

# Nagrom Brisbane Laboratory

## Hire Terms and Conditions

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Nagrom Brisbane Laboratory and the Customer in writing. Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory) a Quotation and such other documents as Nagrom Brisbane Laboratory may require. Each Hire Schedule is not a separate contract but forms a part of this agreement between Nagrom Brisbane Laboratory and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. The customer agrees to receive all associated documentation by electronic means. Nagrom Brisbane Laboratory, may in its absolute discretion, decline to hire Equipment to the Customer at any time.

**Amendment:** These Hire Contract Conditions may be changed by Nagrom Brisbane Laboratory from time to time by Nagrom Brisbane Laboratory giving notice of the amendment to the Customer. Notice is deemed given when Nagrom Brisbane Laboratory 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.brismetlab.com.au](http://www.brismetlab.com.au); or (c) displays the amended terms at premises from which Nagrom Brisbane Laboratory conducts hire operations.

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

### 1. Definitions and Explanations

In these Terms and Conditions these words and phrases have the following meanings:

**Commencement** – The date when the Equipment leaves any of Nagrom Brisbane Lab premises.

**Equipment** – Means any kind of equipment, vehicles or tools including but not limited to the mineral processing equipment, and includes tools, consumables, parts and accessories for any of the foregoing.

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

**Hire Period** – Means from commencement until the end of the period shown on the Quotation. 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 Nagrom Brisbane Laboratory agrees. Nagrom Brisbane Laboratory may issue and require the customer to sign an amended Quotations for any extension of the Hire Period.

**Quotation** - means a document which Nagrom Brisbane Laboratory may require the Customer to sign (or accept in a way Nagrom Brisbane Laboratory requires) including particulars of the Equipment and the Hire Period and such other information as Nagrom Brisbane Laboratory may decide to require.

**Nagrom Brisbane Laboratory** – The company or companies issuing the Quotation.

**Remote Area** – Any location which is more the 50 kilometres from the Nagrom Brisbane Laboratory branch from where the Equipment is hired.

## 2. Nagrom Brisbane Laboratory Obligations

Nagrom Brisbane Laboratory 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;

## 3. Obligations of the Customer

The Customer must:

- 3.1 Deliver the Equipment to Nagrom Brisbane Laboratory when it is due back;
- 3.2 Return the Equipment to Nagrom Brisbane Laboratory clean and in good repair; ordinary fair wear and tear excepted;
- 3.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4 Operate the Hire Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- 3.5 **Indemnify** Nagrom Brisbane Laboratory 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 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 persons operating or erecting the Hire Equipment are suitably instructed, trained and qualified in its safe and proper use and comply with all relevant laws relating to the use of the Hire Equipment;
- 3.8 Ensure all persons operating the Hire Equipment wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer of the Hire Equipment or Nagrom Brisbane Laboratory
- 3.9 Conduct a job safety analysis prior to using the Hire Equipment at a site and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- 3.10 Clean, fuel, lubricate and maintain the Hire Equipment in good condition and in accordance with the manufacturer's and Nagrom Brisbane Laboratory's instructions at the Customer's cost,
- 3.11 Provide access to Nagrom Brisbane Laboratory to maintain and service the Equipment and undertake statutory inspections when necessary during normal business hours, additional charges will apply.
- 3.12 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Nagrom Brisbane Laboratory 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;

- 3.13 Operate the Equipment with an adequate motor vehicle and/or power source;
- 3.14 The Customer must advise Nagrom Brisbane Laboratory of any risks of hazardous substance contamination to the Hire Equipment as soon it becomes apparent;
- 3.15 Report and provide full details to Nagrom Brisbane Laboratory of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

The Customer must NOT;

- 3.16 Not in any way alter, modify, tamper with, damage or repair the Hire Equipment without Nagrom Laboratory's written consent;
- 3.17 Lose or part with possession of the Equipment;
- 3.18 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 3.19 Exceed the recommended or legal load and capacity limits of the Equipment;
- 3.20 Ensure that no persons operating the Hire Equipment are under the influence of drugs or alcohol
- 3.21 Exceed the recommended or legal operating limits for the Equipment.

#### **4. Payments by the Customer to Nagrom Brisbane Laboratory**

- 4.1 On or before Commencement (or as otherwise specifically agreed with Nagrom Brisbane Laboratory), the Customer will pay the Hire Charge.
- 4.2 Immediately on request by Nagrom Brisbane Laboratory, the Customer will pay:
  - 4.2.1 the new replacement price of any Equipment which is for whatever reason not returned to Nagrom Brisbane Laboratory.
  - 4.2.2 all costs incurred in cleaning the Equipment;
  - 4.2.3 the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;
  - 4.2.4 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;
  - 4.2.5 all costs incurred by Nagrom Brisbane Laboratory in recovering possession of the Equipment;
  - 4.2.6 the cost of fuels and consumables provided by Nagrom Brisbane Laboratory and not returned by the Customer;

- 4.2.7 any expenses and legal costs (including commission payable to a commercial agent) incurred by Nagrom Brisbane Laboratory in enforcing this Contract due to the Customers default.;
- 4.2.8 all costs of repairing or replacing tyres, including road service; and
- 4.2.9 if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.
- 4.2.10 Without limiting the ability of Nagrom Brisbane Laboratory to recover all amounts owing to it, the Customer authorises Nagrom Brisbane Laboratory to charge any amounts owing by the Customer to the account details of which are provided to Nagrom Brisbane Laboratory.

## 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 Nagrom Brisbane Laboratory 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 Schedule be longer than:
  - 5.2.1 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
  - 5.2.2 a year in any other case.
- 5.3 Nagrom Brisbane Laboratory may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Nagrom Brisbane Laboratory requires for the purposes of:
  - 5.3.1 ensuring that Nagrom Brisbane Laboratory' security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - 5.3.2 enabling Nagrom Brisbane Laboratory to gain first priority (or any other priority agreed to by Nagrom Brisbane Laboratory in writing) for its security interest; and
  - 5.3.3 enabling Nagrom Brisbane Laboratory to exercise rights in connection with the security interest.
- 5.4 The rights of Nagrom Brisbane Laboratory under this document are in addition to and not in substitution for Nagrom Brisbane Laboratory' rights under other law (including the PPS Law) and Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory. Customer agrees that in addition to those rights, Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory the benefit of section 275 (6)(a) and Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory.
- 5.10 Customer must not lease, hire, bail or give possession (‘sub-hire’) of the Equipment to anyone else unless Nagrom Brisbane Laboratory (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Nagrom Brisbane Laboratory and must be expressed to be subject to the rights of Nagrom Brisbane Laboratory under this agreement. Customer may not vary a sub-hire without the prior written consent of Nagrom Brisbane Laboratory (which may be withheld in its absolute discretion).
- 5.11 Customer must ensure that Nagrom Brisbane Laboratory 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:
- 5.12.1 ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - 5.12.2 enabling the Customer to gain (subject always to the rights of Nagrom Brisbane Laboratory) first priority (or any other priority agreed to by Nagrom Brisbane Laboratory in writing) for the security interest; and
  - 5.12.3 enabling Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory an irrevocable power of attorney to do anything Nagrom Brisbane Laboratory considers the Customer should do under this agreement. Nagrom Brisbane Laboratory may recover from Customer the cost of doing anything under this clause 5, including registration fees.

## **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, Nagrom Brisbane Laboratory 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. Nagrom Brisbane Laboratory 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;

- 8.1 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 Nagrom Brisbane Laboratory ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by Nagrom Brisbane Laboratory 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 Nagrom Brisbane Laboratory and its staff in connection with travel to and from the Remote Area;
- 8.2 Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;
- 8.3 The Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc) and general tightening of any loose nuts, bolts, belts 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 Nagrom Brisbane Laboratory shall be entitled to:
  - 9.1.1 Terminate this Contract; and/or
  - 9.1.2 Sue for recovery of all monies owing by the Customer; and/or
  - 9.1.3 Repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.
  
- 9.2 The Customer indemnifies Nagrom Brisbane Laboratory in respect of any damages, costs or loss, to the 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 Nagrom Brisbane Laboratory in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 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 Nagrom Brisbane Laboratory), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

## **11. Governing Law**

Nagrom Brisbane Laboratory and the Customer agree that this Contract is governed by the law of the state of Queensland, and the parties submit to the jurisdiction of the courts of that State.

Effective – October 2017.