



## Conditions of Hire

### **1. Definitions:**

"Company" means **Elteclan Pty Ltd ACN 080 514 709** trading in WA as What Noiz **ABN 31 080 514 709**; it's employees and agents.

"Customer" means the person described as the customer in the Order Confirmation.

"Equipment" means the goods specified in the Order Confirmation.

"Agreement" means the binding and legally enforceable contract represented by these Conditions of Hire

"Order Confirmation" means the appendix to this Agreement

In these conditions of hire, the context requires otherwise:

The singular includes the plural and vice versa:

A reference to one gender includes all genders:

"Personal" includes an individual, firm, partnership, corporation, unincorporated body and government department:

### **2. Payment:**

(a) Unless otherwise agreed by the parties in writing all payments for equipment hire shall be strictly cash on delivery

(b) All payments are to be made in cleared funds. If the Company agrees to receive payment in uncleared funds, the Company shall not be obliged to deliver the equipment until the funds are cleared. A clearance time of ten working days may be required.

(c) If the Company grants the Customer credit, all payments must be made either by way of cash, direct deposit into the Company nominated bank account, bank cheque, postal note and where approved by the Company, Personal cheque.

### **3. Delivery:**

The delivery times made known to the Customer are estimated only, and the Company shall not be liable for late delivery, or non-delivery, and under no circumstances will the Company be liable for any loss (including consequential loss), damage or delay occasioned to the Customer or its customer arising from late or non-delivery or late installation of the Equipment.

### **4. Liability:**

The Company shall not be liable for and the Customer releases the Company from any claims in respect of faulty or defective design, installation or removal of the Equipment supplied.

The Customer agrees that the Company has no liability to the Customer for any direct or consequential physical or financial loss, injury or damage, and the Customer releases the Company



from the same, to the extent provided for by the Trade Practices Act and the Fair Trading Act of Western Australia.

**4.1 The Company and the Customer agree at all times** ownership and legal and equitable title in the Equipment remains with the Company.

#### ***5. Rights in relation to Equipment***

**5.1 (a)** the Equipment will be stored, when not in use by the Customer, separately from other Equipment owned by the Customer so as to be clearly identifiable as property of the Company;

**5.1 (b)** the Customer will be holding the Equipment as bailee of the Company;

**5.1 (c)** The Company may enter the Customer's premises (or the premises of any associated company or agent, where the Equipment is located) without liability for trespass or any resulting damage and retake possession of the Equipment;

**5.2** The Customer expressly acknowledges that any power given or conferred upon the Company to seize or take possession of the Equipment exists whenever the Customer is in breach of its obligations under this agreement or when the hire period terminates; and

**5.3** During the period of hire the Customer shall not alter, move or part with possession of or deal with the equipment in any manner without the express written consent of the Company.

#### ***6. Risk:***

The equipment under the Customer's custody or control shall be entirely at the Customer's risk as regards any loss or damage caused to the Equipment.

#### ***7. Cancellation:***

No order may be cancelled except with the Company's consent in writing and on terms, which will indemnify the Company against all losses.

#### ***8. Cost of Default:***

**8.1** If the Customer fails to comply with the terms and conditions specified herein the Customer shall pay to the Company all expenses and costs to reimburse the Company against any claims, demands and liabilities of any nature that may be incurred by the Company as a result of the breach or breaches of the terms and conditions on the part of the Customer to be performed or observed.

**8.2** The Company may also charge the Customer interest on overdue money at the rate of 2% per month and may also recover all legal costs incurred by the Company by reason of the Customer's failing to comply with the terms and conditions contained on this Agreement and the Order Confirmation.

#### ***9. Terms to Prevail:***

In the event of any inconsistency between the terms of this agreement and any written order submitted by the Customer to the Company, the terms of this Agreement shall prevail.

#### ***10. General:***



(a) No variation, modification, or waiver of any provision of this Agreement, or consent to any departure from it, shall be of any force or effect, unless the same shall be confirmed in writing, signed by the parties and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

(b) This Agreement as varied from time to time in accordance with sub-clause 10(a) constitutes the entire agreement between the parties and no warranties, representations, guarantees or other terms and conditions of whatever nature not recorded on the Order Confirmation shall be of any force or effect.

(c) If any provision of this Agreement shall be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provision shall be and continue to be valid and enforceable in accordance with their terms.

(d) This Agreement is governed by the law in force in the State of Western Australia