



Definitions

Owner is the proprietor of the plant and equipment listed in the Schedule to this agreement.

Hirer includes an agent of the hirer and agrees to hire the equipment specified in the Schedule from the owner upon the terms and conditions in this agreement.

Equipment means any item of plant and equipment listed in the Schedule to this agreement including accessories.

Terms and Conditions

1 Hire of equipment

1.1 The hiring of the equipment will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.

1.2 The hirer is entitled to use the equipment for the hire period. Any extension of the period must be agreed to by the owner.

1.3 The hirer agrees to return the equipment to the address of the owner on or before the end of the hire period as outlined in the Schedule and that failure to do so can be criminal theft and may be immediately reported to the police.

2 Payment for rental

2.1 The hirer agrees to pay the owner the hire fee and the damage waiver fee (if applicable) specified in the Schedule for the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.

2.2 The required fees must be paid to the owner prior to or on the commencement date of the hire period. Account customers who do not pay their accounts on the terms agreed will be deemed to be in default. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed rental until return is complete.

2.3 A 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.

2.4 The owner may charge the hirer a fee for accepting payment by credit card.

3 Hire of Motor vehicles

Where the Plant hired by the Hirer is a Motor Vehicle these additional Terms and Conditions also apply to the Hire Agreement:

3.1 Definitions:

Motor vehicle means a car, truck, utility or trailer.

3.2 **Insurance:** The Owner will arrange Motor Vehicle accident insurance for each Motor Vehicle to cover any damage caused through a Motor Vehicle accident and the Hirer must pay a charge for such insurance. This insurance will not cover the Hirer for the loss, theft or other damage to the vehicle (other than a Motor Vehicle accident)

If the driver is under 21 years old, the Hirer is not covered.

If the Motor Vehicle is damaged in a motor accident then the Hirer will be liable for the following additional costs:

(a) the first \$2,500 of the cost of any damage if the driver is 25 years or over;

(b) the first \$3,500 of the cost of any damage if the driver is under 25 years and over 21 years;

(c) the cost of repairing damage:

(i) to the tipper tray or Pantech (whichever is applicable);

(ii) to or caused by a truck mounting device;

(iii) to tyres;

(iv) caused other than by the normal use of the Motor Vehicle;

(v) caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road, or

(vi) caused while the Hirer is in breach of any clause of the Hire Contract.

It is a term of this Hire Agreement that the Hirer will, at the commencement of the agreement, provide a credit card imprint to Local Hire Shop, and provide Local Hire Shop with an irrevocable authority (that is, an authority that the Hirer cannot later cancel) to debit from the credit card, liability for the amounts set out in (a), (b) and (c) above. The Hirer can reduce the Insurance Excess to \$1,500.00 for each separate event involving loss or damage by paying the Insurance Excess Reduction Amount to the Owner when entering into the Hire Agreement. This amount will be displayed in store.

3.3 **Damage to Motor Vehicle:** In the event that the Motor Vehicle is lost, stolen or damaged (not through a motor vehicle accident) during the Hire Period, the Customer is liable to pay the amount to replace or repair the Motor Vehicle.

3.4 **Damage to Tyres:** The Hirer is liable to pay the cost of repairing or replacing flat or damaged tyres (with tyres as specified by the vehicle manufacturer) and other damage to tyres arising outside of the ordinary and reasonable use of the Motor Vehicle is the sole responsibility of the Customer.

3.5 **Operation of Motor Vehicles:** The Hirer warrants that it will not allow a person to drive a Motor Vehicle if:

(a) the person is under the age of 21 years old;

(b) the person does not hold a provisional or unrestricted licence to drive that class of Motor Vehicle;

(c) the person is affected by drugs and/or alcohol;

(d) the person has been convicted of any offence relating to driving a Motor Vehicle under the influence of drugs or more than the legally prescribed limit of alcohol, or

(e) the person has previously been refused Motor Vehicle insurance.

A breach of any of this clause 12.5 will render the insurance void and the Hirer liable for the costs of repairs or the replacement cost of the Motor Vehicle.

3.6 **Fines and Government Charges:** The Hirer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle by the Hirer during the Hire Period. If the Owner pays any such charges the Hirer must reimburse the Owner within 7 days of receiving notification of the charges from the Owner.

3.7 **Kilometre Charge:** The Hirer must pay an extra charge for excess kilometres if an agreed usage is made within the hire charge during the Hire Period. This extra per kilometre charge will be displayed in store.

3.8 **Driver Information:** Prior to the commencement of the Hire Period the Hirer will provide the Owner with all information required by the relevant legislation for those persons who will operate the Motor Vehicle for or on behalf of the Hirer. The Owner is also permitted to take a copy of any drivers' licences at the commencement of the Hire Period.

3.9 **Safe Loading:** The Customer warrants that no Motor Vehicle will be laden in excess of the Motor Vehicle's gross vehicle mass at any time during the Hire Period.

3.10 Consumables:

The Hirer must return the Motor Vehicle to the Owner with a full tank of fuel or the Hirer will be liable to pay the Owner the cost of filling the fuel tank at the price displayed in store.

3.11 Other Conditions:

The Hirer acknowledges that the Standard Conditions of Hire set out in this document also apply to Motor Vehicles

4 Damage waiver fee

4.1 Upon payment by the hirer of a damage waiver fee (if applicable) the owner shall be responsible for the cost of repairs or replacement of the equipment due to damage occurring during the hire period subject to any excess payable by the hirer.

4.2 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 in relation to the use of the hired equipment.

4.3 This clause will not continue to operate after the expiration of the hire agreement unless an extension by the owner is granted in writing and an additional agreed fee is paid.

4.4 This clause will not apply to loss or damage which relates to or arises from:

(i) breach of any statutory laws or regulations in connection with the use of the equipment by the hirer;

(ii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;

(iii) 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;

- (iv) lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the hirer under the agreement;
- (v) 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;
- (vi) unexplained disappearances of the equipment;
- (vii) theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where proper security is not used by the hirer to secure the equipment whilst they are left unattended;
- (viii) 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.

5 Use, operation and maintenance

- 5.1 The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 5.2 The equipment shall 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 operating or erecting the equipment are instructed in its safe and proper use and where required hold a valid Certificate of Competency or are fully licensed to use it.
- 5.4 The hirer agrees to operate, maintain, store and transport the equipment 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 in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment in regard to its operation, maintenance and storage
- 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 shall 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 by the hirer at time of hire or the completion date.

6 Hirer's warranties

- 6.1 The hirer warrants that:
 - (i) the equipment will be used in accordance with the conditions outlined in the Schedule;
 - (ii) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (iii) the hirer holds 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 agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.
 - (viii) the hirer agrees that the equipment has been received by the hirer clean and in good working order.

7 Indemnity

- 7.1 To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.
- 7.2 Without limiting clause 6.1 of this agreement, the hirer agrees that to the full extent permitted by law, no warranties are given by the owner in respect of the equipment. Any liability of the owner pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the equipment or the cost of resupplying the equipment, at the discretion of the owner.

8 Loss, damage or breakdown of plant and equipment

- 8.1 Subject only to the obligations of the owner following payment of the damage waiver fee by the hirer in accordance with Clause 3 the hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.
- 8.2 The hirer is liable for the payment of the new list price of any equipment not returned to the owner.
- 8.3 If there is a breakdown or failure of the equipment the hirer shall notify the owner immediately for the appropriate action to be taken.

9 Insurance

- 9.1 The owner will maintain current insurance policies in respect of the equipment to its full insurable value.

10 Liability

- 10.1 The hirer will assume all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair, storage or transport of the equipment.

11 Disclaimer

- 11.1 To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

12 Title to equipment

- 12.1 The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the equipment.
- 12.2 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.

13 Repossession and remedies on default

- 13.1 The owner may retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.
- 13.2 If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.
- 13.3 All costs incurred by the owner incurred in repossessing due to a breach are too paid by the hirer.
- 13.4 In the case of repossession due to a breach of this agreement the hirer agrees to grant the owner permission to enter any premises where the equipment listed in the Schedule is situated to disconnect, decommission and/or remove that equipment.
- 13.5 In addition to the owner's right to retake possession the owner is entitled in its discretion, following any breach of any provision of this agreement by the hire, to terminate this agreement and/or 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.

14 Completion of the hire period

- 14.1 The hire period is completed when the equipment has been returned to the owner in the same condition as when it was hired:
 - (i) on or by the date and time outlined in the Schedule, or
 - (ii) will be deemed completed on the date agreed for pick-up by the owner.
- 14.2 Where pick-up 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 a pick-up number.
- 14.3 The hirer agrees to maintain the responsibility for the equipment whilst it is awaiting pick-up.

15 Non-merger

- 15.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

16 Severance

- 16.1 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

17 Governing law

- 17.1 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

18 Privacy policy

- 18.1 The owner will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

19 Disputes

- 19.1 Both the owner and the hirer agree that any disputes arising from the hire and use of the equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9997 5166) before litigation is pursued.