



## **ACTIONHIRE EQUIPMENT RENTAL TERMS AND CONDITIONS**

### **1. Definitions**

"Actionhire" means Actionhire Equipment of 96 Waterloo Road, Moe VIC 3825 ABN: 21 037 363 658.

"Agreement" has the meaning specified in Clause 2 (a).

"Customer" means the customer identified in Item 1 of the Schedule and includes the Customer's employees, agents, executors, administrators, assigns and representatives.

"Date Out" means the date on which the Equipment is rented being the date specified in Item 2 of the Schedule.

"Equipment" means the equipment rented by Actionhire to the Customer and as specified in Item 3 of the Schedule and includes any and all accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials and substitute and replacement Equipment.

"Location" means the Location of the Equipment as specified in Item 4 of the Schedule.

"De-hire Number" means the number provided by Actionhire to the Customer when the Customer notifies Actionhire that the rental of the Equipment has ended.

"Rental Account Application" means the application identified as the Rental Account Application.

"Rental Charges" means the charges referred to in Clause 3 hereof.

"Rental Period" means the period from the Date Out until the termination of the Rental Agreement.

"Rental Protection/Damage Waiver" means an amount paid by the Customer to reduce the Customer's financial liability in the event of loss or damage to the Equipment.

"Stand Down Number" means the number provided by Actionhire to the Customer when the Customer makes a request to Actionhire for stand down rates.

"Off Hire Number" means the number provided by Actionhire to the Customer when the Customer makes a request to Actionhire for temporary off hire rates.

### **2. Agreement**

- (a) Actionhire rents the Equipment to the Customer on the terms of the Rental Agreement, these Rental Terms and, where applicable, the Rental Account Application (collectively, "the Agreement").  
This Agreement constitutes the entire understanding between the parties. Any prior contemporaneous or subsequent invitations, representations, warranties or the like being hereby expressly negated and excluded. This Agreement is not capable of being varied save by written agreement between the parties;
- (b) the Customer agrees that Actionhire will not be liable for any loss or damage howsoever or whatsoever occasioned (and that these terms and conditions shall not be effected by any delay or failure in delivery or failure of the equipment during the rental period).
- (c) no warranty or representation is given by Actionhire as to the performance, state, fitness or capacity of the machinery or as to the ability to perform any work for which it has been hired.  
Any warranty or representation (express or implied) as to the ability, fitness, or capacity of the machine in performing work in which it was hired is expressly excluded.

### **3. Rental Charges and Other Charges**

- (a) Rental Charges will be incurred from the Date Out until and including the day on which the Customer receives a De-hire Number from Actionhire or the Rental Agreement is terminated in accordance with clause 9, whichever is the earlier unless the De-hire Number is issued before 9am, in which case there will be no Rental Charge for that day.
- (b) The Customer must not request a De-hire Number unless the Equipment is ready to be returned to, or collected by, Actionhire.
- (c) The Customer will pay the daily rate for the first 8 hours or any part thereof of usage per day such that for the period of hire the average daily usage does not exceed 8 hours. The daily rate is as specified in Item 5 of the Schedule.
- (d) For any hour of usage (or part thereof) in excess of the daily hire period, the Customer shall pay the hourly rate as specified in Item 6 of the Schedule.
- (e) The Customer shall the charge for delivery of the equipment as specified in Item 7 of the Schedule and the charge for collection of the equipment as specified in Item 8 of the Schedule.
- (f) The Customer shall pay:-
  - (i) all equipment operating costs (including fuels, oils and lubricants) incurred, and all consumables used during the Rental Period;
  - (ii) any taxes, duties (including stamp duty), levies, charges or imports of or in connection with the Agreement;
  - (iii) a sum equal to the amount of any goods and services tax (GST) payable by Actionhire on any supplies made by Actionhire under or in connection with the agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate;



- (vi) any costs or expenses reasonably incurred by Actionhire in enforcing the Agreement, as a result of the Customer's breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out (including cleaning costs); and
- (vi) any Damage Waiver payable under clause 7.
- (g) Where any amount payable under the Agreement becomes overdue, all outstanding amounts whether due to Actionhire under the terms of the Agreement or under any other Rental Agreement between Actionhire and the Customer will become immediately due and payable by the Customer to Actionhire.
- (h) Actionhire may charge the Customer interest calculated on a daily basis and compounded monthly on overdue amounts from the date of the actual receipt of payment at an interest rate which is 4% greater than the rate published by the Commonwealth Bank of Australia or its successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment;
- (i) Credit Account Customers must pay all amounts owing under the Agreement thirty days from the end of month. All Credit Card Account Customers will be billed on commencement of hire, or at monthly intervals. No unit will be released until credit card account has been received by Actionhire, or a credit account is established.

#### **4. Customer Obligations**

- (a) Except as provided in the Agreement, the Customer shall have no right, title, property or interest in the Equipment except as bailee and must not sublet, assign, transfer, dispose of or otherwise deal with any rights or interest in the Equipment. The Customer must do everything necessary to protect the rights of Actionhire in the Equipment;
- (b) Risk in the Equipment shall be had with the Customer from the Date Out to the date of return of the equipment to Actionhire. Subject to clause 7 below, the Customer is liable to Actionhire for any and all loss or damage to, or caused by, the Equipment or its operation and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at the full new replacement cost, salvage costs and Rental Charges incurred while the Equipment is repaired or replaced.
- (c) The Customer must ensure that the equipment is:
  - (i) operated by a suitably trained, licensed, experienced and (if necessary) certified operator and is operated in accordance with the Operator's Manual and Actionhire instructions;
  - (ii) returned to Actionhire in the same condition as at the Date Out (except for normal wear and tear) and returned with a full tank of fuel or the Customer will pay Actionhire the cost of filling that tank.  
A cleaning charge will apply if necessary;
  - (iii) used for the purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
  - (iv) not removed from the Location without Actionhire's written consent;
  - (v) at all times stored safely and protected from theft, loss or damage.
- (d) If the Equipment breaks down or becomes unsafe to operate, the Customer shall immediately stop using the Equipment, ensure it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.
- (e) The Customer must not repair or attempt to repair the Equipment without Actionhire prior written consent.
- (f) The Customer must immediately notify and provide full details so Actionhire of any loss, theft, breakdown or damage to the Equipment. If Actionhire is not in attendance, message must be left on answering service, indicating the time of the incident. Subject to clause 11, Actionhire will use reasonable endeavours to repair or replace the Equipment at Actionhire's discretion and at the Customer's expense after receiving such notification. Any equipment supplied as a replacement will be supplied for the unexpired balance of the Rental Period on the terms of the Agreement.
- (g) Any person provided by Actionhire to operate the Equipment shall be under the sole direction and control of the Customer. The Customer is responsible for any and all claims, loss or damage whatsoever arising in connection with the operation of the Equipment by that person. Where an operator is provided by Actionhire, no other person shall operate the Equipment without Actionhire's prior written consent.
- (h) The Customer must:
  - (i) ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment;
  - (ii) maintain any safety signs supplied by Actionhire and ensure they are clearly legible and brought to the attention of any person using the Equipment;
  - (iii) ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment;
  - (iv) ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by Actionhire or the safety and operating instructions;
  - (v) ensure that the operator is suitably licensed for the relevant equipment (min. operator age 18 yrs)
  - (vi) not alter, deface, erase or remove and identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment; and
  - (vii) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with Actionhire instructions and the Operator's Manual and the Customer must ensure that the equipment is not turned upside down unless written permission to do so is provided by Actionhire.
- (viii) the machinery may not be transported without prior written consent of Actionhire out of Australia.
- (i) The Customer must comply with all statutory laws and regulations and all common laws.



## **5. Access and Inspection**

Actionhire and its representatives have the right to enter the Location at any time upon giving prior reasonable notice to inspect, maintain and/or repair the Equipment or to repossess the Equipment. The Customer must assist Actionhire and its representatives in exercising its rights under this clause.

## **6. Privacy**

The Customer agrees that Actionhire may obtain, disclose and use information:

- (a) about the Customer's credit worthiness or for the purpose of obtaining and maintaining credit information file about the Customer or collecting overdue payments;
- (b) about the Customer for the purpose of providing services to the Customer, including sharing information with other associated companies.

## **7. Damage Waiver - Compulsory**

- (a) The Damage Protection must be paid by the Customer where the full new replacement cost of the Equipment as determined by Actionhire exceeds \$200.
- (b) For the purposes of this clause, the term Equipment does not include any tools, accessories, parts, grease guns, hoses or similar electrical cords, welding cables, gas cylinders, pneumatic tools, light globes and other similar accessories, ground engaging tools, tracks, tyres or glass.
- (c) If the Customer has acquired Rental Protection, then, subject to this clause, the Customer's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft is limited to \$2500 or 10% of the Equipment (if repaired) or 10% of the full new replacement cost of the Equipment (if replaced), whichever is the greater. This applies per single incident.
- (d) The customer's liability will not be limited in accordance with clause 7(c) if, in PQRS reasonable opinion, the loss or damage to the Equipment arises from or is caused by:
  - (i) a breach of the Agreement;
  - (ii) the customers negligent acts or omissions;
  - (iii) improper use of the Equipment;
  - (iv) transporting, loading or unloading (except where transported by Actionhire);
  - (v) lack of lubrication or other normal servicing of the Equipment;
  - (vi) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment;
  - (vii) artificial electrical current or exposure to any corrosive substance or environment; or
  - (viii) use or location of the Equipment in, or over water, on bridges, vessels or structures of any kind.
- (e) The Customer must promptly report any theft of the Equipment to the Police and provide Actionhire with the written evidence verifying that report.

## **8. Insurance**

The Customer must at its cost take out and maintain during the term of the Agreement policies of insurance for:

- (a) indemnity cover of not less than the full new replacement cost of the Equipment; and
- (b) third party and public liability indemnity (for both property and personal injury) cover of not less than \$20 million.

## **9. Termination**

- (a) Subject to clause 9(b) the Rental Agreement will terminate when the Customer delivers the Equipment to Actionhire during normal working hours, or, if Actionhire agrees, when the Equipment is collected by Actionhire. The Customer irrevocably appoints Actionhire as its agent and authorises and licences Actionhire to enter the Location and repossess the Equipment after the Customer receives a De-hire Number or upon termination of the Rental Agreement, whichever is the first to occur.
- (b) Actionhire may terminate any Rental Agreement or the Agreement as a whole and repossess the Equipment at any time by written notice to the Customer if the Customer is in breach of the Agreement and fails to remedy that breach within 7 days of receiving notice requiring the Customer to do so or the Customer becomes insolvent or otherwise is unable to pay its debts as they fall due.
- (c) Actionhire may terminate the Agreement without prejudice to any rights that may or did arise prior to the termination, at any time during the Rental Period by giving two (2) days written notice of such termination to the Customer.



## **10. Liability and Indemnity**

- (a) As far as the law permits Actionhire excludes all warranties, conditions, rights and remedies the Customer would otherwise be entitled to by law.
- (b) Actionhire's liability for loss or damage (including consequential loss or loss of profit) incurred by the Customer or a person making a claim against the Customer is excluded as far as the law permits. To the extent it cannot be excluded, it is limited as far as the law permits to the repair or replacement of the Equipment.
- (c) Actionhire and its directors, employees or representatives are not liable to the Customer for negligent acts or omissions.
- (d) The Customer indemnifies and shall keep indemnified Actionhire against any liability, loss, damage, costs or expenses incurred or suffered by Actionhire arising directly or indirectly out of or in connection with:
  - (i) any breach of the Agreement, any breach of any laws (including environment laws) or any act or omission on the part of the Customer or its officers, employees or representatives;
  - (ii) any action for trespass resulting from Actionhire entering the Location in accordance with clause 9(a).
  - (iii) any damage to any property of the Customer or any third party of any nature whatsoever and howsoever arising.
  - (iv) any damage to the Customer or any agent or employee thereof or any third party of any nature whatsoever and howsoever caused.
- (e) These limitations and indemnities continue after the Agreement expires or terminates.

## **11. Stand Down Conditions**

A stand down rate of 50% off normal rates may apply subject to:

- (i) Machine availability.
- (ii) Notification to Actionhire before 9am.
- (iii) Stand Down Number having been issued by Actionhire.

## **12. Off Hire Conditions (Temporary)**

- (a) A machine may only be temporarily off hired due to break down, public holiday or RDO. Nil charge applies with the prior written consent of Actionhire.
- (b) Wet weather off hire only applies to earthmoving equipment greater than 6T.
- (c) Notification to Actionhire is required before 9am.
- (d) Temporary Off Hire Number issued by Actionhire.

## **13. De Hire Conditions (Hire completion)**

- (a) De Hire Number must be obtained by the Customer before 9am on day of hire termination.
- (b) Customer must not request De Hire Number unless equipment is ready to be returned to, or collected by Actionhire.
- (c) The equipment remains the responsibility of the Customer until returned to Actionhire depot.

## **14. PPS Law**

- 14.1 This clause applied to the extent that this Contract provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provision or legislation.
- 14.2 If Actionhire does not have a Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:-
  - (a) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
  - (b) a year in any other case.
- 14.3 Actionhire may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Actionhire requires for the purposes of:-
  - (a) ensuring that Actionhire's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling Actionhire to gain first priority (or any other priority agreed to by Actionhire in writing) for its security interest; and
  - (c) enabling Actionhire to exercise rights in connection with the security interest.
- 14.4 The rights of Actionhire under this document are in addition to and not in substitution for Actionhire's rights under other law (including the PPS Law) and Actionhire may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Actionhire's security interest will attach to proceeds.
- 14.5 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provision of the PPS Law do not apply and, for the purposes of Section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Actionhire to give a notice to the Customer); Section 96 (retention of accession); Section 121(4) (notice to grantor); Section 125 (obligations to dispose of or retain collateral); Section 130 (notice to dispose to the extent it required Actionhire to give a notice to the Customer); Section 129(2) and 129(3); Section 132(4) (statement of account if no disposal); Section 135 (notice of retention); Section 142 (redemption of collateral); and Section 143 (re-instatement of security agreement).



- 14.6 The following provision of the PPS Law; Section 123 (seizing collateral); Section 126 (apparent possession); Section 128 (secured party may dispose of collateral); Section 129 (disposal by purchase); and Section 134(1) (retention of collateral) confer rights on Actionhire's Customer agrees that in addition to those rights, Actionhire shall, if there is default by Customer, have the right to seize purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also as additional and independent rights, under this document and the Customer agrees that Actionhire may do so in any manner it sees fit including (in respect of dealing and disposal) by private sale, lease or licence.
- 14.7 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under Section 157 of the PPS Law.
- 14.8 Actionhire and the Customer agree not to disclose information of the kind that can be requested under Section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that Section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Actionhire the benefit of Section 275(6)(a) and Actionhire shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- 14.9 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of Actionhire.
- 14.10 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Actionhire (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Actionhire and must be expressed to be subject to the rights of Actionhire under this agreement. Customer may not vary a sub-hire without the prior written consent of Actionhire (which may be withheld in its absolute discretion).
- 14.11 Customer must ensure that Actionhire is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payments under the sub-hire and the location and condition of the Equipment.
- 14.12 Customer must take all steps including registration under PPS Law as may be required to:-
- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling the Customer to gain (subject always to the rights of Actionhire) first priority (or any other priority agreed to by Actionhire in writing) for the security interest; and
  - (c) enabling Actionhire and the Customer to exercise their respective rights in connection with the security interest.
- 14.13 To assure performance of its obligations under this agreement, the Customer hereby give Actionhire an irrevocable power of attorney to do anything Actionhire considers the Customer should do under this agreement. Actionhire may recover from Customer the cost of doing anything under this clause 14, including registration fees.

## **15. Miscellaneous**

- (a) The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.
- (b) Time is of the essence for obligations of the Customer under the Agreement.
- (c) Actionhire may assign or subcontract all or any of the rights under the Agreement. The Customer must not assign or subcontract all or any of its rights under the Agreement.
- (d) The Agreement is governed by, if signed in Australia, the laws of the States or Territories in which is signed by Actionhire.
- (e) Time out is time used.
- (f) no waiver, granting of time or other indulgence shall affect Actionhire' rights under this Agreement notwithstanding any rule of law or equity to the contrary.
- (g) the headings used in this Agreement are for convenience only and no regard shall be had thereto in the interpretation of this Agreement.

## **16. Guarantee**

The person signing on behalf of the Customer (the "Customer Signatory") acknowledges that Actionhire has entered into this Agreement with the Customer at the request of the Customer's Signatory and in consideration thereof the Customer's Signatory hereby (for the Customer Signatory and the executors and administrators of the Customer Signatory) shall hereby:-

- (a) guarantee the performance and observance of the terms and conditions in this Agreement on the part of the Customer to be performed and observed and it is hereby specifically agreed and declared that this guarantee shall be a continuing guarantee and shall no way be avoided released or affected and shall remain in full force and effect notwithstanding any time indulgence given or allowed by Actionhire to the Customer or any variation of the terms of this Agreement;



- (b) covenant with Actionhire to duly and punctually pay to Actionhire all monies payable under this Agreement and shall perform and observe all other conditions and covenants contained in this Agreement on the part of the Customer to be performed and observed; and
- (c) indemnify and keep indemnified Actionhire against all damages, losses, costs and expenses or otherwise which may be incurred by Actionhire by reason of any default on the part of the Customer in the performance and observance of the agreement and conditions on the part of the Customer to be performed and observed as contained in this Agreement **PROVIDED THAT** payments by the Customer and the performance of the said conditions and covenants by the Customer shall to that extent release us from all liability hereunder.

**I have read, understood, and agree to be bound by the above terms and conditions.**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Contact phone number: \_\_\_\_\_

Drivers licence number: \_\_\_\_\_

Company Name: \_\_\_\_\_

Please sign and email back to [jeremy@actionhire.net.au](mailto:jeremy@actionhire.net.au) or  
Fax to 035126 3254