



TERMS AND CONDITIONS OF HIRE

1. Definitions and Interpretations

"Account Application" means the Account Application form completed by the Hirer when opening its account with the Owner;

"Agreement" means the Quotation and these terms and conditions;

"Claim" includes any demand, claim, damage, loss, liability, penalty or expense (including legal fees):

- (a) to or concerning the Plant;
- (b) caused by or arising from:
 - (i) the possession, control or use of the Plant;
 - (ii) any act, omission, breach of duty or otherwise during the Hire Period howsoever arising or incurred.

"Damage Waiver" means the payment of the damage waiver referred to in the Quotation;

"Dry Hire" means the hire of the Plant to the Hirer without an operator provided by the Owner;

"Due Date for Payment" means, unless otherwise specified, fourteen (14) days from:

- (a) the date of invoice;
- (b) the day of expiry of the Term; or
- (c) delivery or attempted delivery of the Plant, as the case may be

"Event of Default" means an event specified in clause 12 of this Agreement;

"Fee" means the hire fees described in the Quotation or such other rate specified and quoted by the Owner from time to time. Where the context permits, the Fee includes the Day Rate and any other charges payable by the Hirer to the Owner;

"Force Majeure" means outbreak of hostilities, riot, civil disturbance, acts of terrorism or nationalization and **excludes**:

- (a) fire, explosion, flood, earthquake, storm, hurricane or other natural disaster;
- (b) government sanction, the act of any government or authority (including refusal or revocation of any licence or consent) of any kind;
- (c) embargo, labor dispute, strike, blockage, lockout or interruption or industrial action of any kind;
- (d) interruption or failure of electricity, gas or any other service;
- (e) fire, flood, fog or bad weather;
- (f) power failure, failure of telecommunications lines, failure or breakdown of Plant, machinery or vehicles;
- (g) default of suppliers or independent contractors;
- (h) theft or malicious damage;
- (i) financial difficulties or lack of funds.

"Hirer" means the party identified in the Quotation and includes any party claiming through, under or in trust for the Hirer and any receiver, administrator or liquidator of the hirer;

"Hire Period" means the hire period identified in the Quotation;

"include" and similar expressions are not words of limitation;

"Job Site" means the site where the Hirer requires the Plant to be used from time to time;

"law" means all relevant law regulations, rules and by-laws from time to time in force governing or relating to the use, operation, registration, licensing (if any), servicing and maintenance of the Plant. Where the context permits, it includes relevant industry standards;

"manufacturer" means the manufacturer of the Plant. Where the context permits it includes the manufacturer's suppliers and agents in Australia;

"On Hire" means the period commencing when the Plant leaves the Owner Site pursuant to the Quotation until the time it is returned to the Owner Site;

"Other Equipment" includes:

- (a) any item of plant, machinery or vehicle;
- (b) any tools, accessories, parts, items of equipment, timber, mats or other material; or
- (c) any devices supplied with the Plant;

"Owner" means Westside Hire Pty Ltd ACN 160 757 880.

and includes its employees, agents or any sub-contractors and their employees;

"Owner Site" means the premises from which the Owner trades from or such other premises as notified to the Hirer in writing from time to time;

"Plant" means the goods specified in the Quotation and includes any Other Equipment affixed to or supplied with the Plant;

"Quotation" means the quotation that these Terms and Conditions of Hire are annexed to;

"Routine Maintenance and Safety Checks" means the routine safety and maintenance checks described in the maintenance logbook supplied with the Plant.

"Security Interest" means a first ranking security interest in the Plant ("Security Interest") arising by operation of the Personal Property Securities Act 2009 (PPSA)

"Term" means the term of this Agreement specified in the Quotation or such further period as is agreed by the Owner in writing.

"Transportation Cost" means the transportation cost described in the Quotation.

2. Fee

The Fee shall be as noted in the Owner's quotation:

3. Possession or Control

3.1 The Hirer shall be deemed to be in possession or control of the Plant from the time that the Plant leaves the Owner Site (including if the Plant is being transported by the Owner and whether or not the Transportation Cost is

applicable) and until the Owner gives the Hirer written notice confirming the return of the Plant.

3.2 The Owner has and retains title to the Plant and nothing creates any right, property or interest in the Plant inconsistent with the Owner's rights.

3.3 The Hirer must:

- (a) not part with possession or control of the Plant;
- (b) not assign, mortgage, pledge, sell, charge, encumber, sublet, grant any lien, licence or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien or other encumbrance over, the Plant or any of the rights of the Hirer;
- (c) keep the Plant free from any distress, execution or other legal process;
- (d) whenever necessary to protect the Owner's interest, notify third parties of the existence of this Agreement and immediately notify the Owner if the Owner's interests are threatened.

4. Operation, maintenance and storage of Plant

4.1 The Hirer shall at the Hirer's expense and for as long as the Plant is On Hire:

(a) **keep and maintain the Plant in proper working order and good and substantial repair**, including but not limited to:

- (i) Servicing and maintaining the Plant and carrying out daily pre-start inspections and safety checks all in strict accordance with the manufacturer's service schedule;
- (ii) Performing all Routine Maintenance and Safety Checks;
- (iii) not misusing, abusing, overloading or incorrectly loading the Plant;
- (iv) not applying any tool or process without the consent of the Owner;
- (v) protecting the Plant from corrosion and any act, matter or thing involving the imposition of abnormal conditions strains or loads upon the Plant;
- (vi) not operating the Plant so as to share a load with any other machine or equipment;
- (vii) protecting the Plant against and immediately servicing any cut, burst, puncture or damage to any component or accessory;

(b) **lubricate, refuel, conduct daily servicing, running repairs (whether mechanical, structural or electrical) and where necessary replace tyres and other consumable or wearing parts (fair wear and tear excepted) all in strict accordance with the manufacturer's service schedule;**

(c) in the operation, servicing and maintenance of the Plant, employ only persons who are properly qualified, competent and certified or licensed as may be required by law. The Hirer must ensure that:

- (i) all such persons are and remain fully trained and adhere to the law at all times; and
- (ii) it maintains training standards necessary to ensure the Plant is used properly and that it remains properly serviced and maintained.

If a driver, operator or any person is supplied or nominated by the Owner to operate the Plant such person will be under the direction & control of the Hirer. For all purposes in connection with the use or operation of the Plant such person be regarded as the servant or agent of the Hirer and the Hirer shall be responsible for all Claims caused by or arising in connection with the operation of the Plant.

(c) store and secure the Plant with due care and diligence and in compliance with the instructions and recommendations of the supplier and manufacturer of the Plant and the specific instructions (if any) of the Owner.

(d) comply with all law and conduct all surveys, lift studies, job safety analysis and audits as may be necessary for that purpose;

(e) pay to the Owner on demand all money that the Owner pays or is liable to pay to make good any failure by the Hirer to comply with this Agreement and all other costs and expenses, including legal costs and expenses that the Owner may incur in the enforcement or protection or attempted enforcement or protection of the Owner's rights under this, including money paid by the Owner in releasing any lien or other encumbrance claimed on the Plant and in dismantling and removing the Plant from any premises;

(f) immediately notify the Owner of any breakdown, malfunction or accident resulting in personal injury or damage to property, including damage to or involving the Plant;

(g) secure the Plant when not in use and to ensure that all reasonable measures are taken to protect the Plant against acts of damage, theft and vandalism.

(h) ensure that the Plant has a maintenance log book ("**log book**") and that the log book is properly maintained during the Hire Period. If the log book is damaged, stolen or misplaced the Hirer must immediately notify the Owner and indemnify the Owner against the cost of repairing or reinstating the log book.

4.2 The Hirer must **not**:

(a) do or cause or suffer to be done any act, matter or thing which is likely to endanger the safety or condition of the Plant or anyone working in or around the Plant;

(b) without the prior written consent of the Owner **not**:

- (i) make any alteration, addition or replacement to the Plant;
- (ii) remove the Plant from the Job Site.

(c) sub hire or cross hire the Plant without the Owner's prior written consent, which the Owner may withhold in its absolute discretion. Any consent given by the Owner will be on the condition (unless agreed otherwise in writing) that:

- (i) the sub hire or cross hirer must agree to be bound by this Agreement;



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- (ii) the hirer must do all acts, matters and things necessary to protect the Owner's title to the Plant including, but not limited to, ensuring that the sub hire or cross hire grants the Hirer a Security Interest in the Plant;
- (iii) on-hiring or cross hiring of the Plant shall not relieve the Hirer from any liability or obligation under this Agreement. The Hirer shall remain liable to and indemnify the Owner against any loss or damage caused by or arising from the acts and omissions of any sub hirer or cross hirer including the employees and agents of the sub hirer or cross hirer, as if they were the Hirer's acts of omissions.
- 5. Insurance**
- 5.1 For the duration that the Plant is On Hire, unless the Hirer has selected to pay the Damage Waiver Excess in the Quotation, the Hirer must effect insurance and maintain insurance with an insurer approved by the Owner in the names of the Owner and the Hirer for their respective rights and interests in respect of the following:
- (a) the full insurable value of the Plant against such risk as the Owner may nominate or, in the absence of such nomination, against loss or damage by fire, theft, accident and such other risks as are insured against by prudent persons engaged in a similar business to that of the Hirer;
- (b) a policy of employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Hirer in respect of damage or loss caused by the use, maintenance, repair or storage of the Plant;
- (c) public risk liability and product defect liability, and any other such insurance in support of the indemnities contained in this Agreement, and must in respect of any such policy of insurance, deliver to the Owner a copy of the policy and promptly pay all premiums and stamp duty payable in respect of the policy.
- 5.2 All money received under an insurance policy in respect to damage to the Plant shall be applied firstly in restoring or replacing the Plant to its condition prior to the commencement of this Agreement (subject to reasonable wear and tear) and secondly in making good any loss or damage suffered by the Owner. This clause shall not diminish the indemnity in clause 6.
- 5.3 Subject to clause 5.2 each of the Owner and the Hirer is entitled to receive payments of money under the insurance policy effected pursuant to this clause according to its interest in the policy. Each party agrees to assist and co-operate with the other in making, pursuing and settling any claim made under the policy.
- 6. Damage Waiver Excess.**
- 6.1 Damage Waiver is not insurance. If the Damage Waiver is accepted, and subject to it being strictly complied with by the Hirer, the Owner shall waive its right to claim loss and damage to the Plant caused by fire, storm, collision, impact, accident theft, burglary or any other event that the Owner is insured against.
- 6.2 The Hirer shall pay the Owner (if Damage Waiver Excess Applies):
- (a) the Damage Waiver fee as shown on the Quotation form;
- (b) the Owner's insurance policy excess in relation to or arising from any claim; and
- the Hirer must promptly submit a written police report;
- 6.3 If Damage Waiver does NOT apply, the Hirer must produce a valid and current certificate of insurance which is sufficient to cover the hired equipment. The fact that the Hirer has a valid and current certificate of insurance does not exclude or diminish the Hirer's liability to the Owner and it is and shall remain the responsibility of the Hirer to pursue an indemnity from its insurer.
- 6.4 The Damage Waiver excludes any loss or damage caused by or arising from:
- (a) any breach of this Agreement;
- (b) the intentional act or wilful neglect of the Hirer during the period that the Hirer has possession or control of the Plant or whilst the operator of the Plant is under the influence of alcohol or drugs;
- (c) any breach of duty, fault or defect known or apparent to the Hirer and not disclosed to the Owner in writing prior to a Claim arising.
- 7. Risk and Indemnity**
- Despite anything to the contrary contained or implied in this Agreement:
- (a) the Hirer shall assume and remain liable for all Claims, risks and liabilities for and in respect of the Plant and for injuries to or death of persons and damage to property howsoever arising from the possession or control, use, maintenance, repair or storage of the Plant during the Hire Period.
- (b) the Hirer must indemnify and hold and keep the Owner harmless from:
- (i) all Claims, risks and liabilities mentioned in this clause;
- (ii) for all loss it may suffer due to or arising from any failure for any reason by the Customer to satisfy its obligations and liabilities to Westside Hire Pty Ltd;
- (iii) the recovery of moneys owing to Westside Hire Pty Ltd by the Customer including but not limited to collection costs, legal costs any other costs or expenses incurred by Westside Hire Pty Ltd in the enforcement of its rights against the Hirer.
- 8. No Warranties By Owner**
- 8.1 Save that the Owner warrants that on the Hire Start Date the Plant is in good and proper working order for the purpose for which it is designed:
- (a) the Owner gives no other warranty and the Hirer acknowledges that the Owner has not given any other warranty;
- (b) all other conditions and warranties express or implied, whether arising by statute or otherwise, as to the condition, suitability, quality, fitness for any purpose or safety of or title to the Plant are hereby negated and excluded to the full extent permitted by law.
- 8.2 Other Equipment (if any) supplied by the Owner is provided solely for convenience, without the assumption of a duty of care by the Owner and does not to relieve the Hirer of any legal, regulatory or contractual obligation to ensure adequate suitability of the Plant
- 8.3 Prior to entering into this Agreement the Hirer examined the Plant and satisfied itself concerning:
- (a) the condition and suitability of the Plant and its fitness for the Hirer's purposes;
- (b) the Plant's compliance with the specifications and the validity of the manufacturer's warranties.
- 8.4 The parts of this Agreement that exclude or limit the Owner's liability apply only to the extent permitted by law. Subject to the Trade Practices Act 1974 and other law that cannot be excluded, restricted or modified (or that can only be excluded, restricted or modified to a limited extent) and if any such law applies to this Agreement, then to the extent to which the Owner is entitled to do so, the Owner's liability under such law shall be limited at the Owner's absolute option to:
- (a) replacement of the Plant or the supply of other plant similar to the Plant; or
- (b) the payment of the cost of having the Plant repaired;
- (c) the repair of the Plant; or
- (d) refunding the Fee (or part of the Fee).
- 8.5 The Owner shall not be liable to:
- (a) the Hirer for any loss or damage or delay through breakdown, mechanical defect or accident to or of the Plant;
- (b) to any person for any loss or damage to any property stolen from the Plant or damaged or otherwise lost during On Hire or left in the Plant after the return of the Plant to the Owner Site; and
- (c) to the Hirer for any form of breakdown whether mechanical, electrical or structural to the Plant while On Hire; and
- the Hirer waives its rights and releases the Owner from all claims and demands in respect of any circumstances, whether breach of contract, negligence, breach of duty or otherwise for any loss or defects in or malfunction, break down or failure of performance of the Plant.
- 9. Warranties By Hirer**
- 9.1 The Hirer covenants that:
- (a) it must not do or omit to do any act or thing that may invalidate or prejudice any insurance effected by anyone in respect of the Plant;
- (b) has full power and capacity to enter into and observe and perform this Agreement. If a body corporate, it is duly incorporated and validly existing under the Corporations Act, and has full power and authority to enter into and observe and perform this Agreement, or the Hirer, being an individual;
- (b) this Agreement is legal, valid and binding against the Hirer;
- (c) all consents and approvals, whether governmental or otherwise, required in order for the Hirer to use and operate the Plant, observe and perform the Hirer's obligations arising from this Agreement have been obtained and are in full force and effect;
- (d) no Event of Default exists and no event has occurred or is continuing to occur that constitutes or might, with the passing of time or giving of notice constitute an Event of Default; and
- (e) to the best of the Hirer's knowledge, information and belief, no information supplied by the Hirer to the Owner in relation to this Agreement contains any material misstatement of fact or omits a material fact.
- 10. Access to Plant**
- The Owner shall at all times have free access to the Plant and may examine and/or test the same at the discretion of the Owner following reasonable notice to the Hirer.
- 11. Force Majeure**
- 11.1 If a party becomes unable wholly or in part by Force Majeure to carry out any of its duties or obligations under this Agreement and that party asserts Force Majeure as an excuse for failure to perform the party's obligation, then:
- (a) that party must give to the other party prompt written notice of:
- (i) detailed particulars of the Force Majeure;
- (ii) so far as is known, the probable extent to which the party will be unable to perform or will be delayed in performing the duty or obligation;
- (b) the relevant duty or obligation, as far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure;
- (c) that party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible; and
- (d) that party must prove that they have:
- (i) not caused, could not and cannot control the Force Majeure;
- (ii) taken all reasonable steps to minimise delay or damages caused by foreseeable events;
- (iii) substantially fulfilled all obligations; and that
- (iv) the other party was notified as soon as possible of the likelihood or actual occurrence of the Force Majeure;



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- (v) they could not have prevented or avoided the Force Majeure through prudent management processes, policies, precautions and planning.
- 11.2 A party will not be entitled to terminate this Agreement by reason of Force Majeure.
- 12. Default and Termination**
- 12.1 An Event of Default occurs if:
- (a) any money payable under this Agreement is not paid on the Due Date for Payment;
 - (b) the Hirer breaches any of its obligations, other than a failure to pay money, and such failure continues for more than 3 days after the Owner has given the Hirer notice requiring the Hirer to remedy the breach;
 - (c) any warranty, representation or statement made by the Hirer under or in connection with this Agreement is false;
 - (d) the Hirer commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
 - (e) a receiver, or an agent in possession for a mortgagee, is appointed in respect of the Hirer's property;
 - (f) a mortgagee takes possession of the Hirer's property;
 - (g) any execution or similar process is made against the Hirer's property;
 - (h) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Hirer to be wound up unless the winding up is for the purpose of reconstruction or amalgamation;
 - (i) a compromise or arrangement is made between the Hirer and its creditors;
 - (j) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Hirer to be placed under official management;
 - (k) the Hirer is unable to pay its debts as and when they fall due;
 - (m) an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Hirer under the Corporations Act or any similar process; or
 - (n) an investigation is commenced by the Australian Securities Commission Act to investigate the affairs of the Hirer.
- 12.2 On an Event of Default without prejudice to any other rights and remedies the Owner may have against the Hirer:
- (a) the Owner may take possession of the Plant with or without notice to the Hirer;
 - (b) the Hirer must, at the Hirer's expense, immediately on demand deliver the Plant in good order and repair in accordance with the directions of the Owner, and in default the Hirer irrevocably authorises the Owner to:
 - (i) enter any premises occupied or controlled (or believed by the Owner to be occupied or controlled by the Hirer) and repossess the Plant;
 - (ii) break open any gate or lock and dismantle the Plant from any part of the premises to which they may be affixed; and
- the Hirer indemnifies the Owner in respect of any loss arising from any act done under or by virtue of this clause.
- 12.3 On termination of this Agreement by reason of an Event of Default:
- (a) the Owner shall be entitled without notice to take possession of the Plant, for which purpose the Hirer irrevocably appoints the Owner as its agent for collection and licenses the Owner to enter any land of the Hirer or under the Hirer's occupation and upon which the Plant is situated;
 - (b) the Hirer must pay to the Owner by way of liquidated damages, in addition to and without prejudice to any other right or remedy of the Owner, an amount equal to the total of:
 - (i) the unpaid balance of the Fee for the Term that would have been payable until the expiration of the Term had the Agreement not been terminated;
 - (ii) the Owner's costs and expenses incurred in repossessing and storing, insuring and registering the Plant and in entering on and removing the Plant from land or premises on which the Plant was situated, and make good any injury or damage caused to the land or premises;
 - (iii) the Owner's costs and expenses of repairs reasonably necessary to bring the Plant to a saleable condition; and
 - (iv) overdue account keeping fees and interest calculated in accordance with this Agreement.
- 13. Reinstatement of Plant – Surveys**
- 13.1 Prior to the commencement of usage the Hirer must inspect the Plant ("On Hire Survey") to establish condition and any defects ("**pre hire condition**").
- 13.2 As soon as practicable following termination of this Agreement, the Plant will be inspected by the Owner to establish its general condition and a statement of condition of the Plant will be prepared ("**Off Hire Survey**"). The Owner shall provide a copy of the Off Hire Survey to the Hirer.
- 13.3 the Hirer shall indemnify the Owner against any cost, loss or damage to remedy any maintenance, service, repair or defect items ("**Items**") noted in the Off Hire Survey and reinstate the Plant to its pre hire condition (fair wear and tear excepted).
- 14. Time Of The Essence**
- Time shall be of the essence in relation to the terms of this Agreement.
- 15. Subrogation**
- 15.1 The Hirer must assist and co-operate with the Owner in relation to the Owner exercising any and all of its rights in respect of the Plant, including the Owner instituting, carrying on and enforcing, compromising or completing any legal proceedings that the Owner thinks desirable to protect its rights in respect of the Plant.
- 15.2 The Hirer irrevocably authorises the Owner to do on behalf of the Hirer all such things as the Hirer shall at any time be obliged to do under or by virtue of this Agreement and that the Hirer has neglected or refused to do. The Hirer shall ratify all acts and things done by the Owner pursuant to this clause and shall indemnify the Owner against all losses arising from any act done under or by virtue of this clause.
- 16. GST**
- 16.1 If GST has application to any Supply made under or in connection with this agreement, in addition to any payment or amount due under or consideration payable or to be provided pursuant to this agreement ("**payment**") the Owner may recover from the Hirer an additional amount on account of GST. Such amount shall be calculated by multiplying the value of the payment for the relevant Supply by the prevailing GST rate. Any GST recoverable from the Hirer under this clause must be calculated without any deduction or set-off of any other amount and must be paid by the Hirer at the same time as the consideration of the relevant supply is payable or to be provided.
- 16.2 In this clause:
- (a) "**GST**" means any tax, impost or duty on goods or services imposed by the Commonwealth, a state or a territory or any similar or like tax, whether imposed before or after the commencement of this agreement;
 - (b) "**Supply**" means the supply of any goods, services, other rights, benefits or other things by the Owner and includes the definition of supply in any legislation or regulation, which imposes implements or varies a GST.
- 17. General**
- 17.1 Unless otherwise required by the context or subject matter, a reference to a party includes that party's agents, employees, subcontractors, executors, administrators, personal representatives, successors and assigns.
- 17.2 The special conditions (if any) set out in the Schedule shall form part of this Agreement. To the extent of any inconsistency between the special conditions and any other term of this Agreement, the special conditions shall prevail to the extent of the inconsistency.
- 17.3 Any indulgence by the Owner or failure by the Owner to insist upon strict performance by the Hirer of any provision of this Agreement must not be taken to be a waiver of any existing or future rights of the Owner.
- 17.4 The Hirer must not assign or otherwise deal with its rights or obligations under this Agreement.
- 17.5 This Agreement does not create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other.
- 17.6 Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.
- 17.7 These Terms and Conditions of Hire must be read in conjunction with the Westside Hire Pty Ltd Account Application and Quotation Form which collectively constitute the entire agreement between the parties and are governed according to the jurisdiction clause in the Account Application.
- 18. Disputes**
- Without prejudice to their rights at law or in equity, the parties must attempt in good faith to resolve any Claim or dispute arising out of or in relation to this Agreement through negotiations between a director of each of the parties with authority to settle the dispute. If a dispute cannot be settled within seven (7) days from the date on which either party has served on the other written notice of the dispute then either party may exercise its rights without further notice.
- 19. Personal Properties Securities Act**
- The Hirer:
- (a) consents to the Owner perfecting a Securities Interest;
 - (b) shall do anything reasonably requested by the Owner to enable or facilitate the Owner to perfect a Security Interest;
 - (c) waives its right to receive;
 - (i) each notice that is permitted to waive;
 - (ii) all information and anything that may be waived under the PPSA and the Owner is not obliged to give the Hirer any notice or provide copies of any documents under the PPSA unless the notice is mandatory under the PPSA and cannot be excluded;
 - (b) must not;
 - (i) purport to sell, sell, lease or dispose of any interest in the Plant;
 - (ii) purport to grant or create any security interest or lien over the Plant (other than the Security Interest);
 - (iii) part with possession of the Plant except as expressly permitted by the Owner in writing;
 - (iv) permit the Plant to become an accession to or commingled with any other object or material;
 - (v) without the prior written consent of the Owner, change its name or initiate any change to any documentation registered under the PPSA.