

# MACHINERY LEASE AGREEMENT

Between Active Engineering Solutions Limited trading as Active VMA and the Lessee

# ACTIVE VMA

PO Box 7264, Rotorua 3042, New Zealand

Office: 07 345 5609

Email: admin@activevma.co.nz

ACTIVEVMA.CO.NZ



Lessee Details	Lessees Person of Authority	Active VMA (Lessor)
Name:	Name:	Name: Active Engineering Solutions Limited trading as Active VMA
Address:	Position:	Address: 3-7 McCloskey Road Rotorua
Phone:	Mobile:	Phone: +64 7 345 5609
Email:	Email:	Email: ross@activevma.co.nz

## Background

The Lessor has agreed to lease to the Lessee the Machinery described on this page. The Machinery will be provided by the Lessor in accordance with the Standard Terms and Conditions in the Schedule of this Agreement. The Lessee will pay the Lessor in accordance with the terms described on this page, and otherwise in accordance with the Standard Terms and Conditions in the Schedule to this Agreement.

## Term

Commencement Date: \_\_\_\_\_

Minimum Period and/or Renewal Date: \_\_\_\_\_

## Insurance

Name of Insurer or agent: \_\_\_\_\_  
(Please attach a copy of the Certificate of Insurance to this Agreement)

## Description of Machinery

## Consumables or Servicing not included in Hireage Fees

\_\_\_\_\_ or as otherwise detailed in clause 3.7 of the attached Standard Terms and Conditions

## Hireage Fees

Monthly Hireage Fee (NZ\$) GST excl \_\_\_\_\_  
or as otherwise detailed in the attached Standard Terms and Conditions.

## Purchase Option

Purchase Price (GST exclusive) \_\_\_\_\_  
or as otherwise detailed in clause 11 of the attached Standard Terms and Conditions

Signed for and on behalf of the Lessee by:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Date

Signed for and on behalf of Active VMA:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Date

This Agreement between the Lessee and Active VMA consists of this cover page together with the attached Standard Terms and Conditions. To accept, please sign and return to Active VMA via email or post

# SCHEDULE - STANDARD TERMS AND CONDITIONS

- 1. Definitions**
  - 1.1 In this Agreement, unless the context otherwise requires the following terms will have the following meanings:

*Agreement* means this Machinery Lease Agreement and all schedules, and annexures to it.  
*Commencement Date* means the start date described on the front page of this Agreement or as otherwise agreed by the parties.  
*Hireage Fees* means the sum due by the Lessee as set out on the front page of this Agreement.  
*Lessee* means as detailed on this front page of this Agreement.  
*Lessee's Scheduled Servicing* means any servicing intervals referred to in the Machinery's owner manual of 50-hours or less.  
*Lessor* means Active Engineering Solutions Limited trading as Active VMA.  
*Lessor's Scheduled Servicing* means any servicing intervals referred to in the Machinery's owner manual of greater than 50-hours  
*Machinery* means the plant, equipment or machine(s) described on the front page of this Agreement.  
*Term* means as detailed on the front page of this Agreement. The Term may be extended by agreement of the parties.
- 2. Interpretation**
  - 2.1 In this Agreement, unless the context otherwise requires:

References to schedules are references to this schedule;  
The plural includes the singular and vice versa;  
Any party to this Agreement includes its successors and permitted assignees and transferees;  
A statute includes that statute as amended and includes any statute replacing that statute, and any regulations, orders in council and other instruments issued or made under that statute;  
The word including, and other similar words do not imply any limitation;  
A person includes any individual, firm, corporation, association of persons (corporate or not), trust, government department or municipal authority (in each case whether or not having separate legal personality);  
Derivatives of any defined word or term will have a corresponding meaning;  
A reference to any document or agreement includes a reference to any document or agreement as amended, novated or replaced; and  
An obligation not to do something includes an obligation not to suffer, permit or cause that thing to be done.
- 3. Agreement**
  - 3.1 This Agreement will commence on the Commencement Date.
  - 3.2 This Agreement will continue in full force and effect until the Lessee has fulfilled its payment obligations as detailed in clause 6.0.
  - 3.3 The Lessee will take possession of the Machinery on the Commencement Date.
  - 3.4 The parties acknowledge that the Machinery is acquired by the Lessee for the purpose of leasing the Machinery only.
  - 3.5 The Lessor makes no representation or warranty concerning the condition or performance of the Machinery.
  - 3.6 All repairs and costs associated with expected fair wear and tear, along with the Lessor's Scheduled Servicing of the Machinery will be at the Lessor's expense.
  - 3.7 The Lessee's Scheduled Servicing maintenance costs, and any/all costs for the repair and replacement of parts (including any repairs or replacements necessary as a result of accidental damages, misuse or abuse) for the Machinery will be at the Lessee's expense (fair wear and tear excepted).
  - 3.8 All repairs and or replacements undertaken by the Lessee as per clause 3.7 must be:
    - (a) Authorised by the Lessor prior to commencement; and
    - (b) Undertaken by approved service providers, and using genuine parts only.
  - 3.9 During the Term of this Agreement the legal title and all interests in the Machinery will remain solely with the Lessor.
- 4. Lessee warranties**
  - 4.1 The Lessee warrants that:
    - (a) It has authority to enter into this Agreement with the Lessor;
    - (b) It has no reason to doubt the ability of the Lessee to pay all sums due under this Agreement as they become due for payment; and
    - (c) No person, nor governmental authority, has any right or claim which could prevent the Lessee at any time, from complying with the terms of this Agreement.
- 5. Lessor warranties and exclusions**
  - 5.1 The Lessor warrants that:
    - (a) It is the registered owner of the Machinery;
    - (b) The Machinery is fully operational and fit for purpose;
    - (c) There is no contractual or legal right of any third party which could prevent or prejudice the use of the Machinery by the Lessee; and
    - (d) Except so far as provided in this Lease, the Lessor warrants that it will not interfere with Lessee's use of the Machinery, nor allow anyone else to do so.
  - 5.2 The Lessor does not make any representation or warranty concerning:
    - (a) Any defect that may be present or may arise at the time of delivery of the Machinery; or
    - (b) Any future condition or performance of the Machinery.
- 6. Payment and accounts**
  - 6.1 The Lessee will pay the Hireage Fees by the 20th of the following invoice month throughout the Term of this Agreement.
  - 6.2 All payments made by the Lessee must be made in full, without any set-off, counter claim or deduction.
  - 6.3 If any sum payable is not paid prior to or on the payment date in clause 6.1, the Lessee shall pay to the Lessor interest on the sum payable, calculated on a daily basis and compounded quarterly from the due date until payment in full at the rate of 5% per annum above the Bank of New Zealand cash rate from time to time.
- 7. Delivery and possession**
  - 7.1. The Lessor will, at the cost and expense of the Lessee, assign to the Lessee the benefit of all manufacturers' guarantees in respect of the Machinery.
  - 7.2. Immediately on possession of the Machinery, the Lessee shall fully examine the Machinery to satisfy itself that the Machinery is in good order and in safe, clean and usable condition.
  - 7.3. In the event there is any defect in the Machinery, the Lessee shall immediately inform the Lessor of such defect. If no notice of defect is received by the Lessor within 48 hours from time of possession, it will be deemed accepted by the Lessee that the Machinery is in good working order and acceptable to the Lessee.
- 8. Lessee's obligations in respect of the Machinery**
  - 8.1. The Lessee must keep the Machinery in good repair and condition.
  - 8.2. The Lessee must obtain and maintain all permits, licences and authorities to operate the Machinery.
  - 8.3. The Lessee will ensure that the Machinery is operated only by properly skilled and trained personnel, and will follow the operating instructions of the manufacturer.
  - 8.4. The Lessee will not remove, alter or modify any plates or makings affixed on the Machinery, indicating the Lessor's interest and ownership in the Machinery.
  - 8.5. The Lessee will not make any alteration, addition or improvement to the Machinery without the written consent of the Lessor.
  - 8.6. The Lessee must keep and maintain accurate records of all maintenance carried out on the Machinery.
  - 8.7. The Lessee will not sell or sub-lease the Machinery, nor create any charge or lien over the Machinery without the prior written consent of the Lessor.
  - 8.8. The Lessee will not allow the Machinery to be used by any other person not associated with Lessee's business, or permitted by the Lessee to use it.
  - 8.9. If the Machinery is lost or damaged, the Lessee will immediately notify the Lessor. The Lessor may then choose whether the Lessee must immediately make good such damage, or that the Lessee assign to the Lessor all the Lessee's rights, benefits and claims under the relevant policy of insurance.
- 8.10 The Lessee is responsible for payment of all taxes, licence fees and other charges due to any proper authority in respect of the Machinery.
- 8.11 At the expiry of this Agreement, the Lessee will hand over the Machinery to the Lessor in good repair and fully operational, working order.
- 9. Inspection of the Machinery**
  - 9.1. At any time during the Term of this Agreement the Lessor has a right to inspect the Machinery.
  - 9.2. If during any inspection the Lessor discovers any material defects in the Machinery, the Lessee must make good that defect within 24 hours after completion of the inspection.
- 10. Insurance**
  - 10.1. During the Term of this Agreement, the Lessee will at its own cost insure the Machinery against all risk under a comprehensive insurance policy, including third party liability insurance, without restriction or excess.
  - 10.2. The Lessee will ensure that the name of the Lessor is noted on the Certificate of insurance as a first ranking interested party/registered owner.
  - 10.3. The Lessee will pay all insurance premiums punctually, and will produce to the Lessor on request copies of the insurance policies together with evidence of payment of the premiums.
- 11. Purchase Option**
  - 11.1. At any time during the Term of this Agreement the Lessee will have the option to purchase the Machinery from the Lessor by paying the sum detailed on the front page of this Agreement, less any payments made to date under this Agreement (Purchase Price).
  - 11.2. On payment of the Purchase Price, this Agreement and all obligations and warranties of the parties will terminate.
- 12. Default by the Lessee and termination**
  - 12.1. At any time during the Term this Lease may be terminated if there is Default Event.
  - 12.2. For the purposes of this Agreement a Default Event will occur, if:
    - (a) Any representation or warranty made by the Lessee is found to be incorrect;
    - (b) Any Machinery is lost, destroyed, or damaged to such an extent as to make it unfit for use, for any reason;
    - (c) The Hireage Fees remain outstanding for a period of more than 14 days from the due date of payment specified in Clause 6,
    - (d) Any other money payable to the Lessor by the Lessee remains unpaid for a period of 14 days after notice of demand has been received by the Lessee,
    - (e) The Machinery is used by the Lessee for illegal purposes, or for any other purpose not envisaged under this Agreement;
    - (f) The Lessee makes an arrangement for the benefit of its creditors; or
    - (g) The Lessee or any other person takes any action indicating that the Lessee is insolvent.
  - 12.3. When a Default Event occurs:
    - (a) This Lease will terminate automatically;
    - (b) The Lessee must inform the Lessor immediately;
    - (c) The Lessor may make whatever arrangements it decides in order to re-take possession of the Machinery;
    - (d) Every expense of the Lessor arising from Default Event will be payable by the Lessee.
- 13. Termination**
  - 13.1 When this Agreement terminates, the Lessee shall deliver the Machinery to 3-7 McCloskey Road, Rotorua within 48 hours.
  - 13.2. If the Lessee is prevented by law from delivering the Machinery to the Lessor, or if the Lessor so decides in any event, the Lessor may collect the Machinery. If it does so, all cost, in connection with the Lessor taking possession, transporting and storing the Machinery will be payable by the Lessee.
  - 13.3. The Lessee shall pay all expenses and costs incurred by the Lessor in enforcing its rights under this Agreement.
  - 13.4. In accordance with the Lessee's obligations under clause 8.11, any/all costs of restoring the Machinery to fully operational, working order on return by the Lessee or on termination shall be payable by the Lessee.
- 14. Security**
  - 14.1 This Agreement will operate to create Security Interests, as defined in the Personal Property Securities Act 1999 (PPSA), in favour of the Lessor in the Machinery and all of the Lessee's present and after acquired property (including goods, money, accounts receivable, intangibles, negotiable instruments, documents of title and investment securities) to the value of any debt owed by the Lessee to the Lessor.
  - 14.2 The Lessee acknowledges that the Lessor may at any time register a Financing Statement/s on the Personal Property Securities Register to protect the Lessor's Security Interest described above.
  - 14.3 The Lessee agrees to do all acts necessary and provide the Lessor on request all information the Lessor requires to register such a Financing Statement/s. You waive all rights to receive a copy of any verification statement of a Financing Statement/s.
- 15. Limitation of liability**
  - 15.1 Except in the case of death or personal injury, and as far as the law allows, the maximum limit of the Lessor's liability to the Lessee, whether in contract, tort, negligence, breach of statutory duty or otherwise shall be \$1.00 in aggregate, over the Term of this Agreement and after it has ended.
  - 15.2. The Lessor will not be liable to the Lessee, for any loss or expense which is:
    - (a) Indirect or consequential loss;
    - (b) Economic loss or other loss of turnover, profits, business or goodwill.
  - 15.3. Nothing in this Agreement excludes liability for fraud.
- 16. Assignment**
  - 16.1. This Agreement is binding upon any successor, permitted assignee or transferee of either party.
  - 16.2. The Lessee will not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lessor, which consent may be withheld without giving a reason.
  - 16.3. The Lessor may assign its rights and obligations to any other person at any time during the Term of the Agreement.
- 17. Indemnity**
  - 17.1. The Lessee agrees to indemnify the Lessor against all costs, claims and expenses arising directly or indirectly from:
    - (a) Its failure to comply with all relevant laws;
    - (b) Its breach of this Agreement;
    - (c) Any act, neglect or default by any agent, employee, licensee of the Lessee;
    - (d) A contractual claim arising from Lessee's use of the Machinery; and/or
    - (e) A contractual claim arising from the Lessee's non-payment of the Hireage Fees or any other payment due under this Agreement.
- 18. Miscellaneous matters**
  - 18.1. No amendment or variation to this Agreement is valid unless in writing, signed by each of the parties or its authorised representative.
  - 18.2. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
  - 18.3. The parties agree that electronic communications will satisfy any legal requirement that such communications be in writing.
  - 18.4. Any communications to be served by way of notice on either party by the other shall be delivered by hand or sent by post or recorded delivery or by e-mail.
  - 18.5. In the event of a dispute arising between the parties in relation to this Agreement, the parties undertake to firstly attempt to settle the dispute by engaging in mediation before referring any dispute to an Arbitrator or the Courts.
  - 18.6. In the event of any conflict between any term of this Agreement and the provisions of the Constitution of a limited company, that is a party to this Agreement, or any comparable document intended to regulate any other corporate or collective body, then the terms of this Agreement shall prevail.
  - 18.7. The validity, construction and performance of this Agreement shall be governed by the laws of New Zealand.