



**TERMS AND  
CONDITIONS OF HIRE**

**ASSET CONSTRUCTION HIRE  
Pty Ltd**

A.B.N. 34149150078

## CONDITIONS OF HIRE

### 1. DEFINITIONS

<b>OWNER</b>	Means ASSET Hire Pty Ltd (ASSET), its employees, subcontractors or agents and any associated companies.
<b>HIRER</b>	Means the person or persons, partnership, trust, firm or corporation referred to in the HAC, its servants or agents and any associated companies.
<b>HAC</b>	Means the Hire Agreement Contract, which specifies the Rate of Hire, Duration of Hire, Site location details, etc.
<b>Hire Charge</b>	Means the consideration for the hire of the Equipment as detailed in the HAC.
<b>Hire Period</b>	Means the period specified in the HAC and any extension thereto.
<b>Site Location</b>	Means the place referred to in the HAC or such other place the parties may agree upon.
<b>Premises</b>	Means the OWNER'S yard and/or any other location specified by the OWNER.
<b>Dry Hire</b>	Means the OWNER supplies equipment only.
<b>Replacement Cost</b>	means the supplier's or the manufacturer's recommended retail price for an article to replace any lost, damaged, destroyed or stolen equipment.
<b>Equipment</b>	means items, which the HIRER hires from the OWNER and which are listed on the HAC as well as any tools, accessories, attachments, parts, manuals, instructions, and any substitute and replacement equipment.
<b>Off Hire Number</b>	means the number given to the HIRER by the OWNER (signifying the OWNER'S acknowledgement that the HIRER wishes to end the hire period) when the HIRER notifies the OWNER that the equipment is available for collection.
<b>Rental Ready</b>	Means the equipment is in safe working condition, is clean and undamaged consistent with the condition with which it was dispatched at the commencement of the hire period.
<b>Goods</b>	Means all wares, merchandise, articles of every kind and description, and includes packages, crates and contents thereof, of whatsoever kind.
<b>Operator</b>	Means a worker, one employed or skilled in operating the Equipment.

### 2. ACCEPTANCE

- Usage of the Equipment constitutes acceptance of these CONDITIONS of HIRE. or
- Acceptance of the HAC by the HIRER is deemed to occur on receipt by the OWNER from the HIRER of either a verbal confirmation, written or by electronic data transfer (fax or email).
- If the HIRER cancels the HAC after the OWNER receives confirmation the HIRER will incur a cancellation fee. The cancellation fee will be as per clause 3.3 a)
- It is the HIRER'S responsibility to be at the Agreed Site Location one hour before or after the agreed Delivery or Pickup of the Equipment. This allows for normal traffic variations. If the HIRER is not at the site location as agreed to instruct the transport driver on where to access and egress the site location the HIRER remains liable for all costs incurred by the OWNER.

### 3. HIRE PERIOD

#### 3.1 COMMENCEMENT

The hire period commences from,

- The time and date specified in the HAC or
- The time the equipment is delivered to the HIRER (if delivery has been arranged by the OWNER) whichever is the later.

#### 3.2 Off Hire Numbers And Returns

- The Hire Period does not end until 5pm on the day the HIRER obtains, from the OWNER, an off hire number.
- Notwithstanding when the Hire Period ends, the HIRER shall be responsible for ensuring that the Equipment is not damaged, stolen or harmed in any way if the HIRER leaves the equipment unattended at any time, including leaving the equipment for collection by the OWNER.
- In the event of the HIRER failing to return the OWNER'S equipment to the OWNER'S premises the hire charges will continue until 5pm on the day the machine is returned.
- If the OWNER considers that the equipment is not returned in Rental Ready condition the hire period shall continue until the equipment is renewed to rental ready condition.
- Notwithstanding when the Hire Period ends, the HIRER shall remain Liable under this agreement until all monies owing to the OWNER have been paid in full including but not limited to Hire Charges, Cleaning Charges, Damage Levy Charges, Damage and Repair Charges, Fuel Charges, Loss of Equipment Charges and Interest Charges.

#### 3.3 Termination

- The HIRER may terminate this Agreement by notice in writing to ASSET together with payment to ASSET of 80% of the hire charge which would otherwise have been payable during the balance of the HAC provided that the full hire charge payable in respect of such Equipment is paid by the HIRER up to the date of the said notice.
- Upon determination or termination of this agreement, the HIRER shall at the HIRER'S expense:
  - Return the Equipment to the OWNER at the OWNER'S premises or agreed location; failing which the HIRER irrevocably permits the OWNER to enter upon the premises where the equipment is held and take possession of such Equipment without notice. The HIRER agrees to indemnify the OWNER against any claim whatsoever in entering premises where the Equipment is located, including premises not owned by the HIRER.
  - Return the Equipment in Rental Ready condition, with batteries charged, equipment cleaned and a full tank of fuel.
- ASSET reserves the right to cancel any HAC at any time without the necessity to give reasons to the HIRER. The HIRER will be responsible for the hire, at the rate agreed, up to such time as ASSET advises the HIRER of the exercise of this clause.
- In the event that HIRER owes monies to the OWNER beyond the Due Date, the OWNER may, at their sole discretion, immediately suspend work and/or remove the Hired Equipment from the site location.
- If the HIRER refuses to provide possession of the equipment to the OWNER, the OWNER is entitled to the normal hire rate as specified in the HAC until such time as the OWNER takes possession of the equipment.
- The OWNER will not be liable for any loss whatsoever incurred by the HIRER arising from the exercise by the OWNER of its rights under clause 3.3 c. and 3.3 d. and of these Conditions of Hire.
- Termination of the hire period shall not affect any of the conditions that are expressed or implied to operate or have effect in these Conditions of Hire.

#### 4. JURISDICTION

- The Laws of Australian Capital Territory will govern any proceeding in respect of any cause of action arising under this agreement.
- Any provisions contained in this agreement prohibited by or void under any law will be ineffective to the extent of such prohibition, without invalidating the remaining provisions.
- This agreement will be construed as intended to operate to the maximum extent to which it can validly apply.
- The HIRER agrees that any proceeding in respect of any cause of action arising under this agreement shall be instituted heard and determined in a court of competent jurisdiction closest to the OWNER'S address shown in the HAC.

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### 5. TERMS OF PAYMENT

- a. Payment terms are C.O.D unless the HIRER has completed an Account Facility Application and returned it to ASSET. Upon written approval from ASSET, trading terms will be 30 days from date of invoice. Trading terms are in accordance with the approved Account Facility Application.
- b. The HIRER shall pay to the OWNER the Hire Charges, GST, Stamp Duty, Damage Levy, Delivery, Collection costs and any other fee, charge, cost or expense whether specified in the Agreement or not within the terms agreed to by the OWNER.
- c. The OWNER may tender invoices to the HIRER at the commencement or completion of the hire period or periodically throughout the hire period.

### 6. USE OF EQUIPMENT

The hired Equipment is available for inspection prior to the commencement of the hire period and the HIRER acknowledges that they have not relied on any representations made by or on behalf of the OWNER in respect of the hired Equipment, its performance or its suitability for its intended application.

### 7. EQUIPMENT CONDITION

#### 7.1 Before the Hire

- a. Prior to the equipment leaving the OWNER'S premises, or at such other time or location agreed in writing by the OWNER, the HIRER and the OWNER shall conduct a joint inspection (Run Up) of the Hired Equipment and record the condition of the Hired Equipment (Run Up Report). Failure by the HIRER to be in attendance at the Run Up Inspection shall be deemed to be acceptance by the HIRER of the Run Up Report prepared by the OWNER.

#### 7.2 After the Hire

- a. At the conclusion of the Hire period and upon return of the Hired Equipment to the OWNER'S premises, or at such other time or location agreed in writing by the OWNER, the HIRER and the OWNER shall conduct a joint inspection (Off Hire Inspection) of the Hired Equipment to ascertain the condition of the Hired Equipment following the Hire Period. Failure by the HIRER to be in attendance at the Off Hire Inspection shall be deemed to be acceptance by the HIRER of the Off Hire Report prepared by the OWNER.
- b. The HIRER shall be liable to the OWNER for all costs, loss, expense and damages incurred by the OWNER for the repair to or the reinstatement or replacement of the Hired Equipment or any part, thereof to a Rental Ready condition, in the event that the Off Hire Report, is different to that recorded in the Run Up Report, fair wear and tear excepted.

### 8. HIRER'S OBLIGATIONS

#### 8.1.1 Before Use

- a. The OWNER agrees to supply to the HIRER of the Equipment all necessary manuals and instruction (both written and oral) necessary for use of the Equipment, upon written request by the HIRER.
- b. It is the HIRER'S responsibility to ensure the HIRER has all the necessary manuals and written instructions before using the equipment.
- c. IT is the HIRER'S responsibility to ensure the Operators of the Equipment wear appropriate safety clothing and use appropriate safety equipment and follow appropriate safety measures.
- d. The HIRER agrees that the equipment must NOT BE used or operated by any unlicensed Operators.
- e. The HIRER shall only supply an Operator who is competent and who is familiar with the equipment i.e. minimum 100 hour's operational time of similar Equipment.

#### 8.1.2 During the Hire Period

- a. It is the HIRER'S responsibility to insure that the Operator completes the Pre Start checklist and checks of the Equipment CONDITION prior to commencement of work at each shift and fax a copy of each to the OWNER'S office each Monday.
- b. The HIRER will at the HIRER'S own expense Clean, Fuel, Lubricate and provide Daily and Weekly Maintenance for the Equipment.

- c. The HIRER will keep the Equipment in good and substantial repair and condition and not damage the paintwork on the Equipment (normal wear & tear excepted).
- d. The HIRER will, keep the radiator, engine and tyres filled to proper levels in accordance with any written or verbal instructions given to the HIRER by the OWNER and/or in accordance with any instructions contained within the operating manuals provided.
- e. The HIRER must be fully responsible for the safekeeping of the Equipment and must comply at the HIRER'S own expense with all laws, ordinances and regulations that may affect the Equipment while it is in the HIRER'S possession or being used by the HIRER including, in particular, any Occupational Health and Safety Laws.
- f. The HIRER will, give any local or other authorities any necessary notice of the HIRER'S intention to use any part of the Equipment and pay all fees in connection therewith. The HIRER shall obtain and keep in force any licenses or permits needed to use the Equipment.
- g. The HIRER will store the equipment in a safe secure location at all times.
- h. The HIRER will not Damage the Equipment by misuse and shall only use the Equipment for those purposes which a competent and qualified Operator would use them in accordance with any and all instructions for use appearing on the Equipment; and in accordance with any and all instructions, manuals, checklists or verbal directions given by or on behalf of the OWNER.
- i. The HIRER will, not allow any notices i.e. instructional stickers, warning stickers, load charts, compliance plates, or any other notices affixed to the Equipment, whether in position at the time of commencement of the hiring or subsequently affixed thereto during the period of hiring to be damaged, obliterated, defaced or covered up.
- j. The HIRER will, not sell, assign, mortgage, pledge, sub let, lend, part with the possession of all or any part of the Equipment (or any interest therein) or otherwise deal with any of it, nor remove the Equipment from the site.
- k. The HIRER has a duty of care owed to the OWNER whilst the equipment is on hire to the HIRER.
- l. The HIRER will, protect the Equipment against execution or seizure and not allow any lien to be created over the Equipment whether for repairs or otherwise.
- m. During the course of the hire of the equipment, the equipment shall be at the HIRER'S risk in all respects.
- n. The HIRER will, at all times use the equipment in a proper, safe and skilful manner within the capacity of which it is designed,

#### 8.1.3 Breakdowns

- a. If the equipment breaks down, becomes damaged or upon the occurrence of any failure intermittent or not which could with continued use cause damage to the Equipment the HIRER must immediately:
  - 1) STOP using the equipment,
  - 2) Affix an Out of Service Tag to the operational controls and take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the equipment.
  - 3) Inform the OWNER of the failure of the Equipment and the hours shown at the time of the problem on the equipment.
- b. The HIRER SHALL NOT USE such equipment until the Out of Service Tag has been removed from the equipment, by the OWNER or authorized agents once the problem has been repaired or replaced.
- c. While the Equipment is tagged as unfit for operation any damage or loss caused by unauthorized removal of the tag shall be the HIRER'S responsibility.
- d. If any Equipment breaks down or is damaged due to the HIRER'S negligence or misuse the OWNER will continue to charge hire charges until the equipment has been repaired. Any replacement equipment supplied will be at the HIRER'S expense.
- e. Except for routine maintenance required by the agreement the HIRER must not in any way interfere with any parts, fittings and/or appliances attached to the Equipment or without the written consent of the OWNER carry out or have carried out any repairs to the equipment,

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- f. The HIRER will, grant the OWNER the right of access to the premises where the Equipment is located and the right to inspect the Equipment during normal working hours and to submit the equipment to such mechanical or other tests as may be required to enable the equipment to be properly serviced and maintained.
- g. The HIRER is responsible for any extra costs incurred by the OWNER for onsite delays to service and repair, out of the control of the OWNER e.g. access problems, delays, site inductions, and industrial problems.

### 8.1.4 At the Completion of the Hire Period

- a. The HIRER shall clean the equipment on completion of the hire period, the OWNER with absolute discretion, determines if the HIRER has unfulfilled obligations under this agreement and the OWNER may, at the HIRER'S expense, clean, repair and/or repaint the Equipment.
- b. The HIRER shall remain liable for any extra transport charges if the equipment is not packed up in one location ready to be loaded on the transport truck.
- c. The HIRER shall remain liable for the full Replacement Cost in respect of any Equipment lost, damaged or destroyed, caused by:
  - 1) Theft of the Equipment.
  - 2) Mysterious disappearance or wrongful conversion of the equipment.
  - 3) Loss or damage relating to lack of lubrication or other normal servicing of the Equipment.
  - 4) Loss or damage of tools, accessories, grease guns, lifting equipment, harnesses and other similar accessories.
  - 5) Loss or damage in contravention of the conditions of this Conditions of Hire agreement.
  - 6) Loss or damage from use in violation of any statutory laws and regulations.
  - 7) Loss or damage during transport, except where transported by the OWNER.
  - 8) Loss or damage caused by the negligence of the HIRER.
  - 9) Loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves Bridges or Vessels of any kind.
  - 10) Use of products and/or attachments other than those specified by the OWNER or the Manufacturer.
  - 11) Overloading of any Equipment.
  - 12) Cuts to tyres and tubes, blowouts, bruises, or other causes inherent in the use of the Equipment.
  - 13) Exposure to any corrosive substance, e.g. caustic, cyanide, salt water, acid, etc. As well as any Lost Hire Charges between the periods the loss or damage occurred and payment was made to the OWNER from the HIRER or the HIRER'S Insurance Company.

### 9. INSURANCE

The HIRER must at their expense maintain all appropriate policies and insurances in respect of the Equipment including but not limited to insurance for:

- a. Damage to or arising out of the hire or use of Equipment in an amount not less than the full new replacement value of the Equipment; and
- b. Third Party and Public Liability risk in respect of the hire or use of the Equipment by the HIRER in an amount not less than \$20 million.

### 10. INDEMNITY

To the extent permitted by law, the HIRER agrees to indemnify and keep indemnified the OWNER in respect of all actions, claims, Suits, demands, or expenses including claims for consequential loss or loss of profit howsoever arising directly or indirectly from:

- a. Any loss or damage to property or personal injury including loss, damage or injury to third parties;

- b. Breakdown of the Hired Equipment whether or not such breakdown was due to an act, omission or default by the OWNER or the HIRER under this agreement; or
- c. Any other act, omission, default or act of Negligence by the OWNER or the HIRER under this agreement and resulting from or incidental to the use or possession of the Hired Equipment, whether arising from any instruction issued or training provided by the OWNER or arising any other reason whatsoever from the use or possession by the HIRER of the Hired Equipment under this HAC.

### 11. DAMAGE LEVY

- a. We charge a Damage Levy (DL) at a rate of 10% of the hire rate known as Damage Levy (DL) to the HIRER.
- b. If the HIRER provides to OWNER prior to the commencement of the hire period a certificate of currency stating that the HIRER has current insurance that covers hired in plant and equipment to the minimum value of \$ 350,000.00, the 10% DL will not be levied. The Certificate of Currency must state that the hired in plant is covered for Damage.
- c. This levy caps the HIRER'S liability in the event of a claim for damage to the equipment to an excess of \$5,000.00, this excess applies in all instances (no exceptions).
- d. The HIRER still REMAINS LIABLE at all times for Theft or Mysterious Disappearances of Equipment.
- e. In the event that the HIRER is in Breach of the CONDITIONS of HIRE, the HIRER WILL NOT be able to claim under the DL clause and will be responsible for the full replacement value of the repairs, limited by the replacement value of the Equipment.

### 12. EXCLUSIONS OF CONDITIONS & WARRANTIES

Certain conditions and warranties may be implied into the HAC 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 Condition of Hire.

### 13. MISCELLANEOUS

- a. This contract is personal to the HIRER.
- b. The owner reserves the rights to change the HAC number and Equipment if required, these Conditions of Hire are still binding in this instance.
- c. Time is to be of the essence of all obligations of the HIRER in these conditions.
- d. The OWNER may assign or sub contract its rights and obligations under this agreement without notice to the HIRER.
- e. Any notice or Invoice that may be given under the HAC may be given by facsimile, or by leaving at the HIRER'S address or by mail.
- f. These conditions shall replace and supersede all other Conditions of Hire, if any, previously in force between the HIRER and the OWNER and no variation of these conditions shall bind either party unless confirmed by the OWNER in writing. The HIRER agrees to be bound by these conditions for all future Hire's unless the OWNER in writing amends these Conditions of Hire.
- g. If any of these conditions or part thereof become void or unenforceable for any reason then that part shall be severed from these conditions to the intent that the balance of this agreement shall remain in full force and effect and be unaffected by any severance of other parts.
- h. Where a party consists of more than one person, their liabilities and the liabilities of their respective legal personal representatives shall be joint and several.
- i. The HIRER agrees that in the event of any conflict between these Conditions of Hire and any of the HIRER'S terms and conditions, these Conditions of Hire will prevail.