

STANDARD CONDITIONS



1. Definitions

Customer means the entity specified in the Schedule and includes its agents, employees or other persons acting under the actual or ostensible authority of the Customer.

Environmental Laws means any law relating to the environment, including the use or protection of the environment, and applicable guidelines issued by a relevant regulatory authority that provide guidance as to how any such law is to be complied with.

Government Fees means any duties, taxes (including but not limited to GST) or other government or regulatory fees that arise as a direct consequence of the Owner and Customer's entry into this Hire Agreement. It includes fees payable under Environmental Laws but does not include income tax payable by the Owner.

Ground engaging equipment means Plant that is used to dig, cut, rip or otherwise engage with earth, rock, concrete and/or other physical parts of the environment. To remove doubt, it does not include tyres on a Motor Vehicle save for where those tyres are used as part of a compaction device.

Hire Agreement means an agreement between the Owner and the Customer for the hire of Plant that incorporates these Standard Conditions as terms of the Hire Agreement.

Hire Fee means the fee specified in the Schedule and includes the interval at which the Hire Fee is to be paid.

Hire Period means the period specified in the Schedule and includes any extension or variation of the Hire Period. It includes all weekdays, weekends and public holidays.

Hire State means the Australian State or Territory specified in the Schedule.

Insolvency Event means becoming insolvent or bankrupt, entering into voluntary or involuntary administration, entering into voluntary or involuntary liquidation, going into receivership or ceasing to trade or carry on business for any reason.

Insurance Policy means an insurance policy with an Australian insurance provider, being an entity who is lawfully entitled to provide insurance within Australia.

Non-Remote location means any location that is not a Remote location.

Motor Vehicle means any car, truck or other motorised item that is capable of self propulsion. It also includes a trailer or other non-motorised item that is intended to be used in conjunction with what would otherwise be a Motor Vehicle.

Owner means the entity specified in the Schedule and includes its agents, successors in title and permitted assigns.

Owner's Address means the address specified in the Schedule.

Plant means the items identified in the Schedule and includes all its parts, associated tools and accessories supplied to the Customer in association with the hire of the Plant.

PPSA means the *Personal Properties Securities Act 2009*.

PPSR means the Personal Properties Security Register under the PPSA or an equivalent register under an equivalent Act if the PPSR and/or PPSA no longer applies.

Remote location means any location that is more than 100km from a city or town with a population of more than 2000 people as specified in the most recent Australian Bureau of Statistics data for that city or town.

Schedule means the schedule in clause 1 of the Hire Agreement.

Standard Conditions means this document and its provisions. Where relevant, it includes its provisions as updated from time to time and incorporated into this Hire Agreement.

Termination Notice means written notice given by the Owner to the Customer that terminates the Hire Agreement in accordance with clause 10.1.

2. Interpretation

2.1 The following rules of interpretation apply to this Hire Agreement:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting individuals or persons include bodies corporate and vice versa;
- (c) words denoting one gender include all genders;
- (d) grammatical forms of defined words or phrases have corresponding meanings;
- (e) reference to a clause is a reference to a clause in the Hire Agreement or the Standard Conditions (as relevant to the circumstances) unless otherwise specified;
- (f) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (g) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (h) time is of the essence unless otherwise specified;
- (i) references to a party binds their executors, administrators and permitted assigns;
- (j) obligations under this Hire Agreement or related documents that affect or oblige more than one party bind each party jointly and severally;

- (k) all clauses necessary for dealing with, and administering, any and all rights under this document after termination survive termination and continue to bind the parties to their fullest extent, save for where it is expressly provided to the contrary;
- (l) the Owner and the Customer may vary this Hire Agreement at any time, but any such variation must be evidenced in writing. References to this Hire Agreement or related documents are therefore taken to be references to this Hire Agreement or related documents as changed, novated or replaced (as occasion requires). To remove doubt, execution of this Hire Agreement or related documents may be in counterpart;
- (m) any term or clause of this Hire Agreement which a court finds to be unlawful is taken to be removed and the rest of this Hire Agreement is to be given effect to its fullest extent. To remove doubt, any term or clause removed from this Hire Agreement in accordance with this sub-clause may still be used in determining the intent of this Hire Agreement for the purpose of its interpretation unless use of the term or clause for that purpose is denied as a matter of law and/or would result in an absurdity (e.g. reference to the removed term or clause would have the effect of invalidating other lawful parts of the Hire Agreement); and
- (n) any references to law, legislation or provisions of legislation are references to law or legislation applicable in the State of Queensland or the Commonwealth of Australia (as applicable) and includes changes or re-enactments of the legislation as required to retain the validity of this document.

3. Owner's title in Plant

- 3.1 The Customer acknowledges that the Owner retains title in the Plant, that the Customer retains possession of the Plant as a bailee only and that in no circumstances will the Plant be deemed to be a fixture or fitting of any premises in the control or ownership of the Customer. The Customer is not entitled to offer, sell, assign, sub-let, mortgage, pledge, or otherwise deal with the Plant in any way that is inconsistent with the rights of the Owner as owner of the Plant. To remove doubt this clauses applies even if the Customer is subject to an Insolvency Event.
- 3.2 If the Customer is, knows, or ought to know it will become subject to an Insolvency Event, the Customer must notify the Owner immediately and cause the Plant to be delivered to an address specified by the Owner within the shortest possible time the Customer is physically capable of doing so. If the Owner chooses to collect the Plant upon notification by the Customer, the Customer must do all things necessary to ensure the Owner is not obstructed from collecting the Plant. The Customer irrevocably appoints the Owner with a power of attorney to do all things to collect the Plant in circumstances where the Customer is subject to an Insolvency Event.

4. Customer's use of Plant

- 4.1 The Customer is entitled to use the Plant during the Hire Period within the Hire State subject to the terms of this Hire Agreement. The Customer must not remove the Plant from the Hire State, save for where that removal is reasonably required to return the Plant to the Owner or the Owner otherwise permits such removal in writing.
- 4.2 Before using the Plant, the Customer must familiarise itself and all relevant staff and contractors with the Plant's operating requirements, specifications and use restrictions. The Customer agrees by its use of the Plant thereafter that the Customer:
 - (a) is satisfied the Plant is suitable for its intended use;
 - (b) is satisfied the Plant is in a condition that is fit for its purpose; and
 - (c) will only use the Plant for its intended use, in a manner which is safe and in accordance with the Plant's operating specifications, use restrictions and all applicable legal requirements.
- 4.3 The Customer agrees that it will only allow the following persons to use the Plant while the Plant is under the Customer's control:
 - (a) persons who are appropriately experienced and hold necessary qualifications, licences or other regulatory approvals and certifications;
 - (b) persons who have familiarised themselves with the operating requirements, specifications, use restrictions and all applicable legal requirements for the Plant and who are capable of operating the Plant in a safe manner and in accordance with its specifications, use restrictions and all applicable legal requirements;
 - (c) persons who are not under the influence of alcohol or drugs or other impairing substances, which should involve, but is not limited to, taking account of any regulatory requirements relating to the maximum limits of influence by any such alcohol, drugs or other impairing substances.
- 4.4 The Customer is taken to be using the Plant regardless of whether the Plant is being operated by a person arranged or supplied by the Customer or by a person arranged or supplied by the Owner for the Customer's use of the Plant. To remove doubt, the operation of the plant by a person arranged or supplied by the Owner for the Customer's use does not reduce the Customer's other obligations imposed under the Hire Agreement, including but not limited to the obligations in clause 4.3.
- 4.5 Subject to the Owner's availability, and if requested by the Customer, the Owner will attend at the premises where the Customer is using the Plant to provide basic instruction as to the use and operation of the Plant. To remove doubt, any such attendance is not included in the Hire Fee and the Customer will be required to pay an additional fee to the Owner for the attendance, which will consist of an hourly rate for the Owner's

- time and a rate for the Owner's travel costs. Nothing in this clause obliges the Customer to employ the Owner to provide instruction as to the use and operation of the Plant or reduces the Customer's other obligations imposed by clause 4.
- 4.6 The Customer agrees to ensure that the Plant is kept clean, fuelled and lubricated. The Customer also agrees to maintain the Plant in good condition in accordance with the manufacturer's specifications and Owner's instructions at the Customer's own cost (excluding the requirement to carry out scheduled servicing). Without limiting the matters that the Customer must do under this clause, the obligation includes the Customer maintaining and keeping in current certification the following during the Hire Period (where these items are fitted or otherwise used as part of the Plant):
- (a) fire extinguishers;
 - (b) chains, ropes, slings or other such tie down equipment, bow shackles or other such fasteners.
- 4.7 The Customer must not in any way alter, modify, tamper with, damage or repair the Plant without the Owner's written consent. At all times, the Customer must keep the Plant safe and secure such that it is adequately protected from theft, seizure, loss or damage.
- 4.8 The Customer must inform the Owner as soon as reasonably practicable of the occurrence of any loss, damage, breakdown or unsuitability of the Plant, but no longer than two business days after the loss, damage, breakdown or unsuitability of the Plant occurs (unless it is impossible or highly impractical to do so). If the Plant is lost, damaged, broken down or becomes unsuitable for any reason, the Customer must not continue to use the Plant or act in any way that could cause further loss, damage, breakdown or unsuitability of the Plant.
- 4.9 Save for where the loss, damage or breakdown of the Plant is as a result of fair wear and tear only, the Customer is responsible for all of the Owner's costs of repairing and/or replacing the Plant (at the Owner's sole discretion but acting reasonably) due to the loss, damage or breakdown of the Plant. The costs to the Owner referred to in this clause include, but are not limited to, the following:
- (a) insurance excesses;
 - (b) delivery, collection or other transportation costs;
 - (c) consultant and employee costs, including but not limited to professional and trade costs;
 - (d) administrative costs;
 - (e) certification and other costs associated with ensuring the repaired or replaced Plant complies with relevant regulatory requirements.
- 4.10 To remove doubt, where the Plant is a Motor Vehicle, the Customer is responsible and liable for the cost of repairing or replacing flat or damaged tyres arising from anything other than fair wear and tear of the tyres.
- 4.11 The Customer is also responsible for payment of any and all tolls, fines, penalties or other statutory fees arising out of, or in conjunction with, the Customer's use of Plant. This does not however include payment for registration of the Plant or other similar charges which are ordinarily required to be paid to ensure the Plant is lawfully able to be used on Government roads and the like.
- 4.12 Where the Plant includes ground engaging equipment, the Customer must pay the costs of maintaining and replacing that ground engaging equipment in relation to any wear, use or damage in comparison to its condition at the start of the Hire Period. Where, at the end of the Hire Period, the ground engaging equipment is worn, used or damaged in comparison to its condition at the start of the Hire Period, the Owner may charge the Customer an amount that the Owner considers (at its sole discretion) equivalent to the amount of wear, use or damage of any ground engaging equipment instead of charging the full replacement cost.
- 4.13 The Customer must take out and hold for the duration of the Hire Period an Insurance Policy which covers the Customer for an amount equivalent to the replacement cost of the Plant in circumstances where the Plant is lost, stolen or damaged. The Insurance Policy may have an excess, which will be payable by the Customer in the event of the Plant being lost, stolen or damaged. Any payments received by the Customer under the Insurance Policy are to be held on trust by the Customer for the benefit of the Owner for the purpose of satisfying any and all claims the Owner may have against the Customer under this Hire Agreement. The Customer irrevocably gives the Owner a power of attorney in relation to claiming or recovering any amount for the Plant under an Insurance Policy taken out in accordance with this clause.
- 4.14 If the Plant is lost, damaged, breaks down or becomes unsuitable because of fair wear and tear only, the Owner will take all necessary steps to repair or replace the Plant (at the Owner's sole discretion but acting reasonably) for the Customer's use as soon as reasonably practicable from being made aware of the loss, damage, breakdown or unsuitability. The Owner will not charge the Customer the Hire Fee applicable to the time in which the Plant was lost, damaged, broken down or unsuitable because of fair wear and tear only.
- 4.15 Nothing will render the Owner liable to the Customer for any damage or loss suffered (or alleged to be suffered) due to the loss, damage, breakdown or unsuitability of the Plant resulting from fair wear and tear to the Plant.
- 4.16 If the Customer and the Owner agree to extend the Hire Period, the terms of this Hire Agreement apply to the extended Hire Period in the same way that they applied to the original Hire Period (subject to any amendments).
- 4.17 The Customer must, at its cost, return the Plant to the Owner's Address or such other location specified by the Owner on or before the end of the Hire Period. If the Owner specifies another location or place for the return of the Plant, the maximum cost

to the Customer for returning the Plant will be the cost of returning the Plant to the Owner's Address.

4.18 The Customer is not entitled to any discounts or set-off for non-use of the Plant within the Hire Period or returning the Plant prior to the end of the Hire Period. Failure to return the Plant to the Owner's Address or such other location specified by the Owner on or before the end of the Hire Period will incur a daily pro-rata fee based on the Hire Fee plus 20%. This fee is in addition to any other rights, remedies or causes of action the Owner might have for the Customer's failure to return the Plant.

4.19 If the Owner agrees to deliver, collect or otherwise arrange to transport the Plant for or on behalf of the Customer, the Customer must pay the Owner a fee specified by the Owner for that delivery, collection or transport. This clause does not oblige the Customer to use the Owner for delivery, collection or transport of the Plant under the Hire Agreement.

5. Owner's servicing and inspection

5.1 The Customer must make the Plant available for all regular servicing and inspections at an address or place specified by the Owner within 30 days of being notified by the Owner that a regular service or inspection is required.

5.2 The Customer will pay the costs of regular servicing and scheduled inspections (including the costs of transporting the Plant to the address or place specified by the Owner, including costs incurred by the Customer for any wages, contractors fees, delay or other expense that relates to the Customer's business).

5.3 Despite clause 5.2, if the Customer is using the Plant at a Remote Location, then the Customer must pay the costs of returning the Plant to a Non-Remote location for regular servicing and scheduled inspections during the Hire Period.

5.4 The Owner may attend at the premises of the Customer or any premises where the Plant is used by the Customer for the purpose of inspecting the Plant and determining whether the Customer is complying with its obligations under the Hire Agreement. In any such attendance the Owner will comply with the direction of the Customer for the purpose of complying with workplace health and safety laws and will otherwise act in a manner that does not unreasonably interfere with the Customer's business. The Customer must not unreasonably restrict or obstruct the Owner from carrying out an inspection of the Plant.

6. Fees and charges

6.1 The Customer must pay the Owner the Hire Fee throughout the entirety of the Hire Period along with any additional fees and charges payable under the terms of this Hire Agreement.

6.2 Without limiting any other fees and charges that may be payable under other terms of this Hire Agreement, the Customer must pay the Owner:

- (a) an additional fee at the intervals specified in the Hire Fee as follows:

- (i) for Non-Motorised Plant – an amount equivalent to $\frac{1}{8}$ th of the relative daily rate for each hour the Plant is used over and above 8 hours in a calendar day;

- (ii) for Motorised Plant - an amount equivalent to $\frac{1}{8}$ th of the relative daily rate for each hour the Plant is used over and above 12 hours in a calendar day.

- (b) the cost plus 20% of any consumables or trade materials supplied by the Owner to the Customer for use in association with the Plant;

- (c) if the Plant is not returned in the same good and clean condition it was when it was provided to the Customer at the start of the Hire Period, save for fair wear and tear, a fee equivalent to the cost of cleaning and restoring the Plant to a good and clean condition; and

- (d) any Government Fees that the Owner is obliged to pay, save for circumstances where the Customer pays those Government Fees and provides the Owner with documentation that allows the Owner to confirm in a manner required by the relevant regulatory authority that the Government Fees have been paid.

6.3 Despite clause 6.1, the Customer is not obliged to pay the Owner the Hire Fee or any additional fees and charges payable under this Hire Agreement until the Owner has given the Customer a tax invoice for the Hire Fee or other fees and charges payable under this Hire Agreement.

6.4 Upon the Owner giving the Customer a tax invoice for the Hire Fee and/or any additional fees and charges payable under this Hire Agreement, the Customer must pay the Owner the Hire Fee and any additional fees and charges payable in the manner, and in the time, specified in the tax invoice as a debt due and payable. To remove doubt, the Owner may issue a tax invoice for payment of the Hire Fee at the specified intervals and is not required to wait until the end of the Hire Period to issue a tax invoice for those intervals.

6.5 If the Customer fails to pay the Owner the fees and charges required by clause 6.1, without limiting any other remedies, rights or causes of action the Owner might have in relation to the Customer's failure, the Customer must pay the Owner the outstanding fees and charges plus:

- (a) an amount equivalent to 2.5% per month (accruing daily) on any fees and charges that are not paid when the debt becomes due and payable; and

- (b) all other expenses incurred by the Owner in taking action to recover the amount that the Customer has failed to pay, including but not limited to legal costs, debt recovery and consultant fees.

6.6 The Owner may set-off any fees and charges payable by the Customer under clause 6.1 against any amount payable by the Owner to the Customer regardless of how the obligation for the amount payable by the Owner to the Customer arises.

7. Exclusion of liability

- 7.1 Except as expressly provided in this Hire Agreement, all terms, conditions and warranties in favour of the Customer are excluded. This clause applies except to the extent a law does not allow a term, condition or warranty to be excluded.
- 7.2 The Owner's liability for any breach of a term, condition or warranty of the Hire Agreement, save to the extent such a limitation is otherwise modified by the operation of law:
 - (a) is limited to the repair or replacement (at the Owner's sole discretion) of the Plant and the reduction of the Hire Fee for the time in which the Plant is not made available to the Customer because of that liability; and
 - (b) will not result in the Owner being liable for any loss or damage suffered (or alleged to be suffered) by the Customer or any other party, no matter what the loss or damage is caused by.
- 7.3 The Customer acknowledges that the Owner is entering into the Hire Agreement as trustee only and that the extent of any damages or loss the Customer may claim from the Owner are limited to the assets of the trust for which the Owner has entered the Hire agreement as trustee.

8. PPSR Registration

- 8.1 The Owner may register its interest in the Plant on the PPSR. The Owner's right to do so is in addition to, and does not subsume, any other rights the Owner has in respect of the Plant and the Customer's use of the Plant.
- 8.2 To the extent Chapter 4 of the PPSA applies, the following provisions do not apply to the Hire Agreement: section 95, to the extent it requires the Owner to give the Customer a notice; section 96; section 121(4), section 125, section 129(2) and (3); section 130; section 132(3)(d); section 132(4); section 142; and section 143.
- 8.3 Subject to clause 8.2, the following provisions of the PPSA provide rights to the Owner: section 123; section 126; section 128; section 129; section 134(1). The Customer agrees that those rights operate under the PSSA and as separate and independent rights under the Hire Agreement.
- 8.4 The Customer waives its right to receive a verification statement in relation to registration events under section 157 of the PPSA.
- 8.5 The Owner and the Customer agree not to disclose information of the kind that can be requested under section 275(1). The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply.
- 8.6 Despite clause 8.5, the Owner shall not be liable to the Customer or any other party to pay damages or any other compensation or be subject to an injunction in respect of any actual or threatened breach of this clause.
- 8.7 The Customer must do everything required and within its power to enable the Owner to effect registration of a security interest in the Plant. Without reducing the obligation on the Customer to do so, the Customer gives the Owner an irrevocable power of

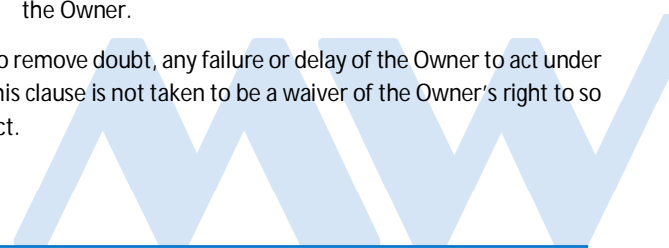
attorney to do all things necessary by and on behalf of the Customer to enable the Owner to effect registration of a security interest in the Plant.

9. Indemnities

- 9.1 The Customer indemnifies the Owner in relation to any liability, loss, claim, cause of action, proceeding or other legal process brought or threatened to be brought against the Owner arising out of or in connection with the Hire Agreement or the Customer's use of the Plant.
- 9.2 The Customer indemnifies the Owner in relation to any costs or expenses the Owner incurs in defending and otherwise dealing with any liability, loss, claim, cause of action, proceeding or other legal process brought or threatened to be brought against the Owner arising out of or in connection with this Hire Agreement or the Customer's use of the Plant.
- 9.3 The indemnities in clauses 9.1 and 9.2 operate as joint and several obligations on the Customer. The Customer must pay any amount required under the indemnities as a debt due and payable on the Owner's written demand.
- 9.4 To remove doubt, in applying clause 9, the Customer is taken to be using the Plant regardless of whether the Plant is being operated by a person arranged or supplied by the Owner to facilitate the Customer's use of the Plant or another person.

10. Termination

- 10.1 The Owner may terminate the Hire Agreement if the Customer breaches a term of the Hire Agreement or the Customer is, or is reasonably expected to be, subject to an Insolvency Event. Termination is effected if the Owner gives the Customer written notice that the Hire Agreement is terminated.
- 10.2 Non-issue of a Termination Notice is not to be taken to be a waiver of the Owner's rights in respect of any of the Customer's breaches and does not in any way affect any right or remedy the Owner may rely on to enforce or otherwise bring a claim or action for a breach of this Hire Agreement.
- 10.3 Upon the issue of a Termination Notice:
 - (a) the Owner may take all steps necessary to recover or repossess the Plant, including entering the Customer's or other premises where the Plant is being kept;
 - (b) the Customer must do all things within its power to assist the Owner to recover or repossess the Plant, including arranging for entry into any premises where the Plant is kept and signing any authorisation or other document required to allow the recovery or repossession of the Plant; and
 - (c) the Customer gives the Owner an irrevocable power of attorney to do all things necessary on behalf of the Customer to enable and ensure the return of the Plant to the Owner.
- 10.4 To remove doubt, any failure or delay of the Owner to act under this clause is not taken to be a waiver of the Owner's right to so act.



11. Force Majeure

- 11.1 Subject to clause 11.2, neither party will be responsible for any delays in delivery, installation or collection of the Plant due to causes that are reasonably beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, shortages or inability to obtain shipping space or land transportation.
- 11.2 Nothing in clause 11.1 will limit or exclude the liability of the Customer in respect of the Plant's loss, theft or damage.

12. Claim for Payment

- 12.1 Invoices issued by the Owner to the Customer under this Hire Agreement are, as occasion requires and at the election of the Owner, taken to be a claim for payment under the *Building and Construction Industry security of Payment Act 1999* (NSW), the *Building and Construction Industry Security of Payment Act 2002* (VIC), the *Building and Construction Industry Payments Act 2004* (Qld), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Construction Contracts Act 2004* (WA), the *Building and Construction Industry (Security of Payment) Act 2009* (ACT), the *Building and Construction Industry Security of Payment Act 2009* (TAS), and/or the *Construction Contracts Act (Security of Payments) Act 2009* (NT).

