

## Olympus Australia Pty Ltd – Repair Rental Terms and Conditions

### 1 Definitions and Interpretation

In these terms and conditions:

**Business Day** means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in the capital city of Victoria.

**Business Hours** means the hours between 9:00am and 5:00pm AEST on any Business Day.

**Company** means Olympus Australia Pty Ltd (ABN 90 078 493 295) and its successors and assigns.

**Customer** means the organisation renting the Equipment.

**Equipment** means the equipment rented by the Company to the Customer as listed in the completed Repair Rental Order Form. Equipment Location means as set out in the completed Repair Rental Order Form.

**Fees** means the price as charged by the Company as stated in the Repair Rental Order Form.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**PPSR** means the Personal Property Securities Register established pursuant to the PPSA.

**Secured Property** means all Equipment that is loaned to the Customer by the Company (whether now or in the future).

**Security Interest** has the meaning given in section 12 of the PPSA.

**Start Date** means the start date on which rental equipment is dispatched from Olympus.

### 2 General

- 2.1 The Company agrees to rent the Equipment to the Customer, and the Customer agrees to rent the Equipment, in accordance with these terms.
- 2.2 These terms and conditions are deemed to be incorporated into all contracts for the loan of Equipment by the Customer and will prevail over any inconsistent terms unless otherwise agreed by the Company in writing.
- 2.3 Equipment provided by the Company shall remain at all times, the property of the Company. Equipment is supplied for use by the customer only, at the location specified.

### 3 Prices and payment

- 3.1 Unless otherwise specified in these terms, the Company agrees to rent the Equipment to the Customer as per the fees set out in the Repair Rental Order Form. However, any fees payable by the Customer pursuant to these terms shall be made in the manner and quantum as determined at the discretion of the Company and as advised by the Company from time to time.
- 3.2 The fee for use of Equipment is fixed for the duration of the Customer repair period and the return of the Customer repair to the Customer.

### 4 Rental period

- 4.1 The rental period for the Equipment commences on the Start Date and terminates when the Customer dispatches the Equipment to the Company at the nominated Company return delivery address.
- 4.2 It is the Customer's responsibility to arrange prompt and timely return of the Equipment to the Company.
- 4.3 Should the Customer fail to return the Equipment to the Company within 10 days of the Customer repair completion and return to the Customer, the company will charge a daily rental of AUD\$180 per day until such time as Equipment is dispatched to the Company.
- 4.4 Rental Equipment not returned to the Company after 3 months from date of issue will be invoiced for the List Price of Rental Equipment.

### 5 Termination and right of the Company to obtain possession of the Equipment

- 5.1 The Company reserves the right to enter Customer premises to recover Equipment provided to the Customer under this Agreement, and the Customer hereby agrees to provide access and information to the Company in the course of such Equipment recovery.
- 5.2 In the event that the Company terminates the rental of the Equipment the Customer must immediately return the Equipment to the Company in accordance with clause 3.2
- 5.3 If the Customer does not immediately return the Equipment to the Company in accordance with this clause 3.2 and clause 3.3, the Customer agrees that the Company, its agents, contractors or employees reserves the right (without the necessity of giving notice) to enter any premises of the Customer's where the Equipment is located to recover the Equipment, by any means, which may include disconnecting or severing other goods or equipment where the Equipment is wholly or partially attached to or incorporated in any other goods or equipment. The Customer indemnifies the Company against any claims, loss, damage or costs arising out the repossession of the Equipment.

### 6 Delivery of Equipment

- 6.1 Delivery of Equipment to the Customer will be effected by road express freight to the Customer at the Equipment Location. Delivery is at the expense of the Company and at the risk of the Customer. The Company does not offer airfreight as an option for delivery, unless the Customer pays the entire airfreight cost.
- 6.2 Upon receipt of Equipment, the Customer shall inspect Equipment and provide written notification to the Company of any damage, which may have occurred in transit, within 12 hours of receipt of Rental Equipment.

### 7 Return of Equipment

- 7.1 In the event a Customer Repair is not authorised for completion, Equipment shall be returned to Olympus within 7 days of Customer repair rejection.
- 7.2 Prior to returning the Equipment to the Company, the Customer must clean and sterilise the Equipment in accordance with AS/NZ 4187: 2003 (Cleaning, disinfecting and sterilizing reusable medical and surgical instruments and equipment, and maintenance of associated environments in health care facilities). Where in the Company's sole opinion the Equipment has not been sterilised in accordance with these terms, normal biohazard procedures will be applied by the Company to sterilise the Equipment, and the Customer will be liable to the Company for the biohazard costs including reasonable administrative and labour fees.
- 7.3 Upon return of the Equipment to the Company, the Company will in its sole discretion identify if the Equipment is returned incomplete, damaged and/or not in good working order (Defective Equipment).
- 7.4 All Equipment provided by Olympus is complete and in good working order and condition. Customer shall bear the risk of any theft, loss, destruction of or damage to the Equipment from any cause whatsoever, from delivery to until equipment is received back by Olympus

### 8 Risk

The risk in the Equipment passes to the Customer immediately upon delivery of the Equipment by the Company to the Equipment Location.

### 9 PPSA

- 9.1 The Customer acknowledges that these terms create a Security Interest in the Secured Property, as well as any proceeds received by the Customer from the sale of the Secured Property, for the purposes of the PPSA.
- 9.2 The Customer consents to the Company effecting a registration on the PPSR in relation to the Security Interest arising under or in connection with these terms and the Customer agrees to provide all assistance required by the Company to facilitate registration and/or to enable the Company to exercise its rights in connection with the Secured Property.
- 9.3 For any part of the Secured Property that is "inventory", the Customer agrees not to allow any Security Interest to arise in respect of that Secured Property unless the Company has first perfected its Security Interest in that Secured Property. The Customer agrees to immediately notify the Company of any changes to its name or address.
- 9.4 The Customer will pay on demand any losses arising from, and any costs and expenses incurred in connection with registration of a Security Interest and/or any action taken by the Company to protect its Security Interest in the Secured Property.
- 9.5 The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

**10 Customer covenants**

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The Customer acknowledges and agrees with the Company that:

1. The Equipment will remain at all times the property of the Company and the Customer has no proprietary right or interest in the Equipment or any part of it except as expressly set out in these terms and unless otherwise agreed in writing by the Company.
2. The Customer will not sell, lease, hire, charge, pledge or part with possession of, or permit the creating of a Security Interest in, the Equipment.
3. Subject to the extent permitted by the law and subject to clause 12, the Customer indemnifies the Company for any loss or damage to the Equipment by whomever and howsoever caused.
4. The Customer will not modify the Equipment in any manner.
5. The Customer will use the Equipment at its own risk, skilfully and in a proper manner and only for the purpose and within the capacity for which the Equipment was designed.
6. The Customer will permit the Company or its agents, contractors or employees to enter the Customer's premises where the Equipment is located at all reasonable times in order to inspect the Equipment and carry out repairs and maintenance to the Equipment.
7. The use of the Equipment is for the Customer's use only.
8. The Customer accepts full responsibility for the safekeeping of the Equipment and must guard and insure the Equipment against theft, damage or loss until it has been returned to the Company. In respect of theft, damage or loss of Equipment, however so caused, the Company may in its sole discretion decide that these terms will continue until the Equipment has been replaced or repaired by the Company at the Customer's cost.
9. The Customer agrees that these terms continue to the full extent permitted by law in event that the Equipment is being repaired or replaced due to a default or otherwise.

**11 Employees**

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The Customer warrants to the Company that all employees, contractors or agents of the Customer who use the Equipment are aware of how the Equipment is used and that they will comply at all times with any regulatory requirements in relation to the Equipment.

**12 Guarantees and warranties**

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The Company warrants that:

1. the Equipment is in good working order and fit for the purpose disclosed by the Company at the date of dispatch; and
2. the Equipment complies with all applicable Australian medical standards and regulations.

**13 Limitation of liability and indemnity**

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1. To the extent permitted by law, the Company, its employees, contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profits and loss of revenue) of any kind whatsoever in relation to the Equipment.
2. The Customer acknowledges that it has not relied on any representations, description, or statement made by the Company in relation to the Equipment, or the skill or judgement of the Company, its agents, contractors or employees, as to whether or not the Equipment is fit for a particular purpose.
3. The Customer indemnifies the Company from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered or contributed to by any of the following:
  - (a) the Customer or the Customer's employees' failure or any third party associated with the Customer failure to:
    - i. adequately provide or display safety markings or safety information on or with the Equipment;
    - ii. comply with any law about the Equipment or their use (including for example their sale, marketing, labelling or marking); and/or
    - iii. take any reasonable precaution to bring to the attention of any potential users of the Equipment any dangers associated with the Equipment;
  - (b) the Customer making any statement about the Equipment without the Company's approval;
  - (c) the Customer or any third party's use or operation of the Equipment;
  - (d) any negligence or breach of duty by the Customer or any party or any breach by the Customer or any third party of these terms;

- (e) any workmanship or procedure performed by the Customer or a third party; and
- (f) any misuse, neglect or alteration by the Customer, the Customer agents, the Customer employees or any third party of the Equipment.

4. The limitations of liability in this clause 13 shall survive any termination or expiration of these terms.

**14 The Company's rights**

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Any right that the Company may have under these terms and conditions is in addition to, and does not replace or limit, any other right that the Company may have.

**15 Severability**

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Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of these terms.

**16 Assignment**

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The Customer must not assign its rights or obligations under these terms and conditions without the prior written consent of the Company in writing. The Company may assign its rights and novate its obligations under these terms to another person without the consent of the Customer.

**17 Variation**

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The Company is entitled to vary these terms at any time by giving the Customer 7 days' prior written notice.

**18 Waiver**

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1. A right of the Company may only be waived in writing, signed by the Company.
2. No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
3. A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again.
4. The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

**19 Notice**

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1. A notice, consent or other communication under this agreement is only effective if it is in English, in writing, is signed and is either left at the addressee's address or sent to the addressee by mail, facsimile or email to the address set out in the Schedule or such address notified by a party to the other party. A notice taken to have been received:
  - (a) if posted, 3 Business Days after it is posted;
  - (b) if faxed during Business Hours, on that day a confirmation sheet has been produced (or the next Business Day if it is sent outside Business Hours); and
  - (c) if emailed, at the time of a successful receipt by the recipient (which may be evidence by the transmission of an automatic electronic read receipt).

**20 Governing law**

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1. These terms are governed by the law in force in the state of Victoria, Australia.
2. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the state of Victoria, and any court that may hear appeals from any of these courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.