



Terms & Conditions of Hire

AD-CPH2011

The *Agreement to Hire Equipment From Coalcliff Plant Hire – Hire Details* together with these Terms & Conditions of Hire apply to the agreement between you the Hirer (and/or the Guarantor) and Coalcliff for the hire of Equipment.

These Terms & Conditions of Hire may change from time to time and you must review them every time you hire Equipment from Coalcliff, or extend or renew your hire of Equipment with Coalcliff.

1. Definitions

In these Terms and Conditions:

“Coalcliff” means Four Corners Plant Hire Pty Ltd ACN 109 179 964 as trustee for the Coalcliff Plant Hire Unit Trust trading as Coalcliff Plant Hire, and its substitutes, successors and assigns;

“Hirer” means legal entity or entities accepting Coalcliff’s quotation for the supply of Equipment and/or services or whose order for Equipment and/or services is accepted by Coalcliff;

“Equipment” shall mean all and each item of plant and/or equipment to be supplied by Coalcliff under these terms & conditions of hire and, all additions, alternations and replacement to that plant and/or equipment;

“Hire Charge” means Coalcliff’s charges for the provision of Equipment and/or services to the Hirer;

“Contract” means the contract formed by the Hirer accepting a quotation or Coalcliff accepting an order or by delivery and receipt of Equipment. These terms & conditions apply to a contract however formed.

2. Charges and payment

2.1 Charges are based on **10 hours a day and 7 days a week** unless negotiated otherwise and agreed by Coalcliff in writing.

2.2 Unless negotiated otherwise and agreed by Coalcliff in writing, stand-down (off-hire) of any or all of the Equipment during the period of hire will only take place in the event, for the period of, and to the extent that, inclement weather or mechanical failure of the Equipment (in the course of ordinary and reasonable use) prevents effective use of the Equipment. The Hirer must contact Coalcliff as soon as the Hirer wishes to invoke a period of Equipment stand-down (off-hire) and receive approval from Coalcliff before the stand-down (off-hire) becomes effective.

2.3 Coalcliff may require a deposit and the Hirer irrevocably consents to Coalcliff drawing upon this deposit for any outstanding Hire Charge or additional cost or fee.

2.4 The Hirer is liable to pay all goods and services tax in addition to the Hire Charge as well as any duty or tax imposed by a government or authority in respect of the hiring including any rental duty.

2.5 Hire Charges continue until the Equipment is returned to Coalcliff in the condition required by this agreement.

2.6 The Hire Charge is due within 21 days of invoice unless terms are stated differently.

2.7 Any costs involved in debt collection, including any legal and court costs, are payable by the Hirer.

2.8 Payment on time is of the essence of this agreement.



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- 2.9 If the Hirer has been given a discount, which has been recorded on the Agreement for Hire of Equipment or the Hirer should otherwise have been reasonably aware of, and the Hirer fails to pay on time, Coalcliff is entitled to cancel the discount.
- 2.10 The Hirer will issue interim invoices and/or an invoice at or after completion of hireage.
- 2.11 Interest will be charged at the rate of 9% per annum, on any invoice that remains unpaid 30 days **or more from the date that payment is due.**

3. Purchase Orders

If the Hirer requires Purchase Order Numbers to be recorded on Coalcliff invoices, the Purchase Order Number must be provided by the Hirer to Coalcliff at the time the hire is made.

4. Protection of Equipment

- 4.1 The Hirer is responsible for the security of the Equipment at all times until it is returned to, and accepted by, Coalcliff.
- 4.2 The Hirer will be charged, and the Hirer agrees to pay, for any accident or damage to the Equipment caused by vandals, neglect, misuse, abuse and weather act.
- 4.3 The hirer will take all reasonable steps to safeguard the Equipment from theft, loss or damage and give Coalcliff notice of any unusual risks.

5. Repairs and Maintenance of Equipment

The Hirer is responsible in respect to all Equipment for:

- (a) At least once per day before it is first used and when indicated during the day:
- (I) Maintenance, servicing, greasing and air filter cleaning;
 - (II) Checking lubricant, filters and levels of and for leaks of fuel, water, engine oil, brake fluid and clutch fluid;
 - (III) Checking for loose bolts;
 - (IV) Checking ground engaging tools including blades and buckets;
 - (V) Checking tyres including tyre pressure;
 - (VI) Safety checks; and
 - (VII) Attending to all items mentioned on the pre-start checks and/or daily maintenance forms.
- (b) Returning all Equipment to Coalcliff in the condition it was at the time it was collected, fair wear and tear expected;
- (c) Immediately reporting to Coalcliff all faults, defects and/or damage to Equipment and problems and that may reasonably arise in relation to the Equipment.



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- (d) All damage to or loss of the Equipment, in whole or in part, including and not limited to tyre damage;
 - (e) Faxing to the attention of Coalcliff's workshop manager (Fax number: (08) 9734 1766) all pre-start checks and daily maintenance forms at the completion of each working week, if the hire of Equipment extends beyond one week; and
 - (f) Servicing and minor repairs of the Equipment as follows:
 - (I) If the Hirer has the Equipment located more than 100 kilometres from the premises of Coalcliff (in Collie, Western Australia) then the Hirer is responsible for conducting all minor repairs and major servicing (e.g. 250, 500, 750, 1000 hour services etc) of the Equipment;
 - (II) In the circumstances of Equipment servicing under clause 5(f)(I), Coalcliff will provide the Hirer with a service kit to assist the Hirer with servicing the Equipment, at no additional charge to the Hire Charge, however, all service reports, service kits, parts and Equipment remain the property of Coalcliff and must be expeditiously returned by the Hirer to Coalcliff;
 - (III) Coalcliff may charge the Hirer for all reasonable costs where Equipment repairs are determined to be minor (i.e. \$500.00 or less), including and not limited to, a call-out fee, labour charges and travel time,
 - (IV) Any servicing of the Equipment by, or on behalf of, Coalcliff, either at the reasonable request of the Hirer or that Coalcliff deems reasonably necessary, will be carried out at no additional charge to the Hire Charge other than a charge for travel time, which Coalcliff may charge the Hirer at the rate of \$120.00 per hour or part thereof.
6. *Cleaning of Equipment*
- 6.1 The Hirer is responsible for ensuring the Equipment is returned to Coalcliff fully cleaned and detailed inside and out.
 - 6.2 Failure to return Equipment fully cleaned and detailed will result in a charge to the Hirer of \$80.00 per hour.
7. *Insurance*
- 7.1 The Hirer must ensure that all Equipment is covered by insurance at full replacement cost (for new Equipment) or market value with industry approved insurers and on terms and amounts and subject to conditions approved by Coalcliff before the commencement of the hiring contemplated by the contract;
 - 7.2 The Hirer must maintain all other insurances appropriate to its circumstances or required under law, including where appropriate public liability insurance and worker's compensation insurance, and will maintain such insurances throughout the period of the hiring.
 - 7.3 The Hirer must immediately give Coalcliff copies of all relevant insurance policies upon request, and details in writing of any claim without delay.
 - 7.4 If the Hirer fails to take out any insurance Coalcliff may do so and the Hirer will immediately pay the cost.



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8. *Loss and Liability*

- 8.1 The Hirer is responsible for all risks of or in connection with the operation of the Equipment, including third party injury or damage to persons or property and the Hirer undertakes to indemnify, release and hold harmless Coalcliff against all actions, claims, demands and liability howsoever arising (whether direct or indirect and irrespective of jurisdiction) from such risks.
- 8.2 The Hirer's responsibility to indemnify, release and hold Coalcliff harmless shall be limited to the extent the Hirer is negligent and further to the extent Coalcliff is held vicariously liable for the negligent acts or omissions of the Hirer.
- 8.3 To the fullest extent permitted by law all conditions, warranties and the like concerning the state, quality, description, or fitness for purpose of the Equipment are excluded.
- 8.4 The Hirer acknowledges it has made its own enquiries and has not been induced by any warranty or representation or the like, including in relation to the capacity or ability of any Equipment, unless noted and agreed in writing on the agreement.
- 8.5 Coalcliff is not to be liable to the Hirer or any other party by reason of any delay or failure in performing Coalcliff's obligations due to any cause beyond Coalcliff's reasonable control including fire, flood, material adverse weather conditions, interruption of power supply, war, act of terrorism or civil disturbance, industrial action or trade dispute or blockade, legal or government restriction or embargo ("**force majeure**").
- 8.6 Once the Hirer accepts and starts to use the Equipment it is deemed to have inspected the Equipment and found it to be in good condition and that the correct quantities have been delivered.

9. *Using and Operating the Equipment*

- 9.1 It is the Hirer's responsibility to:
- (a) determine whether the Equipment has a valid vehicle license, or, if not, a valid permit under part III of the *Road Traffic Act (WA) 1974* ("The Act"), and if a valid permit the conditions imposed by the Director General under section 26(1) of the Act;
 - (b) ensure that the Equipment operator is fully conversant with and has been properly trained in the use of the equipment, has all the appropriate permits and licenses and is aware of all safety requirements;
 - (c) ensure that the Equipment for which there is not valid vehicle license under Part III of the Act shall not be used on any road as defined in section 5 of the Act, in which case such equipment shall not be driven or towed otherwise than in accordance with conditions imposed by the Director General under section 26(1) of the Act.
- 9.2 The Hirer must have all licenses, permits, authority clearances and registrations that are required in respect of the Equipment, or its use, including under the *Motor Vehicle (Third Party Insurance) Act (WA) 1943*.
- 9.3 When requested, the Hirer must advise Coalcliff where the Equipment is located, and allow Coalcliff and arrange for Coalcliff to have access to inspect the Equipment.



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- 9.4 The Equipment must only be operated in accordance with existing laws and regulations, and generally accepted practices.
- 9.5 The Hirer must ensure that there is kept on the Equipment current operating manuals and current safety instructions for the Equipment.
- 9.6 The Hirer may only use the Equipment only for the purpose for which it is designed and suited and may not modify the Equipment.
- 9.7 The Hirer must not permit any repairs to be done to the Equipment save than by Coalcliff, or with Coalcliff's prior written authority.

10. Return of the Equipment

- 10.1 The Hirer is to return the Equipment with a full tank of fuel (where applicable) otherwise the Hirer will incur a service fee of 10 cents per litre on top of the browser price for fuel.
- 10.2 The Hirer will be charged for a discharged fire extinguisher at \$150.00
- 10.3 The Hirer will be charged the replacement cost of any manuals or safety instructions that are damaged or not returned to Coalcliff

11. Termination

- 11.1 Coalcliff may terminate this agreement or suspend its obligations, at the option of Coalcliff, where:
- (a) the Hirer dies or becomes bankrupt, or a petition of bankruptcy is lodged, or a winding up petition is lodged against it, or it enters into any composition for arrangements with creditors, or a receiver is appointed or a petition for administration is lodged, or execution is issued against the Hirer;
 - (b) the Hirer fails to pay any Hire Charge or other monies due in full on the due date or breaches any of the other terms and conditions of this agreement;
 - (c) there is an event of force majeure, being an event outside of the reasonable control of any party to this agreement;
 - (d) the Hirer does not have or is unable to obtain suitable and adequate insurance for the Equipment and personnel.
- 11.2 On termination, all monies due to Coalcliff, including Hire Charges for the unexpired residue of the hire term, are immediately payable by the Hirer.
- 11.3 Termination will not limit any other right available to Coalcliff.
- 11.4 Upon termination of this agreement or expiry of the hire term, Coalcliff will be entitled to repossess the Equipment at the expense of the Hirer (unless the Hirer immediately returns the Equipment to Coalcliff) and the Hirer authorises Coalcliff to enter the premises where the Equipment is located and will arrange for Coalcliff to be able to enter any third party's premises for that purpose.
- 11.5 The Hirer may only cancel or terminate this agreement with the prior written consent of Coalcliff, and if Coalcliff provides such written consent then the Hirer agrees to pay



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Coalcliff an amount or amounts equal to Coalcliff's loss of profit for the remaining term of hire and reimbursement of all costs, such amount/s to be advised by Coalcliff to the Hirer.

12. Guarantee

12.1 In consideration of Coalcliff entering into this agreement with the Hirer at the request of the Guarantor the Guarantor hereby (and if more than one, jointly and severally) guarantees to Coalcliff the due performance and observance by the Hirer of all the terms, covenants, agreements and stipulations contained or implied in this agreement on the part of the Hirer including the due payment of any Hire Charges and other monies payable under this agreement.

12.2 The Guarantor further agrees to indemnify and keep indemnified the Owner against any losses, costs, expenses and/or damages sustained or incurred by the Owner arising out of any breach of this agreement by the Hirer.

12.3 The guarantee and indemnity contained in the paragraphs above shall be irrevocable and continuing and shall not be revoked by notice or by any reason of the death, bankruptcy, liquidation or mental incapacity of the Guarantor, or any of them, or of the Hirer.

13. General

13.1 All right, title and interest in the Equipment remains with Coalcliff.

13.2 The Hirer must keep the Equipment free from any lien or encumbrance, and not pledge the Equipment as security.

13.3 This agreement is personal and the Hirer may not assign or subcontract its rights or obligations.

13.4 This agreement may only be varied if the variation is agreed in writing by Coalcliff.

13.5 Where the Hirer consists of two or more parties their liability is joint and several.

13.6 If a provision of this agreement is deemed invalid, then, at the option of Coalcliff, that provision may be severed from agreement and the agreement will otherwise continue unaffected.

13.7 Any notice under this agreement must be in writing and may be served on by pre-paid post, electronic mail or facsimile to the address, email address or facsimile number set out in this agreement or such other address as is notified by the Hirer in writing for the purpose.

13.8 When a general statement is made and then or in any other part of the contract particular cases are mentioned the general statement is not limited.

13.9 This agreement is governed by the laws of Western Australia, and the parties to the agreement irrevocably submit to the jurisdiction of Western Australian courts.



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Description of equipment to be hired:

Fleet Number: _____ Description of Plant: _____

Rate: _____ Mob/Demob: _____

Registered: Yes/No _____ Registration No. _____

Permits: Yes/No _____ Permit Numbers : _____

Hirers Address: _____

Hirers Email: _____ Hirers Fax: _____

Executed by Four Corners Plant Hire

Pty Ltd (ACN 109 179 964)

Signing clause for hirer that is a company
Executed by:

(ACN _____)

Director/Company Secretary

Director/Company Secretary

Terry Massara

Director

Director

Signing clause for hirer that is an individual

Signed by the said

Signing clause for the person authorised by the hirer

X

Client Representative

Being a person authorised by the hirer to enter the Contract on the Hirer's behalf and sign documents relevant to the Contract

X

Position with Client

X

Signature



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Contract term:

_____ to _____

Purchase order number: _____

Please sign and return with a purchase order number via fax to (08) 9734 1766