



Conditions of Hire

1) Definitions

'Hirer' means a person, firm or, corporation hiring Equipment from the Owner, and any officer, employee or agent of the Hirer who signs this or any other document purportedly on the Hirers behalf may be taken by the Owner as having full authority to sign on the Hirers behalf.

- (a) 'Owner' means Promech Plant Hire. ABN 54 927 460 797
- (b) "Equipment" means all properties which the Owner agrees to hire to the Hirer.
- (c) The Owner may refuse to hire Equipment to the Hirer.

2) Period of Hire

- (a) Means the period, for which the equipment is hired, as agreed between the Owner and the Hirer, shall also include these Standard Conditions of hire. The Hirers standard conditions will be read down to the extent that they are inconsistent with these standard conditions of hire and comprise the entire agreement between both parties.
- (b) The Hirer hires the equipment from the owner for period and prices agreed on.
- (c) The period of hire shall commence:
 - i) From the time the equipment is collected by the Hirer from the Owner's premises and shall expire at the time of return of the Plant to the Owner's premises; or
 - ii) Where the Owner has agreed to deliver or collect the Equipment.
- (d) If the Hirer fails to:
 - i) Return the Equipment to the Owner's premises; or
 - ii) Give the Owner sufficient notice to enable the collection and return of the Equipment to the Owner's premises.

Extra hire charge will be incurred. In this clause 2 'sufficient notice' means notice given to the Owner by the Hirer in writing, by telephone or personally between or acquired an "OFF-HIRE" number as verification that such notification has been received.

3) Rate of Hire

- (a) Means the agreed price for hiring the equipment.
- (b) Where the Hirer uses the Equipment for more than 8 hours in any day a charge of 15% of the daily rate of hire shall be incurred for each additional hour or part thereof the Equipment is used in addition to the daily charge.
- (c) Where the Hirer uses the Equipment on a Sunday or Public Holiday an additional hiring charge may be applied.
- (d) The Owner reserves the right at any time and without notice to revise the hire rate.
- (e) All Government charges, rates and duties on hiring arrangements shall be charged as an extra.
- (f) GST to be inclusive of all tax invoices and shown separately on the tax invoice.
- (g) All damages shall be charged as an extra. The Hirer will be liable for any consumables or trade materials provided by the Owner.
- (h) "Order" means the form used by the Hirer as confirmation to hire equipment.
- (i) The Owner reserves the right to charge a minimum period of hire for all Equipment.
- (j) The Customer is not entitled to any discount or rebate if the Plant is not used by the Customer for the entire hire period.
- (k) The Owner shall, if requested by the Hirer, but only if personnel are available, attend the site and instruct the Hirer in the operation of the Plant. The Hirer shall in addition to the hire charges pay the Owner for such services. Any other additional services provided to the Hirer, shall be paid for by the Hirer at rates agreed with the Owner.

4) Environmental Laws

Means any statute, policy directions or regulations made or issued by a regulatory body or government that relates to the protection of the environment are the Hirers responsibility.

5) Repairs/Breakdown

- (a) Where the Hirer notifies the Owner immediately of any repair/ breakdown, in no circumstances proceed to repair the equipment without prior approval.
- (b) Owner to have the right of access to the Equipment in order to inspect, repair or replace.
- (c) Hirer must compensate the Owner for the replacement cost of any Equipment which is damaged, lost or stolen during the hire period.
- (d) Hirer must also compensate the Owner for any other loss or expense it incurs.
- (e) The Owner to take all steps necessary to repair the equipment or provide a suitable substitute, as reasonably possible.
- (f) The Owner not to be liable for any expenditure, damage, loss or inconvenience incurred by the hirer arising from a breakdown.

6) Conditions of Hiring Inspection Privilege and Waiver of Defects

Hirer accepts and hires the Equipment on an as is basis.

Hirer acknowledges receipt of all of the equipment in good working condition and repair and declares that Hirer fully understands its proper operation and use.

Hirer acknowledges and declares that Hirer has examined the Equipment.

7) Equipment becomes Unsafe or in Disrepair

Hirer will immediately discontinue use of the equipment should it at anytime following the execution of this agreement or any subsequent agreement become unsafe or in state of disrepair. Furthermore the hirer will immediately notify Owner that the Equipment is unsafe or in disrepair and until such time as Owner has regained possession the Hirer agrees to take all steps reasonably necessary to prevent injuries to any other person and all property from the Hire Equipment or product.

8) Compliance with Laws

Hirer acknowledges that Owner has no control over the use of the Equipment by Hirer and Hirer agrees at his sole expense to comply with all municipal, state and federal laws ordinances and regulations including the Occupational Safety and Health Administration Act of 1970 (OSHA) which may affect the Equipment while it is in the possession of and use by the Hirer. Hirer shall not permit any who is not legally qualified to use the Equipment.

9) Installation

Where we are unable to carry out installation through error or fault on the Hirers part, we reserve the right to charge for our time.

The Owner will not be responsible for any delays due to any causes beyond its control.

10) Hirer's Obligations

The Hirer shall:

- (a) pay all hire charges and where applicable all delivery and collection charges on a strictly net cash basis unless otherwise stated.
- (b) use the Equipment in a skilful, safe and proper manner and only for the purposes and within the capacity for which the Equipment was designed.
- (c) at the Hirers Own expense supply all fuel, filters, oil, consumables and grease necessary for the operation service and maintenance of the Equipment;
- (d) at the Hirers Own expense service, clean and maintain the Equipment in good and substantial repair and condition, reasonable wear and tear accepted or servicing can be provided at extra cost, should inadequate servicing is not provided.
- (e) upon completion of the hire period, clean the Equipment or be charged a cleaning fee for any cleaning required by the Owner.
- (f) accept full responsibility and foregoing whether or not such loss, theft or damage is attributable to any abandonment of any Equipment, negligence failure or omission of the Hirer; any costs incurred by the Owner in repairing or the new replacement cost of the Equipment.
- (g) Ensure that any person using the Equipment shall comply with all relevant statutes, regulations and by laws that apply to the Equipment;
- (h) Not in any way part with possession of the whole or part of the Equipment. nor sell, assign, mortgage, pledge, sub lease lend or otherwise deal with the whole or part of the Equipment;
- (i) Not remove or cover up any plates or other marks that the Owner may affix or cause to be affixed to the Equipment to indicate that the Equipment is the property of the Owner;
- (j) Indemnify and hold the Owner harmless against all claims, actions, suits, demands, costs, expenses, including all legal costs and expenses in any way arising out of the use of the Equipment by the Hirer during the period of hire whether caused by negligence of the Hirer his servants or agents or by negligence by any other person whatsoever or arising out of the condition of the Equipment or the use to which it is put;
- (k) Indemnify and hold the Owner harmless against any union actions claims suits or demands and shall have no claim whatsoever against the Owner resulting from such union actions, claims, suits, demands or any interference, or protest that affects the Equipment or property on which the Equipment may from time to time be situate.
- (l) Ensure that no persons operating the equipment are under the influence of drugs or alcohol.
- (m) The Hirer must not remove the Equipment from the State in which it is hired without the Owner's written consent. The Equipment shall be returned to the point of the initial hire.

11) Daily Checks

The Hirer provides and maintains routine daily checks.

Provides as requested maintenance records and daily check sheets for long term equipment.

12) Warranties

To the extent that the Commonwealth State and Territorial laws permit:

- (b) Any warranty condition, description or representation whether express or implied as to the description, state, quality, merchantability or fitness of the Plant for the purpose for which it is hired is hereby excluded;
- (c) The Owner shall not be responsible or liable to the Hirer whether on grounds of breach of contract contractual duty or negligence for any loss or damage that the Hirer may directly or indirectly sustain or suffer arising from defects in or miscalculation, breakdown or failure of performance of the Plant and the Hirer hereby exonerates and releases the Owner from all claims and demands in respect thereof.

13) Duty of Care

- (a) The Hirer being responsible for all equipment at all times. Hirer also responsible to inform their insurance company to cover hire equipment, that is in their possession. With no responsibility to the Owner if not carried out.
- (b) The hirer shall make prompt verbal report followed within 24 hours of the damage loss by a detailed written report of the damage loss.
- (c) Item of care by hirer expresses the following:
- (i) damage or loss of the Equipment in contravention of these conditions of hire.
- (ii) damage resulting from lack of lubrication or other normal servicing of the Equipment.
- (iii) damage to tyres.
- (iv) theft or loss of the Equipment.
- (v) damage caused by the Hirer's negligence or abuse.
- (vi) damage caused by any illegal act.
- (vii) any Equipment in transit or use over water.

14) Insurance

The Hirer being responsible for all equipment at all times. Hirer also responsible to inform their Insurance Company to cover the equipment that is in their possession. With no responsibility to the owner if not carried out.

15) Title

Title to the Equipment is and shall remain to the Owner. If the Equipment is levied upon for any reason whatsoever, Owner may retake the equipment without notice or legal process, and may take all action reasonably necessary to do so. The Hirer is not permitted nor authorized to lend or re-hire the equipment to any other person, firm, organization or corporation. The Owner does not accept any liability for unauthorized use or re-hire.

16) Construction

The paragraph headings used herein are for convenience only and are not to be used in constructing the meaning or intent of any of the terms or provisions in conditions of hirer or contracts.

17) Severance

In the event of any part of these Conditions of Hire becoming void or unenforceable whether due to provision of any statute or otherwise then that Part shall be severed from these Conditions of Hire to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and be unaltered by any such severance.

18) Payment Terms

- (a) all accounts are due and payable within thirty (30) days of date or amount of invoice or as arranged and confirmed in writing by the company. Disputes and/or claims do not constitute grounds for non payment amounts other than those in dispute.
- (b) Hire is charged for the time the Equipment is out of the possession of the Owner.
- (c) The Owner reserves the right to revise its hire rates & related charges without notice.
- (d) The Owner may charge interest on all amounts not paid by the customer by the due date at the rate per annum equal to 1% plus the National Australia Bank Business Overdraft indicator lending rate, from and including the due date to the date of the actual receipt of payment.
- (e) The right to demand payment of interest under clause 17 is without prejudice to any other rights and remedies that the Owner may have in respect of a payment default under this agreement.
- (f) The Owner may set-off against any credit owed to the Customer any amount owing by the Customer to the Owner.
- (g) any credit accommodation granted by the Owner to the Hirer may be reviewed at any time without notice. Credit may be withdrawn for the Hirer failing to make payments or use the equipment in accordance with these Standard Terms and Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- (h) The Customer acknowledges that the Owner may impose a charge for accepting payments by credit card.

19) Exclusion of Conditions, Warranties and Liability

- (a) To the full extent by NT Law the Owner excludes all implied terms and conditions and warranties including , without limitation , terms, conditions and warranties implied by Commonwealth or State/Territory legislation.
- (b) The Owner and the Customer agree that in the event of the Customer suffering any loss (including economic loss) damage, cost, expenses or claim howsoever arising as a result of hiring or purchasing the Equipment, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Equipment, the liability of the Owner is limited to the repair or replacement of the Equipment. The Owner shall not be liable under any circumstances for any direct or indirect , economic, special or consequential loss or damage of any nature whatsoever.

20) Remote Area Hire.

- (a) If Equipment is to be used in remote areas, excess of 50km from the nearest Owners branch, the Hirer is to provide daily maintenance, routine maintenance, servicing, minor running repairs (including electrical, hydraulic hoses and oil leaks) and breakdown support in accordance with the "Remote Area Conditions" and manufacturers specifications.
- (b) All terms, their transport and associated costs will be the Hirers responsibility and to returned to the place of origin.
- (c) If the equipment breaks down the Hirer will also pay the Owner, of all costs associated with any attendance to the equipment site.

21) Third Party – Substitute Equipment.

All third party items are subject to Promech Plant Hire Terms and Conditions. The Owner may substitute Equipment with that of similar type.

22) Excess Hire Charges:

An excess hire charge is payable by the Customer where the Customer uses the Plant in excess of the hours specified in the Hire Agreement. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.

23) Useable Items Charge:

Unless otherwise indicated in the Hire Agreement, the Customer must pay a useable items charge in respect of 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 end of the hire period. The Customer shall not be entitled to a payment or credit in respect of any usable item returned with less usage than at the start of the hire period.

24) Replacement of Usable Items:

The Customer is responsible for replacing usable items when they become worn out or they run out.

25) Wear to Tyres:

The Owner is responsible for the normal wear and tear of tyres and tracks. Ordinary wear and tear is considered to be 4000 SMU 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 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 pressures and track tension.

26) Operator:

- Pre-start check and Log books must be completed.
- Operators must hold tickets or Licenses for equipment being used.
- Operators must be trained and competent in the operation of the equipment on hire.
- It is the Hirers responsibility to ensure the competency of their operators.

I _____ have fully read and understood the Promech Plant Hire Conditions of Hire.

Signature: _____

Date: _____