

# Celexmetrix Pty Ltd Rental Terms & Conditions

## 1. GENERAL.

The following terms and conditions constitute the entire agreement between you (referred to herein as "the Hirer") and Celexmetrix Pty Ltd ABN : 39 117 603 835 (referred to herein as "the Owners") for the hire of certain equipment. Unless otherwise agreed in writing by the Owners, these terms and conditions will apply to all transactions between the Hirer and the Owners to the exclusion of any terms and conditions put forward.

## 2. HIRE CHARGES.

- (a) The charges for rental shall be agreed at the commencement of the hire and shall be invoiced in advance until the return of equipment to the Hirer.
- (b) Rental periods of more than four weeks shall be invoiced monthly.
- (c) The term of the hire shall be for a minimum period of one week unless otherwise stated in our quotation and shall continue to be charged in advance thereafter for COMPLETE rental periods.
- (d) Weekly Rental Periods: the hire charges will be based on full weeks. A week is taken to be five consecutive days (including Public Holidays), including the day hire commences.
- (e) Monthly Rental Periods: The hire charges will be based on full months. A month is taken as a full calendar month and charges apply for all days of the month (including weekends and Public Holidays), including the day hire commences.
- (f) If the actual period of rental is shorter than the period of rental initially agreed at the commencement of the Hire, the Owners reserve the right to
- (i) Re-calculate the rental rate based on the prevailing rates applying to the actual term
  - (ii) Re-calculate the rental rate on a pro rata basis or
  - (iii) Charge for the complete rental period in full.
- (g) At any time during the hire the Owners reserve the right to alter rental charges, delivery and collection charges, any discounts and the contents of the catalogue without prior notice.
- (h) There is a minimum hire charge of \$250 excluding transport charges and GST, which the Hirer accepts upon commencement of the hire irrespective of its duration.

## 3. COMMENCEMENT AND TERMINATION OF HIRE.

- (a) The hire period shall commence on the day the equipment is either collected by the Hirer from the Owners' premises or despatched to the site advised by the Hirer.
- (b) The equipment will not automatically be collected or off-hired by the Owners at the end of the initial period of hire, unless specifically requested in writing on the initial order. It is the Hirer's sole responsibility to inform the Owners of their intention to terminate the hire prior to the expiry of the hire period and to arrange the return of the equipment at the Hirer's cost.
- (c) The Owners reserve the right to charge the Hirer for any further rental periods if the Hirer fails to notify the Owners of its intention to terminate the hire. The period of hire shall end when the equipment is returned to the Owners premises.
- (d) It is the Hirer's sole responsibility to ensure that the equipment is properly packaged for transportation before the equipment is made available for collection.
- (e) Where the equipment is to be collected by the Owners or their appointed agents, it is the Hirer's responsibility to ensure that the equipment is made available for collection at the time agreed. If the equipment is not made available for collection at the agreed time or not packaged suitably, the Owners reserve the right to charge the costs of the failed collection to the Hirer, and for any subsequent rental periods incurred as a result, subject to a minimum charge of \$50.
- (f) Where the Hirer has agreed to purchase the equipment, the hire will be deemed to terminate when the Hirer has paid the Owners for all outstanding rental amounts, and the purchase amount of the equipment in full. Additional rental charges will apply until all accounts are finalised.
- (g) Without prejudice to any other rights under these conditions and in particular to the Hirer's responsibility to inform the Owners of the Hirer's intention to terminate the hire, the Owners may terminate the hire of the equipment at any time by giving the Hirer seven days notice in writing.

## 4. DELIVERY AND COLLECTION.

In addition to the hire charge, separate charges will be made for delivery and collection of the equipment if quoted. Details of the Owners' standard scale of transport charges for all methods of delivery and collection of equipment are available upon request. Where the Hirer's own transport is used it is the Hirer's responsibility to adequately pack and protect the equipment for the return transit to the Owners' premises. All cases must be marked fragile. Additional rental charges may be charged to the Hirer by the Owner where failure or delay of the Hirer's own transport results in additional rental periods.

Unless agreed otherwise in writing by the Owner, any additional transport or delivery costs involved in the contract are to be borne by the Hirer at the prices quoted by the Owner.

## 5. ACCEPTANCE CONDITIONS.

Acceptance of delivery of the equipment by the Hirer or its appointed agent will be conclusive evidence that the said equipment has been examined and found to be complete in accordance with the manufacturer's description, in good order and condition, fit for any purpose for which it may be required and in every way satisfactory.

## 6. INDEMNITIES.

- (a) Any claim for damages by the Hirer against the Owners arising out of the Hirer's use of the equipment shall, subject to the Owners admitting liability or being found liable for such damages, be limited in amount to the total amount of the rental payments paid by the Hirer for the equipment to the Owners as at the date of the Owners receiving notification of any such claim.
- (b) The Hirer shall be solely responsible for and hold the Owners fully indemnified against any loss or damage to the equipment and any loss of profit, cost or expenses and any loss or damage to any property arising in connection with any of the said

equipment or as a result of the use thereof. The Owners shall not be liable for any loss which may arise out of or in connection with the failure of the said equipment for whatever reason.

(c) Save as provided by Law, the Owners exclude all warranties relating to the equipment and the Hirer's use thereof except as specifically stated herein.

## 7. HIRER'S OBLIGATIONS.

The Hirer agrees with the Owners during the continuance of the contract of hire as follows:

- (a) To keep the equipment at the delivery address and in the Hirer's own possession unless otherwise agreed in writing by the Owners.
- (b) Not to allow the said equipment to be transferred to any country prohibited by the Department of Foreign Affairs and Trade.
- (c) To permit the Owners or their authorised representatives at all reasonable times to enter upon the premises or vessel where the equipment may from time to time be kept to inspect, maintain, repair and test the same.
- (d) To repay to the Owners on demand all costs, charges and expenses incurred in any way by reason of any breach of these terms and conditions by the Hirer including, but not by way of limitation, all costs, charges and expenses incurred in ascertaining the whereabouts of the equipment or recovering possession of the equipment from the Hirer or other person and any consequential loss and/or costs suffered by the Owners as a result of the failure of the Hirer to return the equipment in accordance with these terms and conditions.
- (e) To keep the equipment in good condition and not subject to any misuse or wear and tear over and above that consistent with normal and reasonable use (including but not limited to use conflicting with the equipment manufacturer's recommendations).
- (f) To preserve the Owners' and manufacturer's identification numbers or marks or any nameplates that there should be upon the said equipment.
- (g) For deliveries within Australia to assume upon receipt of the equipment until returned to the Owners or the Owners' appointed agents the entire risk of loss or damage to the equipment from any occurrence whatsoever. For deliveries outside Australia to assume for the duration of the period of hire as set out in these terms and conditions the entire risk of loss or damage to the equipment from any occurrence whatsoever. The Hirer undertakes to arrange at its own expenses appropriate insurance cover with an approved insurance company against all insurable risks and to produce on request to the Owners evidence of such insurance and the payment of premiums there under.
- (h) To notify the Owners in writing immediately of any loss or damage to the equipment and on demand to reimburse the Owners in respect thereof within 30 days of the occurrence. The Owners shall continue to charge the Hirer the full cost of hire for the equipment until such payment is received. The Hirer shall be liable for the full replacement cost of the equipment as new.
- (i) To keep the equipment free from distress execution or other legal process and not create or allow to be created any lien over the equipment.
- (j) Not to sell, assign, let on hire or transfer the benefit of hire contract in whole or in part or to part with possession of the said equipment or any part of it at any time during the hire unless agreed with the Owners to purchase the item.
- (k) Not to make any alterations, modifications, or adjustments or attempt any repairs to the equipment unless otherwise agreed between the hirer and the owner.
- (l) In the event of any breakdown or alleged defect in the equipment:
- (i) The Hirer shall give written notice to the Owners within 24 hours (which shall be deemed to be given once received by the Owners) of the discovery of the alleged defect specifying the nature of the defect.
  - (ii) The Hirer shall make no further use of the equipment alleged to be defective after the time at which the Hirer discovers that it is defective unless agreed in writing by the owner.

## 8. OWNERS' OBLIGATIONS.

- (a) The Owners will maintain the said equipment at no cost to the Hirer and will provide such service at the Owners' premises during normal business hours save that the Hirer will be liable for the cost of any repairs necessary as a result of a breach of clauses 7(k) or 9.
- (b) In the event service of equipment as described in 8(a) above is required, the Hirer shall bear all costs in transporting the equipment to the owner's premises and having it returned to the Hirer's location on completion of the service.
- (c) In the event of failure of any item of equipment whilst on hire, the Owners shall use reasonable endeavors to supply free of charge an identical or similar item of equipment within 48 hours of notification for Australian based equipment, and within 96 hours for internationally based equipment.
- (d) In the event of replacement of a failed item as per 8(c) above, the Hirer shall return the faulty equipment to the Owner upon receipt of the replacement equipment, or as otherwise instructed by the Owner.

## 9. CONDITIONS OF USE.

- (a) The Hirer will, in its use of the said equipment, observe all the manufacturer's instructions and other regulations that may be issued for the proper use thereof and shall be entirely responsible for any damage caused to the said equipment through failure to observe such instructions or regulations or failure to use the same in a proper manner.
- (b) The Hirer will also take all reasonable and practical steps to ensure its use of the said equipment conforms with the terms and conditions laid down in the OH&S Act 1985.
- (c) The Owners make the said equipment available purely for rental purposes and the Hirer has no purchase rights or options, unless previously agreed in writing, regardless of the hire period.

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## **10. DELIVERY DATES.**

Delivery dates quoted are intended as estimates only although reasonable endeavours will be made to adhere to them. In no circumstances shall the Owners be liable for delay in delivery arising from any cause whatsoever.

## **11. CANCELLATION.**

Cancellation or part cancellation of any order, can only be accepted with the Owners' consent in writing and on terms which indemnify them fully against loss.

## **12. PAYMENT TERMS.**

- (a) Payment of all charges including hire charges, taxes and delivery charges is strictly net within fourteen Days (14days) of the invoice date **for customers on account terms. Terms are strictly COD for customers without account terms.**
- (b) Payments sent by post are at the risk of the Hirer.
- (c) The Owners may charge and the Hirer shall pay interest at the rate of 2% per annum above the published 90 day bank bill rate for the time being on all sums which, from time to time, may be due from the Hirer to the Owners hereunder and for the time being unpaid, such interest being calculated from the due date until the payment is received.
- (d) The Owners reserve the right to alter the credit terms at any time when in the Owners' opinion the Hirer's financial condition or previous payment record so warrants.
- (e) No payment is deemed to be made until received and cleared in the Owners' bank account.
- (f) The Hirer shall not be entitled to withhold payment of any amount payable to the Owners because of any disputed claim of the Hirer in respect of faulty equipment or any other alleged breach of this or any other contract between the Hirer and the Owners, nor shall the Hirer be entitled to set off against any amount payable under this contract any monies which are not then presently payable by the Owners or for which the Owners dispute liability.

## **13. OWNERSHIP.**

(a) The equipment is and shall remain the sole property of the Owners save that for purposes connected with financing of the said equipment the property in the equipment may be vested in a third party. The consent of the Hirer will not be required for the assignment or transfer of this Agreement or the benefit thereof from or to the Owners to or from any bank leasing company or finance house being the owner of the equipment.

## **14. DEFAULT.**

- (a) If the Hirer shall default in making any payment for any period in excess of thirty days or if the Hirer is in breach of these Conditions of Hire, or becomes insolvent or compounds with its creditors or has distress or execution levied upon its property or is wound up or goes into liquidation (except for the purposes of a solvent reconstruction) or has a receiver, administrative receiver or administrator appointed of the whole or any part of its assets or suffers any similar process under the law of its domicile then the Owners shall be entitled to terminate the agreement forthwith and enter upon the Hirer's premises and to remove the equipment without notice to the Hirer.
- (b) The Owners are hereby indemnified by the Hirer in respect of all and any damage or loss to the Hirer or any third party resulting from the exercise by the Owners of its rights therein reserved. This shall include the Owners recovering all amounts outstanding and payable as a result of such action.

## **15. CELEMETRIX PTY LTD WARRANTY.**

- (a) The Owners hereby warrant to the Hirer that at the commencement of the rental period the equipment complies with its Manufacturer's description. The benefit of this warranty may not be assigned by the Hirer to any other party. In no event shall the Owners be liable to the Hirer for any consequential incidental or exemplary damages such as loss of revenues or use of any equipment or down time costs.
- (b) The Owners shall not be responsible for any delays or failures in delivery of equipment or in making repairs, recalibration or replacement due to unavailability of parts, or labour, or industrial disputes, delays in transportation or other causes beyond its reasonable control.
- (c) The foregoing warranty shall not apply to any damage to equipment caused by accident, misuse or abuse. The Owners do not warrant the merchantability of the equipment or its fitness or suitability for any particular purpose or use.

## **16. PERFORMANCE.**

Whilst application advice may be given no responsibility is accepted for incorrect results due to circumstances external to the equipment hired. The Hirer takes responsibility for the selection and rental commitment of the said equipment. If in the event the rented product is unable to complete the Hirer's requirements payment for the initial rental period is to be paid in full within the terms outlined in 12(a).

## **17. PATENTS AND COPYRIGHTS.**

Equipment may be the subject of patent rights and/or legal protection.

## **18. SOFTWARE.**

The following shall apply where software is supplied with the equipment.

- (a) The title to all software including programs and documentation furnished by the Owners shall be retained by the Owner.
- (b) The Hirer is supplied the use of the software only for the rental term and the software shall be used only on the specific equipment with which it was supplied.
- (c) The Hirer may make up to two copies of the Owners' supplied machine readable software for backup and archival purposes.
- (d) Subject to the provision of clause 18(c) the Hirer shall not copy or duplicate or permit a third party to copy or duplicate in any manner any physical or magnetic version of the Owners' supplied machine readable software.
- (e) Upon termination of the hire as defined in clause 3 above, the Hirer shall return to the Owners the original Owners' supplied machine readable software, all copies thereof and all printed material furnished with such software.

(f) The provisions of clause 18(e) shall not apply if the Hirer has purchased user rights from Owners for the Owners' supplied software and has signed the original manufacturer's software or program license agreement for said software. In that event the Hirer's rights and obligations upon termination shall be governed by the original manufacturer's software or program license agreement.

(g) No licenses or rights are granted except as set forth herein or in the original manufacturer's software or program license agreement which the Hirer shall be required to sign on receipt and before using the software.

**(h) The Hirer acknowledges that for the purposes of protection of the original physical media, the software may be supplied by the Owner on alternate media from that supplied by the original manufacturer, and that in that instance the software is still bound by all of the above conditions. The original media supplied by the manufacturer is held at the Owner's premises.**

## **19. FORCE MAJEURE.**

If either the Owners or the Hirer are rendered unable wholly or in part by Force Majeure to carry out their obligations under this contract the party affected shall give to the other prompt written notice of the Force Majeure with reasonable full particulars concerning it whereupon the obligation of the party giving the notice so far as it is affected by the Force Majeure shall be suspended during but not longer than the continuance of the Force Majeure. The affected party shall use all reasonable diligence to remove the effects of the Force Majeure as quickly as possible. The term Force Majeure as employed in this contract should be deemed to include but shall not be limited to any war, riot, act of God, fire, flood, government regulation or act, any natural or accidental disaster, any strike, lockout or industrial dispute or shortage of raw materials or fuel or any breakdown of machinery or any other cause outside the reasonable control of the party suffering such Force Majeure, but not in any circumstances including financial inability. If a party is rendered unable wholly or in part by Force Majeure substantially to carry out its obligations under this contract for a period of one year or more, then either party may declare the contract to be abandoned forthwith by written notice to the other party to that effect.

## **20. FEES AND EXPENSES.**

The Owners shall be entitled to recover from the Hirer all fees and expenses (whether or not formal legal action is instituted) incurred as a result of any breach of these terms by the Hirer or need to enforce same or in any other way arising in connection with these Conditions of Hire.

## **21. DAMAGES.**

The remedies provided herein are the Hirer's sole and exclusive remedies. In no event shall the Owners be liable for direct, indirect, special incidental or consequential damages (including loss of profits) whether based on contract tort or any other course of action.

## **22. AGGREGATE LIABILITY.**

The aggregate liability of the Owners (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Hirer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the hire charges paid to the Owners in relation to the equipment.

## **23. EXPORT CONTROL.**

Overseas rentals arranged by the Hirer are subject to the terms and conditions listed herein. Attention is drawn to the fact that the Owners bear no responsibility for any charges, fees, or fines, taxes or duty payments imposed by any authority, their agents or shipping agent in Australia or overseas. Further it is the obligation of the Hirer to ensure that all overseas import/export duties have been paid to the appropriate authorities.

## **24. MISCELLANEOUS.**

- (a) If any of these conditions or any part of one of these conditions is rendered void by any legislation to which it is subject it shall be void to that extent and no further.
- (b) Any waiver, indulgence or forbearance by either party of any of these Conditions of Hire and/or any breach thereof shall apply only in the particular instant or instances in which such waiver, indulgence or forbearance occurs, and shall not affect or impair the further continuance in force of such terms and conditions, or the right of either party to avail itself of such terms and conditions upon any subsequent breach or breaches thereof.
- (c) The exercise or implementation of or reliance upon any of the terms and conditions by the Owners shall not give rise to any right by the Hirer to cancel any contract with the Owners.
- (d) If any provisions of these Conditions of Hire are found by a court or other competent authority to be void and unenforceable, such provisions shall be deemed to be deleted from the Conditions of Hire and the remaining provisions shall remain in full force and effect.

## **25. GST.**

All prices quoted are exclusive of GST, which will be charged at the rate in operation at the relevant tax point date.

## **26. NOTICE.**

Any notice, demand, statement or other written communication required or permitted to be given to the Hirer by the Owners shall be deemed to have been validly given, delivered or sent by post or electronically (email) or left at the address of the Hirer stated in this Agreement or at the Hirer's present or last known address.

## **27. GOVERNING LAW.**

Any contract between the Hirer and the Owners shall be governed by and construed in accordance with the Laws of Australia and the Hirer agrees to be subject to the exclusive jurisdiction of the Australian Courts.