk

Risk passes to the Client immediately upon collection or delivery of the Equipment, and will remain with the Client until the Equipment is returned in accordance with clause 5.3.

2.7 Possession of Equipment Past Termination Date

The Client agrees that if it does not return the Equipment on the Termination Date, We will be entitled to charge the Client:

- (a) the Hire Charge per Hire Period for each Hire Period or part thereof which occurs after the Termination Date but before the Equipment has been returned to Us;
- (b) the cost of recovering or replacing the Equipment, including all legal fees, disbursements and expenses;
- (c) any loss as a result of the Client failing to return the Equipment; and
- (d) any other cost or expense incurred by Us without limitation as a result of the Client's failure to return the Equipment by the Termination Date in the condition required by this document.

3. TITLE TO EQUIPMENT

3.1 Right and Title

- (a) The Client acknowledges that We own the Equipment and in all circumstances We retain title to the Equipment.
- (b) The Client's rights to use the Equipment are as a bailee only.
- (c) In no circumstances will the Equipment become a fixture.
- (d) The Client must not sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or part with possession of, or otherwise deal with the Equipment in any way.

- (e) The Client acknowledges that a person other than Us may be the legal owner of the Equipment (the **Owner**) and We may have entered into an agreement to use the Equipment with the Owner. The exercise of any rights by the Owner under that agreement will not constitute a breach or default under this Hire Agreement by Us.
- (f) The Client must not hold a lien over the Equipment or withhold it from Us.

3.2 Inspection and repossession

- (a) While title in the goods remains with Us, We have the right, with prior notice to the Client except in an emergency when no notice is necessary, by Our employees, officers, contractors and agents to enter upon any premises where the Equipment are stored (**Premises**) including by force to inspect the Equipment, and/or to repossess the Equipment when an amount payable by the Client to Us is overdue for the Client is Insolvent.
- (b) Where We exercise any right to enter the Premises, including by force, that entry will not give rise to any action of trespass, for damage to property or similar action on the part of the Client against Us, Our employees, officers, agents or contractors.
- (c) The Client must upon demand pay Us Our costs of exercising Our rights under clause 3.2(a).

3.3 Security interest in Equipment

For clarity, and without limiting the other characteristics of that interest, Our interest in the Equipment under clause 3.1(a) and generally is a security interest.

3.4 Registration on PPSR

- (a) The Client irrevocably consents to Us recording the security interest in the Equipment arising under this Hire Agreement on the PPSR and agrees to do all things and sign all documents reasonably required by Us to enable Us to effect such registration.
- (b) The Client must, at Our request, execute documents and do such further acts as may be required for Us to register the security interest granted by the Client under the PPSA.
- (c) The Client further agrees that where We have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- (d) The Client waives the rights which it would otherwise have under sections 95, 96, 118, 121(4), 125, 129, 130, 132(2), 132(3)(d), 132(4), 135, 137(2), 142, 143, 157(1) and 157(3) of the PPSA and any other provision of the PPSA that We notify the Client after the date of this Agreement, to the extent that the law permits the exclusion of the right.
- (e) The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA when requested under that section. The Client must do everything necessary to ensure that PPSA s275(6)(a) continues to apply. This clause is solely to allow Us the benefit of PPSA s275(6)(a) and We are not liable for damages or other compensation or subject to an injunction if We breach this clause.

4. CLIENT OBLIGATIONS

4.1 Condition of Equipment to be Maintained

- (a) The Client must keep the Equipment complete and in the same condition as provided by Us, but for Fair Wear and Tear.
- (b) The Client may not alter or make any additions to the Equipment, including conducting any works, repairs, or modifications to the Equipment, or interfering with the Equipment in any way without Our written consent. For clarity, this includes the removal or erasure of any identifying mark, plate, or number or marking or defacing the Equipment in any way.
- (c) The Client must keep the Equipment clean and in good order as in the condition the Equipment was when it was provided to the Client.
- (d) The Client must comply with any maintenance schedule or order (if any) provided by Us in respect of the Equipment.

4.2 Safekeeping of Equipment

- (a) Unless otherwise agreed to by Us, the Client must keep the Equipment at the premises stated in this Hire Agreement at all times, excluding the collection or return of the Equipment.
- (b) The Client must keep the Equipment in a safe place and accepts full responsibility for the safekeeping of the Equipment.
- (c) The Client agrees to insure, or self-insure, Our interest in the Equipment and will indemnify Us and keep Us indemnified against any loss of, or damage to, the Equipment including, but not limited to, accident, fire, arson, flooding, theft, and all other risks.
- (d) In the event of loss or damage to the Equipment, the Client agrees to immediately pay upon request:
 - (i) any lost hire charges We would have been entitled to under this Hire Agreement;
 - (ii) any insurance excess in relation to any claim regarding the Equipment;
 - (iii) any other amount reasonably incurred by Us in relation to the Equipment; and
 - (iv) in the event that the Client is unable to claim the loss from insurance, the cost of the repair or replacement of the Equipment.

5. RETURN OF EQUIPMENT

5.1 Return of Equipment

The Equipment must be returned on the Termination Date, or at any time before as requested or agreed to by Us, and in the condition in which it was delivered/collected except for Fair Wear and Tear.

5.2 Failure to Return Equipment

If the Client does not return the Equipment within five (5) Business Days after the Termination Date, We reserve the right to charge the Client for, and the Client agrees to indemnify Us for:

- (a) the entire cost of an item of equipment of the same or similar nature and type as the Equipment, as well as any legal and other incidental costs which We incur in respect of the Client not returning the Equipment with that time and in respect of purchasing replacement equipment, on a full indemnity basis; and/or
- (b) all losses and costs associated with recovery of the Equipment, including but not limited to:
 - (i) any lost hire charges We would have been entitled to under this Hire Agreement;
 - (ii) any insurance excess in relation to any claim regarding the Equipment;
 - (iii) all legal fees and expenses; and
 - (iv) any other amount reasonably incurred by Us in relation to the Equipment.

5.3 When a Return Occurs

The Client is deemed to have returned the Equipment only when:

- (a) the Equipment is returned to Our place of business, or any other place directed by Us; or
- (b) when We have taken possession of the Equipment.

6. WARRANTIES AND LIABILITY

6.1 Standard of Equipment

- (a) We provide the warranties in respect of Equipment hired out by Us provided for in the ACL (each an **ACL Warranty**) to the extent that the law does not permit Us to exclude or modify an ACL Warranty. To the extent that the law permits Us to:
 - (i) exclude an ACL Warranty or a remedy in respect of it, that ACL Warranty or remedy is excluded from its application to the Sale Agreement; or
 - (ii) modify an ACL Warranty or a remedy in respect of it in a way more favourable to Us than the ACL Warranty or the remedy in respect of it, then that ACL Warranty or remedy is modified in the way most favourable to Us that applicable law allows it to be modified. If there is any uncertainty about which modification is most favourable to Us, the modification specified by Us by notice to the Client at any time is conclusive of that issue.
- (b) The remaining provisions of this clause 6 are not intended to operate inconsistently with this clause 6.1. To the extent that a remaining provision of this clause 6 would otherwise be inconsistent with this clause 6.1 the remaining provision must to the extent possible be read down to remove the inconsistency but to the extent that it cannot be so read down it will be taken to be excluded from these Terms and Conditions without affecting the validity of the remainder of them.

6.2 Warranties

The Client warrants that, in hiring Equipment from Us that:

- (a) it satisfied itself as to the description and condition of the Equipment and its fitness for the purpose for which it will use them; and
- (b) has not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Us or anyone on Our behalf in respect of the Equipment, other than those expressly contained in this Agreement, the quotation or any other document that We have provided to the Client.

6.3 Limit of Liability

Neither We nor any of Our officers, employees or contractors are liable to the Client for or in respect of any indirect, incidental, or consequential damages or damages sustained by the Client for:

- (a) increased costs or expenses;
- (b) loss of profit, revenue, business, contracts or anticipated savings;
- (c) loss or expense resulting from a claim by a third party; or
- (d) special, indirect or consequential loss or damage of any nature whatsoever,

arising out of or in connection with this Hire Agreement or the hiring out by Us of any Equipment, including any breach by Us of any obligation We owe to the Client under this Hire Agreement or arising out of or in connection with this Hire Agreement under any civil law other than contract law.

6.4 Scope of Limitation of Liability

Where any provision of these Terms and Conditions:

- (a) excludes or limits Our liability; or
- (b) excludes or modifies any warranty or other provision without limitation which would otherwise be implied into the Sale Agreement, each referred to as a **Liability Limitation**, the Liability Limitation applies regardless of whether the Client sues or otherwise seeks a remedy without limitation against Us in respect of the relevant matter for breach of contract, for any tort (including negligence), for any other civil wrong without limitation,

in equity for any remedy provided by statute or in respect of any provision implied into this Hire Agreement by any statute.

6.5 Third-Party Benefit

Where a Liability Limitation is expressed to be for the benefit of any of Our directors, employees or contractors (each a **Third Party**) We hold the benefit of that Liability Limitation on trust and as agent for the Third Party and may exercise that Liability Limitation on behalf the Third Party or may permit the Third Party to do so in its own name.

7. MISCELLANEOUS

7.1 Changes

We may change the provisions of this Hire Agreement from time to time without notice to the Client.

7.2 Jurisdiction

This Hire Agreement will be interpreted in accordance with, and any dispute arising out of or in connection with it will be determined according to, the laws which apply in Western Australia, without regard to choice of law rules which

would result in the substantive law which applies in another place applying to any of those matters.

7.3 Severability

If any provision or part of a provision of this Hire Agreement is void, voidable, unenforceable or illegal:

- (a) it must be read down so as to be valid and enforceable; or
- (b) if it cannot be so read down, the provision or part provision will be severed from this Hire Agreement without affecting the validity, legality or enforceability of the remaining provisions of this document, which will continue in full force and effect.