

TERMS & CONDITIONS OF HIRE WITH INSURANCE OPTION**DEFINITIONS**

In these Conditions of Hire:

(a) The "Owner" is ADVANCE RENTALS

(b) The "Hirer" refers to the person, firm or corporation hiring Plant from the Owner:

(c) The "Plant" OR "Equipment" means all plant and/or equipment including tools, accessories and parts supplied to the Hirer, except where the conditions relating to DAMAGE WAIVER states otherwise.

All equipment supplied on hire is the property of Advance Rentals (hereinafter referred to as "the Company" or "the Owner"). Ownership of the equipment remains the property of Advance Rentals at all times and can be recovered from site at any time at our discretion.

Rates: - Daily Rates are based on a 24 hour period, and charged five (5) days per week unless the Company is notified by the customer - minimum hire period is one day.

- Weekend Rates - Normal Daily Rates will apply for days the equipment is used.

- Extra shifts or hours worked will incur an additional charge.

Late Returns are subject to extra charges.

1 TERMS OF PAYMENT

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

(b) Payment in full for all hiring charges and any other amounts payable in accordance with these Conditions of Hire is required 30 days from end of month. No claims for credit will be recognised after 7 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.

(d) The owner may charge interest on all amounts not paid by the Hirer, by the due date at the rate per calendar month equal to 1%

(e) The Hirer agrees that all charge for hire, loss, damage and repairs will be paid, and that all collection fees, legal fees, court costs or any expenses involved in the collection of these charges will be borne by the Hirer.

2 HIRE PERIODS

(a) The rate is based upon the Plant being hired for a specified time or 24 hours from the date of commencement as recorded on the Contract of Hire.

(b) Hire Period commences from the time the equipment leaves our Depot until it is returned to our Depot. In the event of non-use due to wet weather, the Company may reduce the charge, provided advice is received by 9.00 am each and every day concerned. The Company may, in such event, terminate the hire and return the equipment to the original depot at the hirer's expense.

3 DELIVERY

Drivers do not accept instructions for pick-up. All arrangements must be made with Advance Rentals Hire Controller.

A "pick up" number must be obtained when notification by telephone or in person is given that the equipment or vehicle is available for return.

Obtaining a "pick up" number does not relieve the hirer of responsibility or liability for security of the equipment while waiting for collection.

All returns are subject to inspection at our depot.

Damage other than fair wear and tear will be added to the invoice total and charged to customer's account.

All equipment is at Hirer's risk on delivery until returned to the Company.

Subject to the other terms of this agreement relating to exclusions, in no event will the Owner be liable (whether before or after the expiration or termination of this agreement) for any loss or damage which the Hirer suffers arising from, or caused or contributed to by, the Owner's negligence or the negligence of the Owner's servants or agents. Nor will the Owner be liable for special, indirect or consequential loss or damage as a result of a breach by the Owner of this agreement including, but not limited to, loss of profits or revenue, the costs arising from the loss or use of the equipment and the cost of any substitute equipment which the Hirer acquires.

Using Hirers own equipment.

The consignor must accept responsibility for any damage or loss of any equipment whilst in the carrier's custody during storage or in transit due to civil commotion, Act of God, Government intervention, war, strikes, seizure under legal process, accident, misadventure, fire or water, insurance of equipment will not be effected for the benefit for the consignor except upon his written instruction and then only at his expense.

Notes - All fuels used are to Hirer's account.

The onus rests with the Hirer to ensure that hire equipment is returned to or collected by the Company - if RETURN delivery service is required it is the Hirer's responsibility to contact the Company's Hire Controller and advise that equipment is available for collection. Should the Owner agree with the Hirer to deliver and collect the equipment, hire charges shall commence from the time the equipment leaves the Owner's premises until the Owner is notified by the Hirer that the equipment is available for collection, at which times the Owner will give an "off hire" number as verification that such notification has been received. The notification shall be given by the Hirer in time for the equipment to be picked up and returned to the Owner's premises within the Owner's normal business hours on the day of cessation of hire. In the event of insufficient notice being given the Hirer will be held responsible for the safekeeping of the equipment until collected the following day, and may be charged an extra half-day hire at and within the Owner's absolute discretion. Waiting time for delivery vehicles may be charged extra. The Hirer is responsible for theft or damages to equipment, tools and accessories whilst on hire.

4 BREAKDOWN

If the Hirer notifies the Owner immediately of any Plant breakdown, hire will not be charged during the time in which the plant is not working, unless such conditions is due to negligence or misuse on the part of or attributable to the Hirer. Such notification does not absolve the Hirer from its requirements to safeguard the Plant and in the event of breakdown, the Hirer shall not repair, or attempt to repair, the Plant without the prior consent of the Owner. If the Plant breaks down or becomes unsafe, the Hirer must immediately stop using the Plant and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Plant. The Owner shall not be liable for any expenditure, damages, loss of inconvenience incurred by the Hirer 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 for any other reason whatsoever. If any Plant breaks down or is damaged due to the Hirer's negligence or misuse, the Owner will continue to charge hire charges until the Plant has been repaired or replaced.

5 HIRER'S OBLIGATIONS**5.1 The Hirer shall:**

- (a) Prior to the use of the plant determine the condition and suitability of the Plant hired for the purpose required.
- (b) Use the Plant in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
- (c) Ensure that the Plant is operated by a suitably certified, trained or licensed operator (whether supplied by the Hirer at its costs, or employed and provided by the Owner) (pursuant to the provisions of the Workplace Health and Safety Act) who will work entirely in accordance with the instructions of the Hirer or his authorised representative.
- (d) At its own expense, service, clean, fuel, lubricate and maintain the Plant in good and substantial repair and condition, except for pre-arranged major servicing which will be carried out by the Owner during normal working hours.
- (e) Accept full responsibility for all flat and/or damaged tyres (where applicable).
- (f) Clean the plant thoroughly upon completion of the hire or be charged at the absolute discretion of the Owner a cleaning fee at a rate to be nominated by the Owner for any cleaning required to be performed by the Owner or its representative/s.
- (g) Accept full responsibility for the safe-keeping and insuring of the Plant, and except as specified hereafter, indemnify the Owner for all loss, theft of or damage to the Plant however caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer.
- (h) Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Plant during the hire period however arising, whether from negligence of the Hirer or Owner or otherwise and without limiting the generality of the foregoing whether or not the Plant was being operated by a servant of the Owner or any other person for whose acts the Owner might be or is held to be responsible in connection with the operation of the Plant.
- (i) Not be entitled to claim any lien over the Plant nor sell, transfer, mortgage, charge or encumber in any way the Plant nor, without the Owner's prior written consent, part with possession of the Plant nor assign the benefit of the hire agreement.
- (j) Not be entitled to remove the Plant or allow it to be removed from the Queensland or site if applicable from which it was hired without the Owner's written permission.
- (k) Not alter, make any addition to, deface or erase any identifying mark, plate or number on or in the plant or in any other manner interfere with the Plant.
- (l) Pay to the Owner all hire and related charges and other costs as stipulated in accordance with the Owner's Payment Terms.
- (m) Accept responsibility and fully reimburse the Owner for the cost of freight and other charges to retrieve Plant for any reason.
- (n) Ensure that all safety information supplied with the Plant will be conveyed to any person using the Plant.
- (o) Attach to the Plant and maintain any safety signs supplied with the Plant and bring them to the attention of any person using the Plant, and ensure that they are clearly legible by the operator of the Plant.
- (p) Ensure that all safety and operating instructions and notices are observed and not defaced or removed from the plant.
- (q) Ensure that all operators of the Plant wear suitable clothing and any protective equipment required or recommended by the Manufacturer's safety and operating instructions, or as recommended by the Owner.
- (r) Comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the plant. The Hirer indemnifies and agrees to keep the Owner indemnified against any loss, cost, damage or expense incurred or which may be incurred by the Owner arising from the use of the Plant under this contract.
- (s) Comply with all statutory legislative, Government or semi Government body requirements or regulations as to the operation or use of the equipment hired, including but not limited to Work Place Health and Safety Legislation.
- (t) The Hirer does hereby covenant and agree and represent to the Owner that the Hirer has all licences, permits and qualifications necessary in the use of operation or possession of the equipment hired.

5.2 The Owner may inspect the Plant from time to time during the hire period and the Hirer shall permit or procure admission for representatives of the Owner to the premises upon which the plant is situated for that purpose.

6 TERMINATION OF HIRE

6.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified the Owner may terminate this hire agreement:

- (a) At any time by giving to the Hirer 24 hours notice of its intention to so terminate, such termination will be effective as of the expiry of 24 hours or as agreed under the hire contract.
- (b) Without notice, if the Hirer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owner's rights in or to the Plant may be prejudiced, or have winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment to compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.

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6.2 If installation of de-watering Plant cannot be effected within a particular time or at all due to ground conditions or if such Plant fails for any reason (other than fault of the Hirer to lower or keep lowered the water table at the site) the Hirer shall have no other rights or claims against the Owner of any kind whatsoever.

6.3 On termination of this hire agreement the Owner shall be entitled to take possession of the Plant and for this purpose the Hirer irrevocably appoints the Owner as its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Hirer upon which the Plant is then situated and agrees to indemnify the Owner in respect of any claims, damages and expenses arising out of any action under this condition.

7 EXCLUSION OF CONDITIONS AND WARRANTIES

To the full extent permitted by law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or State legislation. Certain conditions and warranties may be implied into the hire agreement by the Trade Practices Act and State legislation and these conditions are to be read subject to such legislation but no other conditions or warranties shall be implied in these conditions of hire. If there are any terms in this agreement which by law cannot be excluded then the provisions of this agreement which operate to exclude conditions, warranties or representations do not apply.

8 EXCLUSION OF LIABILITY

The Owner and the Hirer agree that in the event of the Hirer suffering any loss, damage or claim howsoever arising as a result of hiring or purchasing the Plant, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure of 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.

9 MISCELLANEOUS

- a) The person signing this document for an on behalf of the Hirer hereby covenants that he or she has the authority of the Hirer to make this Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer 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.
- b) Termination of this hire shall not affect any of the conditions a) that are expressed or implied to operate or have affect after termination.
- c) Time is to be of the essence of all obligations of the Hirer in these conditions.
- d) If any of the Conditions of Sale and Hire are found to be void, voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.
- e) This agreement is governed by the laws of the State of Queensland.

10. DAMAGE WAIVER

- a) Unless the 'Damage Waiver' box is marked 'Not Required' (N/R) and initialed by the Hirer then damage waiver charge shall apply. (See attached Property Damager Waiver Cover)
- b) In the event of loss of the Plant: 10% of the new replacement cost of the Plant.
- c) In the event of damage to the plant 10% of the cost of repairs to the plant (whichever is the greater).

This waiver shall not apply to damage to Equipment in the following circumstances and the Hirer shall be responsible for and indemnify the Owner without limit against any loss or damage where:- in the case of all equipment:

- i. damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment;
- ii. damage caused by misappropriation or wrongful conversion by the Hirer or its employees, servants, independent contractors or agents or by any other person to whom the Equipment is entrusted by the Hirer;
- iii. damage caused by the use or operation of Equipment in contravention of any of these Conditions of the Hire;
- iv. damage caused by the use or operation of Equipment in violation of any statute (Commonwealth or State) or any regulation or bylaw thereafter;
- v. damage to tools or accessories;
- vi. damage to tyres or tubes;
- vii. damage to batteries;
- viii. damage to Equipment occurring for any reason whilst located, used, unloaded, transported on, over or adjoining water including, without limiting the generality hereof whilst located, used, loaded or transported over or on wharfs, bridges, barges and vessels of all kinds;
- ix. the Equipment is lost or stolen;
- x. the damage or loss is caused by the negligence of the Hirer or any person under his control or the Nominated Driver including in the case of a motor vehicle any damage caused by the vehicle being driven without adequate water, engine oil, brake fluid or tyre air pressure;
- xi. the Equipment is used for a purpose for which it was not designed.

The Hirer shall be responsible for loss or damage to the Plant from any cause whatsoever apart from fair wear and tear unless the Hirer agrees, at the time of hire, to take out the insurance option and pays the appropriate fee. Should the Hirer take the insurance option as described herein then the Hirer shall be subject to the terms and conditions of the Owner's policy, a copy of which is available for inspection on request. In the event of a claim being made under this insurance the hirer is responsible for the payment of the policy excess applicable at the time. Hire Charges will continue until the Plant is repaired to the Owner's satisfaction or the claim is settled in some other way.

PPSA Register

- a) For the purpose of this Agreement:
"PPSA" means the PPS Act and any other legislation and regulations in respect of it and terms used in these terms which are defined in that Act shall have the same meaning in these terms to the extent that the provisions of these terms related to the PPSA. "PPS Act" means the *Personal Property Security Act 2009* (Cth) (as amended).
- b) The Customer consents to Advance Rentals effecting and maintaining registration on the register created by the PPSA (in any manner which Advance Rentals considers appropriate) in relation to any security interest contemplated or constituted by these terms in the goods together with the proceeds arising in respect of any dealings in the goods and the customer will sign any documents and provide all assistance and information to Advance Rentals which may be reasonably be required to facilitate the registration and maintenance of a security interest. Advance Rentals may at any time register a financing statement or financing change statement in respect of such security interest (including any purchase money security interest). The customer waives the right to receive notice of a variation statement in relation to any registration on the register of the security interest in respect of the goods.
- c) The customer agrees to:-
- i. Do anything reasonably required by Advance Rentals to enable Advance Rentals to acquire and maintain on or more perfected security interests under the PPSA in respect of the goods;
 - ii. Register a financing statement or financing change statement;
 - iii. Ensure that Advance Rentals security position and rights and obligations are not adversely affected by the PPSA;
 - iv. Not register a financing statement in respect of the security interest contemplated or constituted under these terms without Advance Rentals prior written consent; and
 - v. Not register or permit to be registered, a financing statement or financing change statement in relation to the goods in favour of a third party without Advance Rentals prior written consent.
- d) Section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act. The parties agree the following subclauses of Section 115(1) will not apply and the customer will have no rights under them
Section 115(1) (a), (b), (d), (f), (h), (l), (m), (n), (p), (q) and (r)
- e) Section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act. The parties agree the following sections of the PPS Act will not apply and the customer will have no rights under them:-
- h) Advance Rentals may apply amounts received in connection with these terms to satisfy obligations secured by a security interest contemplated or constituted by these terms in any way Advance Rentals determines in its absolute discretions;
- i. The customer will notify Advance Rentals in writing of any changes of its details contained in the credit application of which these terms form a part, within five (5) days of the date of such change.

Statement by Applicant(s) for Credit

Please read carefully before signing. Where there is more than one (1) applicant, each applicant must sign.

- a) Giving information to a Credit Reporting Agency (Section 18E(8)(c) Privacy Act 1988)
Advance rentals has informed me that it may give certain personal information about me to a credit reporting agency.
- b) Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988)
I/We agree that Advance Rentals may obtain information about me/us from a business, which provides information about the commercial credit worthiness of persons for the purpose of assessing my/our application for customer credit.
- c) Access to Customer Credit Information (Section 18K(1)(b), Privacy Act 1988)
I/We agree that Advance Rentals may obtain a consumer credit report containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit.
- d) Exchange of credit worthiness information (Section 18N, Privacy Act 1988)
I/We agree that Advance Rentals may exchange information with those credit providers names in this application or named in a consumer credit report issued by a credit agency for the following purposes:
- To access an application by me/us for credit.
 - To notify other credit providers of a default by me/us.
 - To exchange information with other credit providers as to the status of this loan where I/We are in default with other credit providers.
 - To assess my/our credit worthiness.
- I/We understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.
- e) Agreement to a credit provider being given a consumer credit report by a credit reporting agency to access a guarantor (Section 18K1(c) Privacy Act 1988).
I/We agree that Advance Rentals may obtain from a credit reporting agency a consumer credit report containing information about me/us for the purpose of assessing whether to accept me/us as a guarantor for credit applied for by, or provided to, the borrower(s) [name in agreement]. I/We agree that this agreement commences from the date of this agreement and continues until the credit covered by the borrowers(s) application ceases.
- f) Agreement to a credit provider disclosing a report including a consumer credit report to potential or existing guarantor/s (Section 18K(1) Privacy Act 1988).