

Hire Contract Conditions

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Caldertech Australia and the Customer in writing. Caldertech Australia agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Caldertech Australia) a Hire Agreement and such other documents as Caldertech Australia may require. Each Hire Agreement is not a separate contract but forms a part of this hire agreement between Caldertech Australia and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. The customer agrees to receive Hire Agreements and all associated documentation by electronic or physical means. Caldertech Australia may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

Notice is deemed given when Caldertech Australia does any of the following: (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website www.caldertech.com.au; or (c) displays the amended terms at premises from which Caldertech Australia conducts hire operations.

Changes to these hire Contract Conditions will only apply to Hire Agreements entered into after the change occurs.

1. INTERPRETATION OF WORDS IN THIS CONTRACT;

Despatched – The date when the Customer takes possession of the Equipment and the commencement of the Hire Period.

Equipment – Means any kind of equipment, products or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses related to the installation, repair, and maintenance of water and gas pipe networks: pipe preparation, pipe scraping, pipe peeling, pipe cutting, electrofusion, butt welding, pipe squeezing, pipe clamping, pipe handling, pipe positioning, pipe re-rounding, pipe towing, flow control, draining, purging, muling, de-beading, parts and accessories for any of the foregoing.

Hire Charge – The amounts shown on the Hire Agreement payable by the Customer to hire the Equipment.

Hire Period – Means from Despatched until Returned as shown on the Hire Agreement. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if Caldertech Australia agrees. Caldertech Australia may issue and require the Customer to sign an amended Hire Agreement for any extension of the Hire Period.

Hire Agreement – Means a document which Caldertech Australia may require the Customer to sign (or accept in a way Caldertech Australia requires) including particulars of the Equipment and the Hire Period and such other information as Caldertech Australia may decide to require.

Caldertech Australia – The company or companies listed on the Hire Agreement.

Remote Area – Any location which is more the 50 kilometres from the Caldertech Australia branch from where the Equipment is hired.

2. CALDERTECH AUSTRALIA OBLIGATIONS

Caldertech Australia will:

- 2.1 Allow the Customer to take and use the Equipment for the Hire Period;
- 2.2 Provide the Equipment to the Customer clean and in good working order;
- 2.3 Collect the Equipment within 5 days of being requested to do so by the Customer and issuing to the Customer a Pick Up confirmation.

NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain a Customer Pick Up Confirmation from Caldertech Australia.

3. OBLIGATIONS OF THE CUSTOMER

The Customer must:

- 3.1 Deliver the Equipment to Caldertech Australia when it is due back;
- 3.2 Return the Equipment to Caldertech Australia clean and in good repair;
- 3.3 Satisfy itself at commencement of the Hire Period that the Equipment is suitable for its purposes;

- 3.4 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Caldertech Australia or posted on the Equipment;
- 3.5 **Indemnify** Caldertech Australia for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- 3.6 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized;
- 3.7 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed;
- 3.8 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- 3.9 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Caldertech Australia in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- 3.10 Operate the Equipment with adequate tools and/or power source;
- 3.11 Report and provide full details to Caldertech Australia of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

The Customer must NOT:

- 3.12 Tamper with, damage or repair the Equipment;
- 3.13 Lose or part with possession of the Equipment;
- 3.14 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 3.15 Allow any person to use the Equipment if the person:
 - (a) does not hold a suitable licence and/or has been adequately trained; or
 - (b) is affected by drugs and/or alcohol.
- 3.16 Exceed the recommended capacity limits and/or technical specifications of the Equipment;
- 3.17 Use the Equipment to carry any illegal, prohibited or dangerous substance.

4. PAYMENTS BY THE CUSTOMER TO CALDERTECH AUSTRALIA

- 4.1 Upon return of the Equipment and/or completion of the Hire Period (or as otherwise specifically agreed with Caldertech Australia), the Customer will pay as per the Customer's payment terms the Hire Charge and any additional charges.

- 4.2 Immediately on request by Caldertech Australia, the Customer will pay:
- The new list price of any Equipment which is for whatever reason not returned to Caldertech Australia.
NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment. In the event of theft, hire fees will be charged to the Customer until the Police Report is provided to Caldertech Australia, which should be submitted within 7 days of the theft allegedly occurring;
 - All costs incurred in cleaning the Equipment;
 - The full cost of repairing any damage to the Equipment caused or contributed to by the Customer including site service, unless expressly agreed otherwise in this Contract;
 - Stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;
 - All costs incurred by Caldertech Australia in delivering and recovering possession of the Equipment;
 - Interest for late payment of amounts owing by the Customer, at the pre-judgement interest rate set by the local State Court from time to time;
 - Any additional Hire Charges;
 - The cost of consumables provided by Caldertech Australia and not returned by the Customer;
 - Any expenses and legal costs (including commission payable to a commercial agent) incurred by Caldertech Australia in enforcing this Contract due to the Customer's default;
 - If any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.
- 4.3 Without limiting the ability of Caldertech Australia to recover all amounts owing to it, the Customer authorises Caldertech Australia to charge any amounts owing by the Customer to any credit card or account details of which are provided to Caldertech Australia.
- 4.4 Caldertech Australia may tokenise the Customer's Credit Card or Account details to facilitate credit card or online payments.
- 5. PPS LAW**
- 5.1 This clause applies to the extent that this Contract 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 and successor provisions or legislation.
- 5.2 If Caldertech Australia does not have at commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Agreement be longer than:
- 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
 - a year in any other case.
- 5.3 Caldertech Australia may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Caldertech Australia requires for the purposes of:
- Ensuring that Caldertech Australia's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - Enabling Caldertech Australia to gain first priority (or any other priority agreed to by Caldertech Australia in writing) for its security interest; and
 - Enabling Caldertech Australia to exercise rights in connection with the security interest.
- 5.4 The rights of Caldertech Australia under this document are in addition to and not in substitution for Caldertech Australia's rights under other law (including the PPS Law) and Caldertech Australia may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Caldertech Australia security interest will attach to proceeds.
- 5.5 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Caldertech Australia to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Caldertech Australia to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 5.6 The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Caldertech Australia. Customer agrees that in addition to those rights, Caldertech Australia shall, if there is default by Customer, 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 the Customer agrees that Caldertech Australia may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 5.7 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 5.8 Caldertech Australia and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its 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 purpose of allowing to Caldertech Australia the benefit of section 275 (6)(a) and Caldertech Australia shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- 5.9 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of Caldertech Australia.
- 5.10 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Caldertech Australia (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Caldertech Australia and must be expressed to be subject to the rights of Caldertech Australia under this agreement. Customer may not vary a sub-hire without the prior written consent of Caldertech Australia (which may be withheld in its absolute discretion).
- 5.11 Customer must ensure that Caldertech Australia is 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.
- 5.12 Customer must take all steps including registration under PPS Law as may be required to:
- Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - Enabling the Customer to gain (subject always to the rights of Caldertech Australia) first priority (or any other priority agreed to by Caldertech Australia in writing) for the security interest; and
 - Enabling Caldertech Australia and the Customer to exercise their respective rights in connection with the security interest.
- 5.13 To assure performance of its obligations under this agreement, the Customer hereby gives Caldertech Australia an irrevocable power of attorney to do anything Caldertech Australia considers the Customer should do under this agreement. Caldertech Australia may recover from Customer the cost of doing anything under this clause 5, including registration fees.

6. DAMAGED, LOST AND/OR STOLEN EQUIPMENT

Upon despatch of the Equipment and until the return of the Equipment to Caldertech Australia's premises the Customer has full responsibility of all Equipment hired. The Customer will pay full replacement cost of any Equipment badly damaged, lost or stolen during the hire period. The Customer will pay any repairing costs to damaged equipment. Any damaged equipment will be decided by Caldertech Australia if it can be repaired or requires replacement. Burns, holes, tears, cracks, water damage or other similar damage to Equipment shall be paid at full replacement cost to Caldertech Australia.

The Customer will pay full replacement cost and is fully liable for any damage caused to the Equipment but not limited to the following circumstances;

- (a) where the Equipment is lost or stolen;
- (b) where the operator is not suitably trained and/or licensed;
- (c) where the operator is affected by drugs and/or alcohol;
- (d) where the equipment has been wilfully damaged by the Customer or its employees or agents;
- (e) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
- (f) where the damage is caused while the Equipment is being carried or towed on any road that is unsealed or is not a public road; or
- (g) where the damage is caused in any way by overloading or the Equipment being used outside the recommended specifications.

Any Equipment returned unclean by the Customer to Caldertech Australia, the Customer shall pay Caldertech Australia the full cost of returning the Equipment to a clean condition.

The Customer shall protect the equipment from the elements during the Hire Period. In poor weather conditions storage of the Equipment may be necessary and is the responsibility of the customer to see that the Equipment is stored safely. Any Equipment damaged from weather is the full responsibility of the Customer and shall be paid at full replacement cost to Caldertech Australia. Digital photographs may be used by Caldertech Australia as evidence of the Equipment's despatched condition and the condition it was returned in by the Customer.

Once the Customer has returned the equipment to Caldertech Australia and the Hire Period is completed, Caldertech Australia shall notify the Customer in writing within 3 working days of the Equipment return date, if there is any damage that may have been caused to the Equipment during the Hire Period and the respective damage and/or related charges that will be incurred by the Customer. Any disputes in relation to these charges must be communicated to Caldertech Australia in writing within 3 working days of the the damage notification. In the event that no communication is received from the Customer within that 3 working day period, the damage charges are deemed to be accepted by the Customer.

Caldertech Australia's Equipment shall be delivered to the Customer in a clean, well maintained and full working condition. It is the Customer's responsibility to notify Caldertech Australia should the equipment not be in a satisfactory condition within 6 hours of the equipment being despatched. Otherwise any damage or uncleanliness of Equipment shall be deemed the Customer's accountability.

7. EXCLUSION OF WARRANTIES AND LIABILITIES.

- 7.1 Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 7.2 Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, Caldertech Australia liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.
- 7.3 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, Caldertech Australia makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.

8. REMOTE HIRE

Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions;

- (a) The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by Caldertech Australia ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometer rate travelled by Caldertech Australia staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by Caldertech Australia and its staff in connection with travel to and from the Remote Area;
- (b) Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;
- (c) The Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all consumables (oil, battery levels, etc.) and general tightening of any loose nuts, bolts or fittings and lubrication of all grease points.

9. BREACH OF HIRE CONTRACT BY CUSTOMER

If the Customer breaches any clause whatsoever of this Contract and does not remedy the breach within 7 days notice of the breach, or becomes bankrupt, insolvent or ceases business then;

9.1 Caldertech Australia shall be entitled to:

- (a) Terminate this Contract; and/or
- (b) Sue for recovery of all monies owing by the Customer; and/or
- (c) Repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so).

9.2 The Customer indemnifies Caldertech Australia in respect of any damages, costs or loss, to extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

10. DISPUTES

- 10.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Caldertech Australia in writing within 7 days of the Equipment return date. In the event that no communication is received from the Customer within that 7 day period, the Hire Charges are deemed to be accepted by the Customer.
- 10.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Caldertech Australia), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association before litigation.

11. PRIVACY

Caldertech Australia will comply with the Australian Privacy Principles in all dealings with Customers. A copy of the Caldertech Australia Privacy Statement is available upon request or by visiting www.caldertech.com.au.

12. GOVERNING LAW

- 12.1 This Hire Contract is a payment claim 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 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.
- 12.2 Except where Caldertech Australia in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause, Caldertech Australia and the Customer agree that this Contract is governed by the law respective State, and the parties submit to the jurisdiction of the courts of that State.

Effective: 1 July 2019