

## General Terms of Hire for Equipment

In these General Terms of Hire for Equipment (Terms) equipment means any item of plant or equipment (including any kind of vehicle) listed in a Hire Schedule and includes any parts and accessories.

The owner and the hirer enter into these Terms to provide for the hiring of all equipment requested by the hirer from time to time. The owner may decline to hire equipment in its sole discretion. If the hirer wishes to hire equipment, the owner will provide the hirer with a hire schedule, order, delivery docket or similar document (Hire Schedule) in the form determined by the owner from time to time. The Hire Schedule may list the particular equipment taken for hire, applicable charges, hire commencement and termination date, special conditions, and such other information and provisions as the owner requires.

These Terms specify the terms applicable to each such hire. Each Hire Schedule shall not constitute a separate hire agreement but must be read together with and form part of these Terms incorporating all of the provisions of these Terms. These Terms, together with the Hire Schedule, any credit account application, and any special conditions, shall be known collectively as the Hire Contract.

### Displacement

#### **1 Hire of equipment**

- 1.1 The hire will commence from the commencement date specified in the Hire Schedule and continue for the hire period specified in the Hire Schedule.
- 1.2 The hirer is entitled to use the equipment for the hire period subject to these Terms. Any extension of the hire period must be expressly agreed to by the owner before the expiration of the hire period.
- 1.3 The hirer agrees to return the equipment to the address identified by the owner on or before the end of the hire period as outlined in the Hire Schedule and acknowledges that failure to do so may be immediately reported to the police.

#### **2 No PPS lease without owner agreement**

Despite anything else in this Hire Contract, without the express written consent of the owner, the hire period (including any option or extension of it) cannot be longer than two years (or any other period that is the time threshold for a PPS lease under the PPS Law (as defined below)).

#### **3 Payment for hire**

- 3.1 The hirer agrees to pay the owner all fees specified in the Hire Schedule (Fees) for the use of the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, environmental and other levies, cleaning, or freight and other charges relevant to these Terms, the Hire Contract, and the hire.
- 3.2 Unless the Hire Schedule or an invoice states otherwise, the hirer will pay the owner the Fees within 30 days from the invoice date. If the hirer does not pay the amount of invoiced Fees by the payment due date, an administrative fee of 5% per month on outstanding Fees may be imposed to cover the costs to the owner from the late payment.



- 3.3 Equipment not returned on time and in accordance with these Terms will be subject to a continuance of the Fees and other charges until return or pick-up (if agreed) is complete, but this will not constitute an extension of the hire period.
- 3.4 The owner may agree to make equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to the owner any charges and expenses incurred in such delivery, installation and/or collection. The owner will use its reasonable endeavours to deliver the equipment at the requested time but will not be liable to the hirer for a late delivery or non-delivery.
- 3.5 A reasonable cancellation fee may be charged by the owner where equipment has been reserved by booking and the hirer cancels the booking without reasonable notice, or fails to take delivery of the equipment.
- 3.6 The owner may charge the hirer a reasonable fee for accepting payment by credit card and this may be up to the applicable permissible charge under legislation.
- 3.7 Unless otherwise stated, the hire charges payable by the hirer in relation to the equipment will be as stated in the Hire Schedule. The owner reserves the right at any time to revise the Fees by providing the hirer with notice. However the Fees cannot be increased during an agreed fixed term hire unless the hirer agrees to the increase. Where the increase in Fees applies to equipment already on hire by the hirer, the hirer may terminate the hire and return the equipment to the owner.

#### **4 Damage waiver**

- 4.1 Upon payment by the hirer up to date of the damage waiver fee specified in the Hire Schedule, the owner waives any claim it may have against the hirer for the cost of repairs or replacement of the equipment due to damage occurring during its use under these Terms. The limitation is subject to payment of any excess payable by the hirer, and these Terms. This clause in no way entitles the hirer to, or implies the availability of, compensation from the owner for any liability incurred by the hirer to any third party in relation to the use of the hired equipment.
- 4.2 This clause ceases to operate at the end of the hire period unless an extension by the owner is granted in writing and an additional agreed fee is paid.
- 4.3 This clause will not apply to loss or damage which arises from:
- (i) breach of this agreement where the breach increased the risk of or causes the loss or damage;
  - (ii) breach of any statute or other law or regulations in connection with the use of the equipment by the hirer where the breach increased the risk of or causes the loss or damage;
  - (iii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
  - (iv) theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
  - (v) lack of lubrication or non-adherence to other normal maintenance requirements that are required by, or could reasonably be expected of, the hirer under these Terms;
  - (vi) disregard for instructions given to the hirer by the owner in respect of the proper use of the equipment or in contradiction of the manufacturer's instructions if supplied with the equipment at the commencement of hire;
  - (vii) unexplained disappearance or wrongful conversion of the equipment;



- (viii) theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where that security is not properly used by the hirer to secure the equipment whilst it is left unattended;
- (ix) loading or off loading equipment from maritime vessels, transportation of equipment on maritime vessels or the use of equipment on any wharf or bridge or over any body of water;
- (x) loss or damage to motors or other electric appliances or devices caused by overloading or artificial electrical current, including use of under rated extension leads or electrical powered tools and machines including automatic voltage regulators; or
- (xi) loss or damage to third parties whilst the hirer is driving and/or towing the equipment.

## **5 Use, operation and maintenance**

- 5.1 The hirer agrees that the use of the equipment carries with it inherent dangers and risks of injury and the hirer agrees to accept all those dangers and risks.
- 5.2 The equipment must not be used by anyone other than the hirer without the express permission of the owner.
- 5.3 The hirer will ensure that all persons installing, maintaining, operating or erecting the equipment are instructed in its safe and proper use and where required hold valid proof of training, or are fully licensed to install, maintain, or operate it.
- 5.4 The hirer agrees to operate, maintain, store and transport the equipment in a proper manner and where required strictly in accordance with any instruction provided by the owner and with due care and diligence.
- 5.5 The hirer agrees that the equipment will only be used for its intended purpose and operated, maintained, and stored in accordance with any manufacturer's instructions and recommendations.
- 5.6 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.
- 5.7 The hirer must ensure the equipment is returned to the owner clean of all foreign matter, or agrees to a reasonable cleaning fee being charged by the owner.
- 5.8 The reasonable costs of fuel or other consumables provided by the owner and used by the hirer are to be paid to the owner when required by the owner.

## **6 Hirer's obligations**

- 6.1 The hirer agrees that:
  - (i) the equipment will be used in accordance with these Terms and any special conditions outlined in the Hire Schedule.
  - (ii) the particulars in the Hire Schedule provided by the hirer are correct in every respect and are not misleading in any way including, without limitation, by omission.
  - (iii) the hirer and/or all its relevant personnel hold a valid current driver's licence, operating licence or permit valid for the type of equipment hired.
  - (iv) the equipment will not be used for any illegal purpose.
  - (v) the hirer's vehicle is suitable for towing the equipment if required.
  - (vi) the hirer will not, without prior written consent of the owner, tamper with, repair or modify the equipment in any way, or permit another to do so.
  - (vii) the hirer will not remove the equipment from the State or Territory in which it is hired without the prior approval of the owner.



## **7 Liability**

- 7.1 To the full extent permitted by law and except to the extent arising from actions or omissions of the owner or from things beyond the reasonable control of the hirer, the hirer indemnifies the owner from all claims and demands on the owner arising out of the use or misuse of the equipment under the hire, including in respect of injuries to or deaths of persons and any damage to property.
- 7.2 To the full extent permitted by law the owner excludes any implied or imposed guarantee, term, condition, warranty, undertaking, inducement or representation in relation to these Terms (Provision). To the extent to which the owner is not able to exclude a Provision (Non-Excludable Provision), and the owner is able to limit the hirer's remedy for a breach of the Non-Excludable Provision, then the owner's liability for breach of the Non-Excludable Provision is limited to (at the owner's election):
- (i) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and
  - (ii) in the case of services, the supplying of the services again (or the payment of the cost of doing so).
- 7.3 Subject to the owner's obligations under the Non-Excludable Provisions, the owner is not liable to the hirer or any third party for any indirect loss or consequential loss arising in connection with this Hire Contract or the Terms or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if the owner has been advised of the possibility of such loss.

## **8 Loss, damage or breakdown of plant and equipment**

- 8.1 Subject only to the provisions for damage waiver in these Terms:
- (i) the hirer must return the equipment in the same state and condition as it was when the hirer takes possession, except for fair wear and tear.
  - (ii) the hirer is liable for any damage to the equipment during the hire period and for the payment of the full new replacement cost of any equipment not returned to the owner.
- 8.2 If there is a breakdown or failure of the equipment the hirer shall notify the owner immediately.

## **9 Termination**

- 9.1 Without prejudice to any other remedies the owner may have against the hirer and notwithstanding the period of hire specified in the contract, the Hire Contract, these Terms, and any hire under these Terms, may be terminated by the owner as follows:
- (i) immediately and without giving prior notice if the owner reasonably considers there is an imminent risk of loss, damage, or disappearance of the equipment;
  - (ii) unless the owner agrees otherwise at the hirer's request, upon giving the hirer 14 days' notice of termination at any time during the hire period. If the hirer terminates these Terms prior to the completion of the hire period, and the hirer was provided with a discounted rate based on the original hire period, the hirer agrees to pay the owner the rate that would have applied to the reduced period of hirer, as reasonably determined by the owner; or
  - (iii) immediately and without prior notice if the hirer has a winding-up petition presented against it, or is wound up, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if it is placed under administration or process of restructuring, or if it ceases to carry on business.



- 9.2 The owner may terminate this agreement at any time if the hirer breaches the agreement and the breach cannot be, or is not, rectified within 7 days after the owner sends written notice to the hirer specifying the breach and requesting rectification. The owner may also terminate these Terms and any hire at any time if the hirer commits a material breach of these Terms.
- 9.3 The owner may seek compensation from the hirer for a breach of these Terms including for loss of revenue whilst the equipment is not able to be hired to others (for example due to its damage or loss) and/or loss of rental that would have been earned had termination not occurred. This does not limit the owner's other rights at law.
- 9.4 If these Terms are, or any hire under these Terms is, terminated under this clause, the hirer must immediately pay all outstanding Fees to the owner and must return the equipment to the owner.

## **10 Title to equipment**

- 10.1 The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the equipment.
- 10.2 The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, the equipment.

## **11 Repossession and remedies on default**

- 11.1 The owner may retake possession of the equipment if:
- (i) the hire is terminated or becomes liable to be terminated by the owner;
  - (ii) the hirer does not pay amounts owing to the owner when due.
- 11.2 In the case of repossession due to a breach of these Terms, the hirer grants the owner permission to enter any premises where the equipment listed in the Hire Schedule is situated to disconnect, decommission and/or remove that equipment.
- 11.3 In addition to the owner's right to retake possession the owner may, following any termination of these Terms or any hire, sue for recovery of any damages or charges or loss suffered by the owner and/or to cancel any insurances effective in respect of the equipment hired.

## **12 Completion of the hire**

- 12.1 Return of the equipment must be by the date and time outlined in the Hire Schedule. The owner may agree a date where the equipment is "off-hire".
- 12.2 Where the off-hire date is agreed the owner will arrange to pick up the equipment within a reasonable period after a request to do so and will issue the hirer with an off-hire number on request. The hirer agrees to maintain responsibility and liability for the equipment whilst it is awaiting pick-up.

## **13 General**

- 13.1 The covenants, agreements and obligations contained in these Terms will not merge or terminate upon the termination of these Terms or any hire, and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 13.2 If any provision of these Terms is wholly or partly invalid, unenforceable, illegal, void or voidable, these Terms must be construed as if that provision or part of a provision had been severed from



these Terms and the parties remain bound by all of the provisions and part provisions remaining after severance.

- 13.3 The rights and remedies in these Terms are cumulative and not exclusive of any rights or remedies provided by law.
- 13.4 Each person signing the Hire Schedule or the Hire Contract as an authorised officer or agent of the hirer warrants to the owner that, as at the date of signing, that person has full authority to sign on behalf of that party.
- 13.5 If the hirer comprises more than one person, the obligations of those persons as the hirer are joint and several.
- 13.6 Unless expressly agreed otherwise by the owner in writing, these Terms override and supersede all prior communications, negotiations, arrangements and agreements, either oral or written between the parties including, without limitation, any terms and conditions contained in a purchase order from the hirer.
- 13.7 These Terms are governed by the laws of Victoria and each party submits to the exclusive jurisdiction of the Courts of Victoria.

#### **14 PPS Law**

- 14.1 This clause applies to the extent that this agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law). References to PPS Law in these Terms include references to amended, replacement and successor provisions. The owner may register its security interest. The hirer must do anything (such as obtaining consents and signing documents) which the owner requires for the purposes of ensuring that the owner's security interest is enforceable, perfected, first priority and otherwise effective under the PPS Law.
- 14.2 The owner may recover from the hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 14.3 The rights of the owner under these Terms are in addition to and not in substitution for the owner's rights under other law (including PPS Law) and the owner may choose whether to exercise rights under these Terms, and/or under other law, as it sees fit.
- 14.4 To the extent that Chapter 4 of the PPS Law applies to the security interest under these Terms, and the PPS Law requires the owner to give a notice or allow time or provide any account to the hirer the hirer and owner agree that to the extent allowable under the PPS Law that requirement does not apply and, for the purposes of section 115 of the PPS Law it is "contracted out" of these Terms in respect of all goods to which that section can be applied.
- 14.5 The hirer agrees that in addition to its PPS Law rights, the owner will, if there is default by the hirer, 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 these Terms and the hirer agrees that the owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 14.6 The hirer 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. The owner and the hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The hirer 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 purposes of allowing the owner the benefit of section 275(6)(a) and the owner will not be liable to pay damages or any other compensation or be subject to injunction if the owner breaches this sub-clause.



## **15 Security interests and sub-hire**

- 15.1 The hirer must not create, 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 the owner.
- 15.2 The hirer must not lease, hire, bail or give possession ('sub-hire') of the equipment to anyone else unless the owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the owner and must be expressed to be subject to the rights of the owner under these Terms. The hirer may not vary a sub-hire without the prior written consent of the owner (in its absolute discretion).
- 15.3 The hirer must ensure that the owner 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.
- 15.4 The hirer must take all steps including registration under PPS Law as may be required to:
  - (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling the hirer to gain (subject always to the rights of the owner) first priority (or any other priority agreed to by the owner in writing) for the security interest; and
  - (c) enabling the owner and hirer to exercise their respective rights in connection with the security interest.
- 15.5 The owner may recover from the hirer the cost of doing anything under this clause, including registration fees.

## **WARNINGS AND LEGAL NOTICES TO HIRER**

The hirer agrees to check that the equipment has been received in good order and condition and ensure that the hirer makes its relevant personnel available to receive instructions (which the owner or its nominee will give) on the operation of equipment in the Hire Schedule and understand the safety procedures that are to be followed including the restrictions on other persons using the equipment.

## **Fair Trading Act NSW - Information for NSW consumers**

To the extent permitted by law, our Terms:

- provide that you are liable for loss of or damage to equipment we hire to you. If you obtain the benefit of damage waiver there are some circumstances where we agree to waive our rights. However, there are cases where damage waiver will not apply. These cases are listed in our above terms and conditions in the clause about damage waiver. Please read them carefully so you understand the limitations of damage waiver in these cases.
- indemnify us for claims including from injury and death arising in relation to the hired equipment unless caused by us or by something beyond your reasonable control.
- allow us to terminate the hire on 14 days' notice even during a fixed hire period. You may ask us to waive this right and we may agree to do so.
- exclude all warranties and guarantees about the hire and the equipment unless we expressly give them, to the extent it is permitted under law for us to exclude liability that way.
- limit our liability for consumer guarantees to supplying the relevant goods or services again or the cost of doing do where it is permitted under law for us to limit liability that way.
- exclude our liability for indirect or consequential loss to the extent it is permitted under law for us to limit liability that way.



Our Terms also permit us to provide, to a third party, data about you in a form that may enable the third party to identify you. This includes reporting unreturned equipment to police and disclosures permitted by privacy law in accordance with our privacy policies.

WARNING

FAILURE TO RETURN THE HIRE SCHEDULED EQUIPMENT ON OR BEFORE THE FINAL DATE OF THE HIRE PERIOD NOMINATED IN THE HIRE SCHEDULE CAN BE CRIMINAL THEFT AND MAY BE IMMEDIATELY REPORTED TO THE POLICE

