

## Commander Rentals – Terms & Conditions

### Equipment/Installation

- 1.1 M2 Commander Pty Limited ACN 136 950 082(Commander/we/us) will provide the Equipment (as described in Item 2 of Section C-1 of this Agreement) at your request. You agree to rent the Equipment for the Contract Term described in Item 3 of Section C-1 and otherwise in accordance with these terms and conditions. The Equipment may be either new or refurbished.
- 1.2 You (the customer in Item 1 of Section A of this Agreement) are responsible for all costs of delivery and installation and for preparing the Site (as described in Item 1 of Section A of this Agreement) for installation. The cost of installation may vary from the quotation price once we have physically inspected the Site.
- 1.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.
- 1.4 We may cancel this Agreement by written notice to you if you have not enabled installation of the Equipment to take place within 60 days of the Proposed Installation Date in Item 6 of Section C-1. In that event you will pay us damages for our storage, handling, re-scheduling and other administration costs as determined by us.
- 1.5 The Equipment is at your risk from the time of its delivery to the Site.
- 1.6 This Agreement: these terms and conditions, the Customer Contract Application at Section A, the System/CustomCare Schedule at Section C-1, and any schedules attached.

### Ownership

- 2.1 The Equipment is and remains our property (or the property of an entity related to us) and you hold it for us (or that related entity).
- 2.2 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Equipment.
- 2.3 You have no right to buy the Equipment at the end of this Agreement or at any other time.
- 2.4 Manuals provided to you are subject to copyright. The Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Equipment without our written permission.

### Things you must do (re Equipment)

#### You must:

- 3.1 Arrange for the Equipment to be properly serviced so that it is at all times in good working condition and remains subject to any applicable warranty.
- 3.2 Comply with the manufacturer's instructions relating to the Equipment and its use.
- 3.3 Comply with all laws and regulations relating to the Equipment, the use or possession of it, or any premises on which it is situated and our toll fraud minimisation information and strategies, a copy of which can be found at [www.commander.com](http://www.commander.com) or by contacting us on 132 777.
- 3.4 Produce the Equipment for inspection or testing by us at our request, and for this purpose allow us access to any place where the Equipment is kept.
- 3.5 Keep the Equipment under your control or the control of your employees.
- 3.6 Notify us immediately in writing if your billing address or phone number changes or the Equipment is lost, stolen or damaged or any person asserts any rights to the Equipment.

### Things you mustn't do (re Equipment)

#### You must not:

- 4.1 Change the Equipment, make any addition to it or install anything with it without our written consent. You agree that the changed equipment, including any other goods supplied with or attached to it, becomes our, or our related entity's property (as the case may be) and will comprise the Equipment for the purposes of this Agreement.
- 4.2 Use the Equipment for any purpose which is unlawful or might endanger the safety or condition of the Equipment or prejudice our, or our related entity's interest in it.
- 4.3 Alter or cover up any insignia, number or mark in or on the Equipment.
- 4.4 Alter the installation of the Equipment in a way that makes it a fixture.

### Insurance

#### You must:

- 5.1 Insure the Equipment and keep it insured for its full insurable value under an all risks insurance policy that applies wherever the equipment may be in Australia.

- 5.2 Take out and maintain an adequate level of public risk liability insurance in relation to the Equipment and its use.
- 5.3 Take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests.
- 5.4 Punctually pay all premiums on each insurance policy and not prejudice any policy.
- 5.5 Give us evidence of the insurance policies.
- 5.6 You irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Equipment or any injury, death, damage or loss caused by the Equipment or its use.
- 5.7 You appoint us your attorney:
- (a) to make, recover and/or compromise in your name any claim under such Insurance or against any person, and
  - (b) to appropriate any insurance money or other amount received at our option towards repair or replacement of the Equipment or towards any money payable by you to us or to any third party.

### Indemnities

- 6.1 You assume liability for the use, repair and storage of the Equipment (including liability for injury to any person or damage to any property, whether direct or consequential or for any economic loss) or any toll fraud suffered by you.
- 6.2 You indemnify us against all loss, claims, liabilities, damages and expense suffered by us as a result of:
- (a) loss of or damage to the Equipment by any cause,
  - (b) anything done by, with or to the Equipment,
  - (c) any other cause for which you have assumed the risk or liability including any toll fraud,
  - (d) any claim or demand by any third party in relation to the Equipment,
  - (e) any failure by you to observe your obligations under this Agreement,
  - (f) any steps taken by us to exercise or preserve our rights under this Agreement.

The indemnities and releases in this Agreement continue in full force and effect notwithstanding the termination of this Agreement.

### Destruction

- 7.1 If the Equipment is lost, stolen or substantially destroyed we may terminate this Agreement by notice to you.
- 7.2 Within 7 days of receipt of that notice you must pay to us by way of indemnity against capital loss an amount equal to the amount payable under 12.2.
- 7.3 We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you.
- 7.4 Except as provided in 7.1, your obligations under this Agreement continue even if the Equipment breaks down, is defective, damaged, lost or stolen and you agree you have no right or claim to setoff or withhold rent or other money.

### Payment obligations

#### You must:

- 8.1 Pay us the total rent at the times specified in Item 4 of Section C Part 1 of this Agreement.
- 8.2 Make all payments to the place and in the manner specified by us in writing from time to time.
- 8.3 Pay interest on any rent or other money that you do not pay on the due date. Interest will be calculated daily at the rate that is 3% per annum above our cost of funding the overdue amount. Unpaid interest will be compounded monthly and interest will be payable on compounded interest.

### Our action

- 9.1 If you fail to comply with any obligations under this Agreement, we may in our discretion pay any money or do any other thing necessary to make good that failure (but without affecting any of our rights or remedies as a result of the failure).
- 9.2 We may do anything which we consider desirable to protect or enforce our rights in the Equipment.
- 9.3 You irrevocably authorise us to use your name and to act on your behalf in doing any such thing that we may reasonably require.

### Expiry/Termination

- 10.1 When this Agreement expires (and is not renewed) or is terminated, you must at your own expense promptly return the Equipment in good order and repair together with any manuals to us, or if we choose we can collect the Equipment.

## Commander Rentals – Terms & Conditions

- 10.2 If you do not return the Equipment, we may retake possession of the Equipment and you:
- (a) authorise and will assist us to enter any premises where the Equipment is located to remove it and to reinstate those premises, and
  - (b) release us from any liability which we might have for damages or loss caused in retaking possession of the Equipment.
- 10.3 You agree to reimburse us for all costs incurred in retaking or attempting to retake possession of the Equipment and any money paid by us in releasing any lien claimed over the Equipment.
- 10.4 If despite any reasonable attempt to do so we are unable to retake possession of the Equipment under this clause 10, you agree to reimburse us upon receipt of invoice for the value of the Equipment as determined by us.
- 10.5 If you do not return the Equipment to us on the expiration of this Agreement (including as extended under this clause) and we have not terminated this Agreement, the term of this Agreement will be extended for a further period of 90 days at a rental which is the equivalent of the periodic rent payable by you immediately before expiration of this Agreement and otherwise on the terms of this Agreement.
- 10.6 An extension under 10.5 will continue until we demand the return of the Equipment or you return the Equipment to us (on at least 90 days prior written notice of your intention to terminate this Agreement).

### Events of default

- 11.1 If any of the following events occurs then (without affecting our other rights and remedies) we may at our option take action to compel you to perform or terminate this Agreement by notice to you, and 10.1 will then apply. We may also take action against you to recover damages for breach of this Agreement.
- 11.2 You do not pay when due any amount payable under this Agreement.
- 11.3 You do not comply with any of your other obligations under this Agreement and, if that failure can be rectified, it is not rectified within 7 days after we give you notice requiring you to do so.
- 11.4 You are placed under any form of external administration.
- 11.5 You make an arrangement with, or an assignment for the benefit of, any of your creditors.
- 11.6 Any action is threatened or levied against the Equipment or the Equipment is lawfully seized.
- 11.7 If you are an individual you commit an act of bankruptcy, become bankrupt, die, become subject to any law regarding mental health or are sentenced to imprisonment.
- 11.8 Any insurance proposal made by you in relation to the Equipment is declined or any insurance policy in relation to the Equipment is cancelled or is materially adversely modified.
- 11.9 Any representation or warranty made by you in relation to this Agreement is untrue or misleading in a material respect.
- 11.10 You fail to comply with your obligations under any other agreement or arrangement with us or any guarantee, indemnity or undertaking given to us.
- 11.11 The Equipment is removed outside Australia.
- 11.12 We determine in our reasonable opinion that there is a serious risk of loss or damage to the Equipment.

### Fundamental Provisions

- 12.1 Each of your obligations under this Agreement is a fundamental and essential condition.
- 12.2 If we terminate this Agreement under 11.1 you must pay us by way of liquidated damages an amount equal to the total of:
- (a) all unpaid amounts payable to us under this Agreement up to the date of termination,
  - (b) the present value of rental payments that would have been payable during the period from the date of termination, using the discount rate to discount each such payment over the period by which the date for payment is brought forward by this clause ("discount rate" means the rate determined by us equal to not less than 70% of the implicit interest rate used by us to calculate the rentals under this Agreement),
  - (c) any duty payable on the amounts payable in (a) and (b),
  - (d) any costs incurred by us in repossessing the Equipment and making repairs that we think necessary, and
  - (e) any interest under 8.3.

- 12.3 Termination of this Agreement will be without prejudice to our rights, powers and remedies for any previous breach by you and any receipt of or entitlement to money before termination.
- 12.4 All of our rights under this Agreement are in addition to our rights under the general law.

### Warranty exclusions

You acknowledge and agree that:

- 13.1 Before signing this Agreement you satisfied yourself as to the suitability and specifications of the Equipment.
- 13.2 You relied solely on your own judgement in selecting the Equipment.
- 13.3 Your obligations under this Agreement will continue despite any defect in or breakdown of the Equipment. (Nothing however detracts from your rights under the CustomCare terms and conditions).
- 13.4 So far as the law permits, all conditions and warranties on our part or which might be implied in relation to this Agreement or the Equipment (whether by statute or otherwise) are excluded.
- 13.5 To the extent that any implied condition or warranty on our part cannot be excluded, our liability for breach is limited (but only to the extent permitted by law) at our discretion to the replacement or repair of the Equipment or the supply of equivalent Equipment.
- 13.6 Subject to 13.5, we exclude all liability in Contract, tort (including negligence) or otherwise for all claims, actions, loss, liability or damage (whether direct, indirect, consequential or incidental loss or damage and whether for loss of profits, costs of delay or data or otherwise) suffered or incurred by you because of a failure of the Equipment or any act, omission, delay or non performance by us or any network service provider.
- 13.7 If any provision of this Agreement is or becomes unlawful or void, it is to be read down to the extent only that it is unlawful or void.

### Assignment/Third Party rights

- 14.1 You must not sell, dispose of, encumber or otherwise deal with the Equipment, or attempt to assign your rights under this Agreement without our prior written consent.
- 14.2 We may (subject to your rights under this Agreement) sell, transfer or assign our rights under this Agreement and/or to the Equipment and your consent is not required.
- 14.3 We may engage an agent, dealer, Contractor or franchisee to conduct any aspect of service or Equipment provision and maintenance under this Agreement.

### Business Purposes

- 15.1 You warrant that the Equipment will be used for business purposes and the amounts payable under this Agreement are outgoings necessarily incurred by you in carrying on your business.
- 15.2 We are not liable to you for any statements made regarding your legal rights or taxation position and you warrant that you have satisfied yourself in relation to such matters.
- 15.3 You indemnify us against any liability which we may incur under any taxation law as a result of the warranty in 15.1 not being correct or any reduction of any depreciation allowance or rebate upon which we have relied in calculating the rent payable under this Agreement.

### Amounts payable by you

- 16.1 You must pay the stamp duty and other taxes and charges which are or become payable in relation to the Equipment or this Agreement.
- 16.2 If any Goods and Services Tax (GST) is or becomes payable by us in respect of any supply made by us to you which is subject to these terms you must, at the time of making payment of rent or any other payment, reimburse us for any GST paid or payable by us.
- 16.3 You must pay all other costs incurred by us in relation to this Agreement or the exercise or attempted exercise of any of our rights under it.
- 16.4 The estimate of stamp duty included in the rent set out in Item 4 of Section C-1 of this Agreement does not limit your obligations under 16.1 if additional duties are assessed to be payable.
- 16.5 You must pay any charge we reasonably request to recover transaction costs incurred by us under this Agreement, including costs incurred in seeking to make good any due payments and for collections, calls, notices, and other action taken by us because you did not strictly comply with this Agreement.
- 16.6 You authorise us to debit your account for these fees at the time charged.

## Commander Rentals – Terms & Conditions

### Maintenance charges

- 17.1 If any maintenance charges for the Equipment have been included in the rental payments in Item 4 of Section C-1 of this Agreement or a charge for a training package has been included in Item 2 of Section C-1, you acknowledge that:
- those charges have been included at your request, and
  - no failure to perform those maintenance or training services will affect your obligation to pay the rental payments and other money payable under this Agreement and to perform your obligations under this Agreement. (Nothing however detracts from your rights under the CustomCare terms and conditions).

### Variation/Waiver

- 18.1 This Agreement may only be replaced by an instrument signed by both parties. However a variation to this Agreement, such as the adding on of additional Equipment, can be documented by way of an acknowledgement issued by us.
- 18.2 You can request us to upgrade the Equipment during the term of this Agreement and we will provide it (if we have upgrades available). If you elect to accept the upgrade you will enter a new agreement on our then current terms and at the applicable rental for that upgrade. This Agreement will then end.
- 18.3 Our rights, your breach of an obligation or an event of default under this Agreement can only be waived by an instrument signed by us.
- 18.4 A single or partial exercise or waiver by us of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- 18.5 The only agreement between us with respect to the Equipment is that contained in this Agreement.
- 18.6 This Agreement cannot be cancelled or terminated except as it expressly provides and you cannot return any part of the Equipment prior to the expiration of this Agreement.
- 18.7 If any provision or part of any provision of this Agreement is void or unenforceable, then it shall be severed from this Agreement without affecting the remaining provisions.

### Miscellaneous

- 19.1 A certificate given by us showing any amount owing by you under this Agreement or any interest rate referred to in this Agreement, the occurrence of any event or the existence of any fact is prima facie evidence of the matters certified.
- 19.2 You authorise us to complete any blank spaces in this Agreement and in particular to insert the serial numbers and other identification details of the Equipment.
- 19.3 This Agreement is governed by the laws of the State of New South Wales and you agree to the non-exclusive jurisdiction of its courts.
- 19.4 A reference to a party includes its successors and permitted assigns.
- 19.5 A reference to the Equipment includes any parts and accessories from time to time attached to or forming part of the Equipment, whether in addition to or in replacement of the Equipment referred to in Item 2 of Section C-1 of this Agreement.
- 19.6 You agree that an electronic or faxed copy of this Agreement is admissible evidence of this Agreement.

### Cooling off period

- 20.1 Commander may cancel this Agreement by written notice to you within 14 days after this Agreement is made. In that case, we will pay you back what you have paid us under this Agreement. You have no other right against us.

### Privacy Act notice and consents

- 21.1 You agree that we may give certain information about you to a credit reporting agency to obtain a credit report about you. (The information which may be given is covered by the s18E(1) of the Privacy Act 1988 (the "Act") and includes identity particulars and the fact that you are entering this Agreement).

- 21.2 You agree that we may seek and obtain information about you from a credit reporting agency or another credit provider and give information about you to another credit provider. (This may include anything about credit worthiness, history standing or capacity, including information about commercial credit, which credit providers are permitted by the Act to obtain or receive).
- 21.3 If you are a natural person, we may collect personal information about you including but not limited to your electronic contact details such as email ("your personal information"). If you are a business customer we may collect information about your business including but not limited to your electronic contact details such as email ("your business information"). You acknowledge and agree that we may use your personal information or business information to send commercial electronic messages, as defined under the Spam Act 2003 (Cth) . Unless you ask us not to, we will use your personal information or business information to provide information to you about goods or services which we or any of our related bodies corporate or any of our partners, dealers and agents may offer to you; provide information to our related bodies corporate, our partners, our dealers and agents so that they can provide information to you about goods and services they offer; send commercial electronic messages as defined under the Spam Act 2003 (Cth ) and for billing, administration and customer information purposes. If you do not want us to use your personal information or business information in this way, you may ask us not to by sending a blank email to [unsubscribe@commander.com](mailto:unsubscribe@commander.com) or by contacting our privacy officer on 1800 007 562. Otherwise we will assume that you have consented to the use and disclosure of the information for these purposes.
- 21.4 Information concerning our policies with respect to personal information is contained in our privacy policy as current from time to time which is available on request or on our Website at [www.commander.com](http://www.commander.com).

### Principal or Agent

- 22.1 You acknowledge that we may enter into this Agreement as principal or as agent. Where we enter into this Agreement as agent, all references to "Commander/we/us/our" are also to be read and construed as references to the principal for whom we act as agent. We will, if requested by you, provide relevant details of the principal for whom we act.

### Training Packages

- 22.2 If Item 2 of Section C-1 includes a training package, we will conduct the training at the Site and endeavour to deliver the training at the times agreed with you in advance. We will deliver training of your receptionist and system administrator on a one-to-one basis and user training in groups of no more than 10 users. We will conduct the training during our normal working hours. You will allow us access to the Site and to the Equipment to enable us to conduct the training. You agree to reimburse us for extra charges if you want us to conduct the training at other times or for additional travel charges (if any), but only if you agreed to pay beforehand. If you request us to cancel or re-schedule a planned training session less than 3 business days prior to the agreed start date, you will lose the agreed hours for that training session.
- 22.3 Training must be conducted within 12 months from the date of this Agreement. Training sessions must be no less than 1-hour duration. At the end of a training session we will provide you with a voucher for any unused training hours of your package. Vouchers are to be used within the remaining period of 12 months from the date of this Agreement. Vouchers cannot be redeemed for any other Commander offer.