
WEATHER STATION LEASE AGREEMENT



TERMS & CONDITIONS OF LEASE OF METEOROLOGICAL MEASUREMENT EQUIPMENT.

1. Defined Terms

“Customer” means the customer set out in section A above;

“Equipment” means the Lease equipment supplied by Metris to the customer as set out in section A above or as amended by both parties from time to time by agreement in writing;

“Metris” means Metris Limited, its subsidiaries and includes its permitted assigns and agents.

“Monthly Lease” means the amount payable by the Customer as set out in section B of this agreement;

2. Lease of Equipment

2.1 Metris agrees to lease the Equipment to the Customer on the terms and conditions contained in this agreement such agreement to come into effect if approved by Metris on the date set out in section D above.

2.2 Where this lease is entered into by the Customer through a billing agent of Metris, the Customer will pay the agent on Metris’ behalf and the agent’s own customer terms will apply to the Customer’s payment obligations.

3. Term

3.1 This agreement shall be for an initial term of 12 months from the date this agreement is approved by Metris.

3.2 After the initial term, this agreement shall continue on a month by month basis until terminated by either party in accordance with this agreement.

4. Conditions of Use

4.1 The Customer must not remove or allow the Equipment to be removed from the Customer’s premises except as may be authorised in writing by Metris prior to any removal or relocation.

4.2 The Customer must give Metris a minimum of one month notice in writing if it intends to vacate the premises.

4.3 The Customer shall reasonably ensure that the Equipment is kept safe and secure at all times and shall not do or permit to be done anything which might or could prejudice any insurance or which may allow an insurer to decline any claim.

4.4 The Customer shall notify Metris of any loss or damage to the Equipment within 24 hours of such loss or damage occurring or upon the Customer discovering such loss or damage. Damage due to Customer action (such as accident with vehicles or machinery, or wilful damage by Customer employee or contractor) shall be the sole responsibility of the Customer.

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4.5 The Customer shall permit Metris or its agents to enter upon the Customer's premises for the purpose of inspecting the Equipment or to carry out any repairs and maintenance in accordance with clause 9 of this agreement at any time or to remove the Equipment if this agreement is terminated for any reason.

4.6 Metris may, at its sole discretion, charge the Customer for all reasonable costs and expenses incurred by Metris to install the Equipment as agreed in section B.

4.7 The Customer shall take all reasonable precautions to protect the equipment from damage by livestock by supplying and installing adequate fencing and/or other barriers to prevent livestock from physically interfering with equipment. All costs of repairs/replacement arising from damage of equipment due to livestock shall be borne by the Customer.

4.8 The Customer shall not make or attempt to make any modifications to the equipment, remove the SIM card, or attempt to download, copy or reverse engineer any software or firmware within the device or equipment.

4.9 The Customer shall be responsible for data charges if the SIM card or modem is used in, or used in conjunction with, any other device.

4.10 The customer shall not attempt or allow the attempted use of the SIM card or modem to access computer servers or other computer equipment owned by, or under the control of, Metris.

4.11 Metris provide you with access to real-time weather data on our website. Weather Data are on an "as is" basis based on professional, scientifically based industry recognised standards and methodology, and using equipment and programs that are fit for purpose and meet our stated specifications, and Metris and its agents makes no representation or warranty as to the accuracy, completeness, currency or reliability of the information. To the extent permitted by law, Metris and its agents expressly disclaim all warranties of any kind, whether express or implied. Metris and its agents will not be liable in contract, tort (including negligence) or otherwise to users of the data for any direct, special, indirect or consequential loss or damage (including loss of profits or loss of data) arising out of or in connection with the service. Metris and its agents total liability to users (if any) in connection with this website and Terms of Use will be limited to the re-supply of the information.

4.12 Users acknowledge that, from time to time, Metris may conduct routine and other maintenance of the system, and that during the conduct of such maintenance users will not be able to access the System, or use some or all of its functionality.

4.13 It is your responsibility to ensure that you have appropriate hardware and software, system configuration and Internet access to access to use the Metris data portal and weather forecasts.

5. Payment

The Customer shall pay Metris the Monthly Lease in advance on the 20th day of each month, or where there is a billing agent the Customer will pay the billing agent. For the avoidance of doubt the initial Monthly Lease payment shall be due prior to delivery of the Equipment to the Customer's premises.

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5.2 The Customer shall not be entitled to a refund of any Monthly Lease paid in advance if the Equipment is returned to Metris or removed by Metris for any reason.

5.3 Metris may alter the Monthly Lease, after the initial 12-month lease period, from time to time by notice in writing to the Customer.

5.4 If the Monthly Lease is not paid on the due date, then without prejudice to any other remedies available to Metris:

(a) Metris may cancel this agreement immediately.

(b) Metris and its agents may charge Interest on any amount overdue which shall be calculated on a daily basis at a rate of 2.5% per month (“default interest”). Default interest shall accrue from the date payment was due until the date payment is received by Metris.

5.5 The Customer shall be responsible for all costs and disbursements incurred by Metris and its agents in recovering any outstanding monies owed to Metris and its agents or incurred by Metris and its agents in enforcing its rights under this agreement. Such costs and disbursements include, but are not limited to all debt collection costs and solicitor costs and disbursements.

6. Ownership and Assignment

6.1 The Customer acknowledges that Metris at all times retains absolute legal and beneficial ownership of the Equipment which is leased to the Customer for the purpose of making meteorological measurements and that the Customer does not obtain any equitable or legal interest in the Equipment whatsoever.

6.2 Metris may transfer its rights, title and interest in the Equipment or this Agreement in part or in whole at any time.

6.3 The Customer must not, and must not attempt to:

(a) sell, assign, pledge, mortgage, charge, encumber, hire, license, or part with possession or permit any lien to exist in respect of the Equipment or grant any security interest over the Equipment to any third party; or

(b) transfer or assign any right or obligation under this Agreement without Metris’ prior written approval.

7. Risk

7.2 Risk of loss or damage to the Equipment passes to the Customer when the Equipment is dispatched to the Customer and passes back to Metris when the Equipment is received by Metris in good order and condition (fair wear and tear accepted).

7.3 Delivery and return of the Equipment is at the Customer’s cost and risk.

8. PPSA

8.1 The Customer:

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(a) agrees that the lease of the Equipment under this agreement creates a security interest over the Equipment, and all of the Customer's present and future rights in relation to the Equipment and any proceeds, in favour of Metris that may be registered on the personal property securities register under the Personal Properties Securities Act 1999 ("PPSA");

(b) must provide all information and do all things including the execution of documents as Metris may require for the purpose of ensuring that Metris has a perfected first ranking security interest in the Equipment and any proceeds under the PPSA;

(d) agrees that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the enforcement by Metris of any security interest created or provided for by this agreement to which Part 9 of the PPSA applies, and waives any right it may have under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA on such enforcement; and

(e) waives any right it may have to receive from Metris a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to the Equipment.

9. Repairs and Maintenance

9.1 Metris shall be responsible for repairs and maintenance of any Equipment arising from normal and reasonable wear and tear.

9.2 The Customer shall be responsible for any repairs and maintenance required due to misuse or negligence or accident by the Customer.

9.3 The Customer shall notify Metris of any repairs and maintenance required.

9.4 The Customer shall not make any additions or alterations to the Equipment or carry out any repairs or maintenance without the prior written consent of Metris.

10. Safety

10.1 The Customer shall ensure that it and its premises complies with all applicable laws, regulations and safety procedures relating to the operation and use of the Equipment including, but not limited to, all environmental and safety laws and regulations.

10.2 The Customer shall ensure that all Equipment remains under its control.

11. Indemnity

The Customer indemnifies Metris and its agents from any claim made by any third party in respect of any damage or loss to any third party whilst the Equipment is located on the Customer's premises.

12. Termination

12.1 Metris may terminate this agreement immediately if the Customer is in breach of any clause of this agreement. Where the breach is capable of remedy Metris may give the Customer 14 days' notice to remedy such breach and if not remedied may immediately terminate this agreement.

12.2 Either party may terminate this agreement after the initial term by giving the other party one months' notice in writing.

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12.3 Upon termination of this agreement for any reason Metris or any agent of Metris shall be entitled to enter upon the Customer's premises for the purpose of removing the Equipment.

12.4 The Customer shall be responsible for ensuring that upon termination of this agreement the Equipment is in a working condition.

12.5 Metris may, at its sole discretion, charge the Customer for all costs and expenses incurred by Metris to remove the Equipment. The Customer shall pay Metris for any such costs and expenses within 5 working days of receipt of an invoice from Metris.

13. General Terms

13.1 Mediation

If a dispute arises, the parties will try to settle the dispute by mediation by a single mediator, before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other ("mediation notice"). The mediator should be agreed upon by the parties, but if the parties cannot agree on a mediator within fourteen days after service of the mediation notice, then either party may petition the President for the time being of the Auckland District Law Society, who shall appoint the mediator.

13.2 Waiver or variation

No waiver or variation of this agreement will be effective unless notice is given in writing to the Customer and signed by an authorised person from Metris.

13.3 Governing law

This agreement shall be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between the parties. The parties hereby nominate as the initial forum for the determination of any judicial proceedings be determined in the District/High Court at Auckland.

13.4 The Privacy Act

The Customer and any guarantor authorise Metris to collect and hold personal information from any source Metris consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. The Customer is advised that it has a right of access to any personal information about the Customer held by Metris and may request the correction of such personal information.