

DIY Grind ('DIY Grind', 'we', 'our', 'us') agree to hire Equipment to the customer set out in the Hire Schedule ('the Customer', 'you', 'your') on the following terms and conditions and in accordance with the details contained in the Hire Schedule.

## **1. Hire of Equipment**

- 1.1 You will hire the Equipment from us from the Commencement Date, for the Hire Period and in exchange for payment of the Hire Fee as well as any other fees and charges specified in the Hire Schedule.
- 1.2 You are entitled to use the Equipment for the Hire Period subject to the terms of this Agreement. If you require an extension of the Hire Period, please contact us before the Hire Period expires and we will endeavour to accommodate your request.
- 1.3 You must return the Equipment to us, clean and in good repair to our premises located at Unit 7, 10 Enterprise Close, West Gosford NSW 2250 on or before the date on which the Hire Period expires.
- 1.4 Failure to return the Equipment on expiration of the Hire Period or any extension thereof may be considered theft of the Equipment, an offence we may choose to report to the police.

## **2. No Fitness for Purpose Guarantee**

Prior to the Commencement Date and prior to executing this Agreement, you will satisfy yourself that the Equipment is suitable and fit for your purposes. Please note that whilst we may provide general information and advice in relation to the Equipment, such information and advice must not be relied upon by you in making a hiring decision as we provide no warranties or guarantees in relation to the fitness of the Equipment for your specific purposes.

## **3. Payment for Hire**

- 3.1 You agree to pay us the Hire Fee and the Damage Waiver Fee (if applicable) specified in the Hire Schedule for the use of the Equipment for the Hire Period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to the hire of the Equipment ('Fees'). You will also pay for the reasonable costs of fuel or other consumables provided by us and used by you.
- 3.2 The Fees and other charges must be paid to us prior to the Commencement Date of the Hire Period and/or when otherwise due and payable under the Hire Schedule or as agreed in writing between us.
- 3.3 Should the Equipment not be returned on expiration of the Hire Period (or any extension of it), you will be subject to a continuance of the Hire Fee and other Fees until the Equipment is returned but this will not constitute an extension of the Hire Period.
- 3.4 We may agree to deliver to, install and collect the Equipment from you, in which case you will pay us any charges and fees incurred in such delivery, installation and/or collection. We will use our best endeavours to deliver the Equipment at the requested time however we are not able to guarantee delivery by a certain time and will not be liable to you for a late delivery or any associated loss or damage due to late delivery.
- 3.5 You will ensure the Equipment is returned to us clean of all foreign matter or you agree to pay to us a reasonable cleaning fee if required.
- 3.6 A reasonable cancellation fee may be charged by us where Equipment has been reserved by booking and you cancel the booking without reasonable notice to us or you fail to take delivery of the Equipment.
- 3.7 We may charge you a reasonable fee for accepting payment by credit card and this may be determined by the applicable charge under legislation.
- 3.8 We reserve the right at any time to revise the Hire Fees and other Fees by providing you with notice. Unless otherwise stated, the Hire Fee and other Fees payable by you in relation to the Equipment will be specified in the Hire Schedule. Where the increase applies to Equipment already on hire by you, you may terminate this Agreement and return the Equipment to us should you not accept the increased charges.
- 3.9 You will be liable for interest on late payments owing to us by you, at the pre-judgment interest rate set by the Local Court of New South Wales from time to time.
- 3.10 You will be liable for any costs incurred by us in recovering late payments from you, including but not limited to, legal costs.

## **4. No PPS lease without DIY Grind's agreement**

Despite anything else in this Agreement, without our express written agreement, the Hire Period (including any extension thereof) cannot be longer than one (1) day short of two (2) years (or one day shorter than the time threshold for a PPS lease under PPS Law as defined below).

## **5. Use, operation and maintenance**

- 5.1 You agree that the use of the Equipment carries with it dangers and risks of injury and you agree to accept all such dangers and risks.
- 5.2 The Equipment will not be used by anyone other than you and any other Authorised Person as specified in the Hire Schedule, without our express permission.
- 5.3 You will ensure that all persons using, operating or maintaining the Equipment are instructed in its safe and proper use and where required hold valid proof of training or are fully and properly licensed to use it.
- 5.4 You agree to operate, maintain, store and transport the Equipment in a safe and proper manner and where required strictly in accordance with any instruction provided by us and with due care and diligence.
- 5.5 You agree that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by us or posted on the Equipment in regard to operation, maintenance and storage.
- 5.6 You agree to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.

## **6. Hirer's warranties**

- 6.1 You warrant that:
  - (a) The Equipment will be used in accordance with the conditions specified in the Hire Schedule.
  - (b) The particulars in the Hire Schedule are correct in every respect and are not misleading in any way, including without limitation, by omission.

- (c) You and any Authorised Person each hold a valid driver's licence, operating licence or permit valid for the type of Equipment hired.
- (d) The Equipment will not be used for any illegal purpose.
- (e) Your vehicle is suitable for towing the Equipment if required.
- (f) You will not, without our consent, tamper with, repair or modify the Equipment in any way or permit another to do so.
- (g) You will not remove the Equipment from New South Wales, without our prior written approval.

## **7. Indemnity and liability**

- 7.1 To the maximum extent permitted by law, you hereby release, discharge and indemnify us, our employees, team members, directors, shareholders, agents, consultants, partners and anyone else affiliated with us, from all claims and demands on us whether arising in contract, tort or otherwise and whether arising out of the hire, use or misuse of the Equipment or by any other means related to this Agreement. You will assume, to our exclusion, all risks and liabilities for and in respect of, the Equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from your possession, use, maintenance, repair, storage or transport of the Equipment.
- 7.2 To the maximum extent permitted by law, we hereby exclude any implied or imposed guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Agreement ('Provision'). To the extent to which we are not able to exclude a Provision ('Non-Excludable Provision') and we are able to limit your remedy for a breach of the Non-Excludable Provision, then our liability for breach of 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 equivalent goods (or the payment of the cost of doing so); and
  - (b) In the case of services, the supplying of the services again (or the payment of the cost of doing so).
- 7.3 Subject to our obligations under the Non-Excludable Provisions, we are not liable to you or any third-party for any indirect loss or consequential loss arising in connection with this Agreement or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if we have been advised of the possibility of such loss.
- 7.4 This clause does not affect any rights that you have under the Australian Consumer Law or any other law that we are unable to contract out of, exclude or modify by this Agreement.

## **8. Loss, damage or breakdown of plant and equipment**

- 8.1 Subject only to the provisions for damage waiver in this Agreement you will be responsible for any loss or damage to the Equipment except for fair wear and tear, during the Hire Period. You are liable for the payment of the full replacement value (at the new list price) of any Equipment not returned to us.
- 8.2 If you have paid the Damage Waiver Fee, we will waive your liability for loss or damage to the Equipment up to the Damage Waiver Limit.
- 8.3 If there is a breakdown or failure of the Equipment you will notify us immediately for the appropriate action to be taken

## **9. Termination**

- 9.1 Without prejudice to any other remedies we may have against you and notwithstanding the Hire Period specified in the Hire Schedule, this Agreement may be terminated as follows:
  - (a) Upon giving you two (2) days' written notice of termination at any time during the Hire Period.
  - (b) If you have received written notice from us regarding a breach of this Agreement and requiring such breach to be remedied with seven (7) days, immediately upon the expiration of those seven (7) if the breach remains unremedied.
  - (c) Without prior notice if you become bankrupt, insolvent or cease to trade.
- 9.2 If this Agreement is terminated under this clause, you must immediately pay all outstanding Hire Fees and other Fees to us and return the Equipment to us.

## **10. Title to Equipment**

- 10.1 You acknowledge that we retain title to the Equipment and that you have rights to use the Equipment as a mere bailee only. You agree that you have no rights to pledge our credit in connection with the Equipment.
- 10.2 You agree not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let or hire or otherwise part with or attempt to part with personal possession or otherwise not deal with the Equipment and not to change or alter the Equipment or make any addition or alteration to the Equipment.

## **11. Repossession and remedies on default**

- 11.1 We may take repossession of the Equipment if you breach any of the provisions of this Agreement (and do not remedy such breach after reasonable notice to do so from us) or if you do not pay your account in the agreed time, and fail to return the Equipment to us. If repossession takes place, we will only charge the Hire Fee up to and including the time of repossession. All other Fees and the costs incurred by us in repossession due to your breach will be paid by you.
- 11.2 In the case of repossession, you agree to grant us permission to enter any premises where the Equipment is situated to disconnect, decommission and/or remove and repossess that Equipment.

## **12. Completion of the hire**

- 12.1 The Equipment must be returned to us in the same condition as when it was hired, fair wear and tear excepted. Return must be by the date and time specified in the Hire Schedule. We may agree to collect the Equipment from you ('pick-up') for a further fee.
- 12.2 Where pick-up is agreed we will arrange to pick-up the Equipment within a reasonable period after a request to do so and will issue you with a pick-up number on request. You agree to maintain responsibility for the Equipment whilst awaiting pick-up.

## **13. General**

- 13.1 The covenants, agreements and obligations contained in this Agreement will not merge or terminate upon the termination of this Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 13.2 If any provision of this Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this Agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.
- 13.3 This Agreement is governed by the laws of New South Wales and each party submits to the exclusive jurisdiction of the Courts of that state.
- 13.4 DIY Grind must comply with all applicable privacy legislation in all dealings with you. Our privacy policy may be accessed at <http://www.diagrind.com.au/privacypolicy>
- 13.5 Both parties agree that any disputes arising from the hire and use of the Equipment (except in regard to payment of Fees or charges) will be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9998 2255) before litigation is pursued.

#### 14. PPS Law

- 14.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPS Law**). References to PPS Law in this Agreement include references to amended, replacement or successor provisions.
- 14.2 We may register a security interest against the Equipment. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of ensuring our security interest is enforceable, perfected, first priority and otherwise effective under PPS Law.
- 14.3 We may recover from you the cost of doing anything under this clause, including but not limited to registration fees.
- 14.4 Our rights under this Agreement are in addition to and not in substitution for our rights under other law (including PPS Law) and we may choose whether to exercise rights under this Agreement and/or under other law, as we see fit.
- 14.5 To the extent that chapter 4 of the PPS Law applies to the security interest under this Agreement, and the PPS Law requires us to give notice or allow time or provide any account to you, the parties agree to the extent allowable under the PPS Law that the requirement does not apply and, for the purposes of section 115 of the PPS Law it is "contracted out" of this Agreement in respect of all goods to which that section can be applied. You agree that in addition to those rights, we will, if there is a default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and you agree that we may do so in any manner we see fit, including (in respect of dealing or disposal) by private or public sale, lease or licence.
- 14.6 You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. The parties agree not to disclose information that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing the owner the benefit of section 275(6)(a) and we will not be liable to pay damages or any other compensation or be subject to injunction if we breach this sub-clause.

#### 15. Security interest and sub-hire

- 15.1 You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with our express and prior written consent.
- 15.2 You must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under this Agreement. You may not vary a sub-hire without our prior written consent (which we may withhold in our absolute discretion).
- 15.3 You must ensure that we are provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 15.4 You must take all reasonable steps including registration under PPS Law as may be required to:
  - (a) Enable that any security interest arising under or in respect of the sub-hire is enforceable, perfected or otherwise effective under PPS Law;
  - (b) Enable you to gain (subject always to our rights) first priority (or any other priority agreed in writing by us) for the security interest; and
  - (c) Enable the parties to exercise their respective rights in connection with the security interest.

#### 16. Definitions

**Commencement Date** means the date that hire of the Equipment commences, as set out in the Hire Schedule.

**Customer** means the person hiring the Equipment, as set out in the Hire Schedule.

**Damage Waiver Fee** means the amount the Customer will pay to DIY Grind to limit their liability for loss or damage to the Equipment up to the Damage Waiver Limit in accordance with this agreement, as set out in the Hire Schedule. If there is no Damage Waiver Fee set out in the Hire Schedule, no damage waiver will be applicable.

**Damage Waiver Limit** means the maximum amount for which DIY Grind will waive the Customer's liability for loss or damage to Equipment under this agreement, as set out in the Hire Schedule. If there is no Damage Waiver Limit set out in the Hire Schedule, no damage waiver will be applicable.

**DIY Grind** means Iwannagofast Pty Ltd (ACN 613 118 924) trading as DIY Grind and operating the concrete polishing equipment hire business.

**Hire Fee** means the amount the Customer will pay to DIY Grind for the hire of the Equipment, as set out in the Hire Schedule.

**Hire Period** means the period during which the Customer hires the Equipment, as set out in the Hire Schedule, and includes any interval of days, hours or part thereof.

**Hire Schedule** means the schedule on the reverse of these terms and conditions.