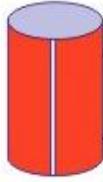


# TERMS OF HIRE

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ACN 075 692 714

Australian Form Hire Pty Ltd trading as

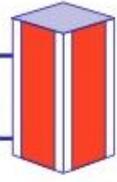
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# MANHOLE FORM HIRE

Phone: 3801 5666 PO Box 4125 Loganholme DC. Qld 4129 Fax: 3388 0237

Address: 44 Chetwynd St., Loganholme, Qld 4129

info@manholeformhire.com.au



## TERMS OF HIRE

### 1. HIRE AGREEMENT BETWEEN YOU AND US

#### These Terms of Hire, together with:

- (a) any Credit Application You completed and submitted to Us;
- (b) any Guarantee, Indemnity and Charge You completed and submitted to Us;
- (c) each Hire Schedule provided to You by Us, whether signed or not; and
- (d) any Special Terms specific to the type of Equipment You have hired attached to Your Rates Schedule, make up the hire agreement between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. It is important that You read and understand all of the terms and conditions of the Hire Agreement before hiring from Us. If You have any questions please ask Us.

### 2. DEFINITIONS

To assist, when We refer to the following terms in this document:

“Credit Account” means You have properly completed and submitted a Credit Application to Us and We have approved You for an account with Us.

“Environmental Laws” means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

“Equipment” means any of Our equipment, including but not limited to, Forms for the IN-SITU construction of manholes and pits and any associated accessories and parts available for hire.

“Hire Period” means for Equipment specified in a Hire Agreement the period described in clause 4.

“Hire Agreement” means the document provided by Us to You which outlines important information, including but not limited to, the Equipment You have hired, contact details and the address for delivery of the Equipment.

“Non Excludable Provision” has the meaning set out in clause 15.3.

“Off Hire Date” has the meaning set out in clause 5.5.

“Off Hire Number” is the number given by Us to You on the Off Hire Date, as set out in clause 5.5.

“PPSA” means the PPS Act and any other legislation and regulations in respect of it and the following words in clause 9.2 and 10 have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

“PPS Act” means the Personal Property Securities Act 2009 (Cth) (as amended).

“We/Us/Our” means Manhole Form Hire (ABN 97 075 692 714)

“You/Your” refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us, as named in the Credit Application or the Hire Agreement (where You do not hold a Credit Account). The reference to “You” includes any employees, agents and contractors.

### 3. OUR HIRE COMMITMENT TO YOU

We agree to hire You the Equipment and will:

- (a) provide the Equipment to You in good working order; and
- (b) subject to clause 8.6, allow You to exclusively use the Equipment during the Hire Period.

### 4. THE HIRE PERIOD

4.1 The Hire Period commences when, either:

- (a) You take possession of the Equipment; OR
- (b) if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address You provide to Us in the Hire Agreement, whichever occurs first.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our custody and possession.

4.3 The Hire Period includes weekends and public holidays.

### 5. HOW WE CALCULATE YOUR HIRE CHARGES and OFF HIRE

**5.1 All Equipment is hired (charged) at a minimum 3 day rate. A week is charged as 4 days (pay first 4 days, next 3 are free)**

5.2 The Rates Schedule will specify the type of rate which will apply to You and the method of calculation.

5.3 You will pay Us for the hire of the Equipment at the hire charge rates set out in the Rates Schedule.

5.4 Except in the circumstances set out in clause 5.5, You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You will continue to incur hire and other charges after the Off Hire Date if You have not returned the Equipment to Us by the Off Hire Date.

5.5 If You have requested that We deliver and collect the Equipment and We have agreed, hire charges will commence from the time the Equipment leaves Our premises and continue until the date You notify Us that You no longer require the Equipment and that the Equipment is available for collection (the “Off Hire Date”). At this time, We will give You a number as verification that Your request has been received (“Off-Hire Number”). On the Off Hire Date, You must notify Us where and when the Equipment is available for collection.

## 6. OTHER CHARGES

In addition to hire charges, You agree that You will be required to pay:

(a) if You require Us to deliver or collect as detailed in the Hire Schedule;

**(b) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;**

(c) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;

(d) an environmental charge in relation to any item of Equipment

(e) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;

(f) charges in connection with the administration of Your account with Us, as detailed in the Rates Schedule, which may include printing and postage costs; and

## 7. PAYMENT

7.1 You must pay all fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.

7.2 If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement and any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

## 8. YOUR OBLIGATIONS TO US

8.1 This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.

8.2 You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for. Subject to clauses 15.2 and 15.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.

8.3 To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:

(a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the Australian Standards AS3610 (1995) Form Work for Concrete guidelines;

(b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use;

(c) wear suitable clothing and protective equipment when using the Equipment as required or recommended by Work Place Health and Safety standards;

(d) ensure that no persons using the Equipment are under the influence of drugs or alcohol;

(e) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by users of the Equipment.

8.4 It is important to take care of the Equipment during the Hire Period. You must:

(a) clean, lubricate and keep the Equipment in good condition and in accordance with the Australian Standards AS3610 (1995) Form Work for Concrete guidelines at Your own cost;

(b) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; and

(c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.

8.5 At all times during the Hire Period, You must store the Equipment safely and securely and protected from theft, seizure, loss or damage.

8.6 You will allow Us to enter Your premises and inspect the Equipment from time to time during the Hire Period. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.

8.7 Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and guidelines. You (or any contractor You engage) must observe any safety directions advised by Us to ensure its safe loading and handling.

8.8 You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.

8.9 You must not use the Equipment off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent, which may be reasonably withheld.

8.10 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.

8.11 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 8.9, You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, You will be charged for the new replacement cost of the Equipment.

## 9. REMEMBER, WE OWN THE EQUIPMENT

- 9.1 You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.
- 9.2 Except in the circumstances set out in clause 10, You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 9.3 In no circumstances will the Equipment be deemed to be a fixture.

## 10. PPSA

10.1 You consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

10.2 You undertake to:

- (a) do anything (in each case, including executing any new document or providing any information) that is required by Us
- (i) so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds,
- (ii) to register a financing statement or financing change statement and
- (iii) to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent.

10.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

- (a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

10.4 Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

10.5 For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.

10.6 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.

10.7 You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

## 11. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for the Equipment for the Hire Period.

## 12. RETURN OF EQUIPMENT

12.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. **If You do not properly clean the Equipment, We will charge You a cleaning cost in accordance with clause 6(b).**

12.2 Except in the circumstances set out in clause 12.3 below, it is Your responsibility to return the Equipment in good working condition to the Manhole Form Hire branch You hired it from during normal business hours.

12.3 If You have requested, and We have agreed, to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

## 13. WHAT TO DO IF EQUIPMENT BREAKS

13.1 In the event that the Equipment breaking or becomes unsafe to use during the Hire Period You must:

- (a) immediately stop using the Equipment and notify Us;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) take all steps necessary to prevent any further damage to the Equipment itself; and
- (d) not repair or attempt to repair the Equipment without Our written consent.

13.2 Except if clause 14.1 applies, upon receiving notice from You under clause 12.1, We will:

- (a) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
- (b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

## 14. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

14.1 If the Equipment has broken down or become unsafe to use as a result of Your negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period,

You will be liable for:

- (a) any costs incurred by Us to recover and repair or replace the Equipment; and

## 15. INDEMNITIES AND EXCLUSION OF LIABILITIES

15.1 Subject to clause 15.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

15.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

15.3 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and We are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach the Non-Excludable Provision is limited to (at Our election):

- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

15.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.

15.5 Subject to clauses 15.3 and 15.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

15.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:

- (a) personal injury;
- (b) damage to tangible property; or
- (c) a claim by a third party, in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

15.7 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

15.8 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

## 16. WHEN THIS HIRE AGREEMENT TERMINATES

16.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:

- (a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or
- (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

16.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours notice.

16.3 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

## 17. RECOVERY OF THE EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 16, We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon

receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

## 18. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION

If You collect or receive the Equipment (whichever is applicable) and find that it is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

## 19. PRIVACY

19.1 At Manhole Form Hire, We take Your privacy seriously. We will comply with the National Privacy Principles in all dealings with You.

19.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. You consent to Us using Your personal information in order to:

(a) fulfil functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or taking steps in accordance with clause 10;

(b) provide services to You;

(c) prevent theft of Our Equipment;

(d) to market to You and maintain a client relationship with You.

19.3 You also consent to Us disclosing Your personal information:

(a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and

(b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

19.4 You have the right to access the personal information We hold about You.

19.5 A copy of Our Privacy Statement is available upon request

## 20. FORCE MAJEURE

20.1 Subject to clause 20.2, neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

20.2 Nothing in clause 20.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

## 21. SEVERABILITY

If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

## 22. GOVERNING LAW

The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

## 23. ENTIRE AGREEMENT

The Hire Agreement as defined in clause 1, comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the parties.

## 24. NO RELIANCE

Subject to clauses 15.1 and 15.3, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

## 25. VARIATION

From time to time, We may need to vary this Hire Agreement. If We intend to do so, We will give You 30 days written notice and clearly set out Our proposed amendments. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 30 days of receiving Our written notice. Any other variation of these terms and conditions must be agreed in writing by You and Us.

## 26. REVIEW OF YOUR CREDIT APPROVAL

26.1 From time to time We may review any Credit Account We have granted to You without notice.

26.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.

26.3 If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:

(a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and

(b) still pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is back in our custody and possession.

## 27. SIGNING THE HIRE AGREEMENT

27.1 The person signing any document which forms part of the Hire Agreement for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and is empowered to bind You to the Hire Agreement.

27.2 the person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

## 28. CLAIM FOR PAYMENT

This Hire Agreement is a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry Security of Payment Act 2002 (VIC), the Building and Construction Industry Payments Act 2004 (QLD), the Building and Construction Industry Security of Payment Act 2009 (SA), the Construction Contracts Act 2004 (WA), the Building and Construction Industry (Security of Payment) Act 2009 (ACT), the Building and Construction Industry Security of Payment Act 2009 (TAS), and/or the Construction Contracts (Security of Payments) Act 2009 (NT).

## 29. PREVIOUS EDITIONS

This edition of the Terms of Hire replaces and supersedes all previous editions of the Terms of Hire We have issued.