

## General Standard terms of hire of Hire

### This Agreement is a claim for payment under the Building and Construction Industry Security of Payment Act 2009

#### 1. Definitions

"Owner" of Plant is Civil Construction Hire Pty Ltd (CCH) ABN 22 160 443 854 or its suppliers

"Customer" refers to the person, firm, organisation, partnership, corporation or other entity hiring Plant from the owner, as identified in the Hire Agreement.

"Plant" refers to all plant and equipment including tools, accessories, parts and machinery of any type supplied to the Customer. The Plant shall be deemed to be owned by the Owner whether owned by the company or not.

"Earthmoving Plant" refers to all plant and equipment required for digging, compacting, rolling, trenching, bulk excavations, trim work etc. The Plant shall be deemed to be owned by the Owner whether owned by the company or not.

"Environmental laws" means any statute, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

"PPSA" means Personal Property Securities Act (2009)

"PPSR" means Personal Property Securities Register

"Hire Agreement" means the agreement between the owner and the customer for the hire of plant which includes:

Any credit application

These standard terms of hire, and

Any Hire Agreement provided to the customer by the owner, whether signed or not

#### 2. Title to Plant

The customer acknowledges that the owner retains the title to the plant and in no circumstances will it be deemed to be the property of the customer (including if the customer becomes insolvent, goes into liquidation or becomes bankrupt while hiring the Owner's Plant).

#### 3. PERSONAL PROPERTY SECURITIES ACT

The Customer acknowledges and agrees that to the extent the Hire Agreement (governed by these Standard terms of hire) creates a PPS lease, as defined in the PPS Act, the Owner has a security interest in the Plant and Equipment for the purposes of the PPS Act and to the extent applicable the PPS Act applies.

Furthermore the customer consents to the owner affecting and maintaining a registration on the PPS register in any manner the owner considers appropriate in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the customer agrees to sign any documents and provide all assistance and information to the owner required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

3.1 The customer undertakes to:

(a) do anything (in each case, including executing any new document or providing any information) that is required by the owner (i) so that the owner acquire and maintain one or more perfected security interests under the PPSA in respect of the equipment and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that the owners security position, and rights and obligations, are not adversely affected by the PPSA; (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the equipment in favour of a third party without the owners prior written consent.

3.2 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

(a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the customer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

3.3 Unless otherwise agreed and to the extent permitted by the PPSA, the customer and the owner agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The customer waives any right the customer may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

3.4 For the purposes of section 20(2) of the PPS Act, the collateral is equipment including any equipment which is described in any Hire Schedule provided by the owner to the customer from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.

3.5 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way the owner determines in our absolute discretion.

3.6 You agree to notify the owner in writing of any change to your details set out in the owners credit application, within 5 days from the date of change.

To assure performance of its obligations under this agreement, the Customer hereby gives the Owner an irrevocable power of attorney to do anything the Owner considers the Customer should do under this agreement. The Owner may recover from Customer the cost of doing anything under this clause 3, including registration fees.

#### TERMS OF PAYMENT

a. Hire is charged for the time the Plant and Equipment is out of possession of the Owner at the Customer's request (inclusive of weekends and public holidays), not only the time in which the Plant and Equipment is used.

b. The Customer is liable for payment in full for all hiring charges and any other amounts payable in accordance with these Standard terms of hire and is required 30 days from the date of invoice. No claims for credit will be recognised after 14 days from the date of the invoice.

c. The Owner reserves the right to revise its Schedule of Hire Rates and related charges without notice, unless the supply of the Plant and Equipment is varied by an agreed supply contract Schedule.

d. The Owner reserves the right to charge interest on all amounts not paid by the Customer by the due date at the rate of 2% per month or part thereof, compounding monthly. In addition, without limiting the above, the Customer will be liable to indemnify the Owner for all expenses incurred by the Owner in recovering any amounts which the Customer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agent and legal costs).

e. The Customer is liable for GST and all other taxes, duties levies, penalties and any other government charges pertaining to the hire agreement.

#### 5. HIRE PERIODS

a. The period of hire commences when the customer takes possession of the Plant or when the Owner delivers the Plant in accordance with the Customers instructions.

b. The hire period ends when the Plant is back in possession of the Owner.

c. The Daily Hire Rate is based upon the Plant being hired for a maximum of 8 Hours in any one day.

d. The Weekly Hire Rate is based upon the Plant and Equipment being hired for a maximum of 5 days unless specified or varied in writing.

e. Note that hire terms are based on time out on hire, not time machine is operating

6. LATE RETURN

The Customer will remain liable to pay charges on the Plant until it is returned to the Owner.

7. BREAKDOWN

The Customer must notify the Owner immediately of any breakdown. Hire will not be charged during the time in which the Plant is not in working order, unless such condition is due to negligence or misuse on the part of or attributable to the Customer. Such notification does not absolve the Customer from its requirement to safeguard the Plant and in the event of a breakdown the Customer must not repair or attempt to repair the Plant without the prior consent of the Owner. If the Plant breaks down or becomes unsafe, the Customer must immediately stop using the Plant and must take all reasonable steps to prevent injury to any persons or damage to property as a result of the condition of the Plant. The Owner will not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising out of any breakdown in the Plant whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or any other reason whatsoever. If any Plant breaks down or is damaged due to the Customer's negligence or misuse the Owner will continue to charge hire charges until the Plant has been repaired or replaced.

CUSTOMER'S OBLIGATIONS

The Customer must:

- a. Determine the condition and suitability of the Plant prior to the use of the Plant
- b. Operate the Plant safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions and specifications
- c. Ensure the Plant is operated by a suitably instructed, trained, certified or licensed operator who will operate the Plant in accordance with the manufacturer's instructions and specifications
- d. At its own expense, clean, fuel, lubricate and maintain the Plant in good and substantial repair and condition, except for prearranged major servicing.
- e. Accept full responsibility for damage caused to tyres and tube by blowout, bruises, cuts or other causes inherent in the use of the Plant
- f. Clean the Plant thoroughly upon completion of the hire to the standard it was presented to them subject to fair wear and tear. The Customer agrees to pay cleaning costs for any cleaning to be performed by the Owner or its representatives.
- g. ensure that persons operating the Plant are not under the influence of alcohol or drugs
- h. ensure persons operating the Plant are wearing appropriate protection equipment as required or recommended by the manufacturer.
- i. Accept full responsibility for the safe keeping of the Plant and indemnify the Owner for all loss, theft or damage to the Plant however caused.
- j. conduct a job safety analysis prior to using the Plant on site to deem suitability of Plant.
- k. Not remove the Plant from the State or Territory in which it was hired without the Owner's written consent. The Plant will be returned to the location in which the Plant was collected by the Customer or delivered by the Owner or the Customer will pay such costs incurred by the Owner to do so.
- l. Not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Plant.
- m. Pay the Owner all hire charges and other costs as stipulated in the Owner's standard terms of hire.
- n. Ensure that all safety information supplied with the Plant is conveyed to any person using the Plant
- o. Pay all fines and penalties arising out of the use of the Plant and reimburse the Owner if the Owner has made such payment.
- p. Where applicable return all Plant fully refuelled or pay the Owner the charged rate to fill the tank
- q. Allow the Owner or the Owners representatives to inspect the Plant from time to time during the hire period
- r. Reimburse the Owner for any costs of recovery of Plant back to Owners premises on an indemnity basis

9. TERMINATION OF HIRE

The Owner may terminate the Hire Agreement immediately by notice to the Customer, if:  
The Customer breaches any term of the Hire Agreement or the Standard terms of hire of Hire

The Customer becomes insolvent, bankrupt, enters into administration, liquidation, receivership or ceases to carry on business.

10. DAMAGE WAIVER OPTION

The Customer is responsible for any theft, loss or damage to the Plant whilst on hire and the costs of replacement or repairs to such will be charged to the Customer. Where the DAMAGE WAIVER OPTION has been charged to the Customer, the Owner agrees upon submission of a written Police Report, to waive its rights to claim for damage to the Plant caused by fire, storm, collision, accident, providing adequate precautions have been taken to safeguard the Plant and the damage was not due to negligence by the Customer. Such waiving of rights is subject to payment by the Customer of an excess of:

In the event of damage to the Plant \$1,000.00 per item or 15% of the cost of the repairs and/or replacement of the Plant (whichever is the greater).

Expressly excluded from Damage Waiver are:

- a. Theft of Plant and Equipment;
- b. Damage due to misuse, abuse or overloading of the Plant or its components;
- c. Disappearance or wrongful conversion of the Plant;
- d. Damage in contravention of the standard terms of the Hire Agreement;
- e. Damage from use in violation of any statutory laws and regulations;
- f. Damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories;
- g. Damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Plant;
- h. Glass breakage;
- i. Damage relating to lack of lubrication or other normal servicing of the Plant;
- j. Damage to the Plant whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- k. Damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
- l. Damage caused by the exposure to any corrosive substances e.g. caustic, salt, water, acid, paints, solvents, etc.
- k. Damage during transport, except where transported by the Owner;
- l. Damage to items on which the Damage Waiver Option is not charged;
- m. Damage caused by the negligence of the Customer;
- n. Damage to motor vehicles and trucks on Hire.

In respect of motor vehicles and trucks the following excesses apply for any damage or accidents caused by the Customer:

- a. Motor vehicles up to 4 tonne \$2,500.00 per incident
- b. Trucks and vehicles over 4 tonne \$4,000.00 per incident

11. Hire of Pumps and Shoring

Where the Plant hired by the Customer is a pump or shoring plant these additional Standard terms of hire also apply to the Hire Agreement.

Site Preparation: The Owner requires unrestricted access to the site(s) nominated by the Customer for the delivery and installation of the pump or shoring plant. Accordingly prior to the commencement of the installation the Customer must, at its own expense:

- a. isolate the power running through those wires (either above or below ground) that are in close proximity to the site(s);
- b. clearly mark and identify in ground and buried services prior to the commencement of the installation of the Plant
- c. undertake any excavation, drilling or restoration necessary to ensure that the area for installation of the pump or shoring plant is free of any obstruction
- d. provide a crane or excavator for the placement and removal of the pump or shoring
- e. provide the Owner with all relevant site information and any other information relevant to the safe delivery and installation of the pump or shoring Plant.

Maintenance: The Customer is at all times responsible for fuelling and oiling pumps on a daily basis. Correct levels are to be adhered to at all times and engines must be stopped for checking.

12. Hire of Earth Moving Plant

Where the Plant hired by the Customer is deemed to be earthmoving Plant as nominated by the Owner, then these additional standard terms of hire also apply to the Customer.

*Excess Hire Charges:* An excess hire charge is payable by the Customer where the Customer uses the earth moving Plant in excess of the number of hours specified in the Hire Agreement. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours at Clause 5c.

*Useable Items Charge:* The Customer must pay a useable items charge in respect of the fuel, tyres, track gear, ground engaging tools and any other useable items listed in the Hire Agreement. The level of usage will be determined by the Owner as a percentage of the actual cost of the useable item to the Owner. This percentage is to be calculated by deducting the percentage usage at the start of the Hire Period from the percentage usage at the end of the Hire Period. The customer will not be entitled to a payment or credit in respect of any useable item returned with less usage than at the start of the Hire Period.

*Replacement of Useable Items:* The Customer is responsible for replacing useable items when they become worn out or they run out.

*Wear to Tyres:* The Owner is responsible for the cost of ordinary wear and tear of tyres and tracks. Ordinary wear and tear is considered to be 4,000 hours. The Customer is liable for the cost of repairing or replacing flat or damaged tyres and is responsible for all wear and tear and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which the Owner considers are adverse or abnormal. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension.

*Bucket and Blade Wear:* The Owner is responsible for the cost of normal bucket and blade wear or damage. The Customer is responsible for the cost of all bucket and blade wear or damage which is caused by use of the buckets or blades in conditions which the Owner considers to be abnormal or adverse.

*Ground Engaging Tools:* The Customer is responsible for all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Customer are to be returned to the Owner at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.

*Cleaning and Maintenance:* The Customer will at its own expense service, clean, maintain and return the Plant to the Owner in good and substantial repair and condition, with the exception of reasonable wear and tear. Except as otherwise notified by the Owner.

- a. the Customer is responsible for undertaking all preventative maintenance servicing and minor running repairs (including electrical, hydraulic hoses and oil leaks) in accordance with the manufacturer's specifications
- b. the Customer is responsible for completing the manufacturer's oil sampling analysis (set out in the Operations and Maintenance Guide) on all compartments. If this is not completed the Customer will be responsible for paying the Owner the reasonable cost of doing so.

#### 13. EXCLUSION OF CONDITIONS AND WARRANTIES

Certain conditions and warranties may be implied into the Contract by the Competition and Consumer Act 2010 (as amended) and State legislation and these standard terms of hire are to be read subject to legislation, but no other standard terms of hire or warranties will be accepted as standard terms of hire.

#### 14. EXCLUSION OF LIABILITY

The Owner and the Customer agree that in the event of the Customer suffering any damage or claim howsoever arising as a result of hiring the Plant, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant, the liability of the Owner is limited to the repair or replacement of the Plant and is not to include economic or consequential damages of any nature whatsoever.

#### 15. MISCELLANEOUS

The person signing this agreement for and on behalf of the Customer hereby covenants with the Owner that they have the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this agreement not in fact having such power and/or authority.

Termination of the hire period will not affect any of the standard terms of hire that are expressed or implied to operate or have effect after termination

Time is to be of the essence of all obligations of the Customer in these standard terms of hire.

#### 16. PROVISIONS SEVERABLE

It is hereby agreed as a term of this agreement that if any provision or part of any provision of this agreement is unenforceable, such unenforceability will not affect any other part of such provision or any other provision hereof.

#### 17. LAW AND JURISDICTION

These Standard terms of hire are to be governed and construed by the laws of the State of New South Wales in which this Agreement is duly executed.

Any proceeding in respect of any matter or thing with respect to the Customer must be instituted or carried on the State of New South Wales in which this Agreement was duly executed.

I have read and understood the standard terms of hire.

Signed:

Position:

Date: