

**TERMS AND CONDITIONS**

The Owner agrees to hire the Equipment to the Customer on terms set out in this agreement. If the Customer wishes to hire the Equipment the Customer must complete and sign (or otherwise accept in the manner required by the Owner) a Quotation/Hire Agreement and such other documents as the Owner may require. Each Quotation/Hire Agreement is not a separate contract but forms a part of this agreement between the Owner and the Customer.

**1. Definitions of words in this agreement**

**Authority** means any governmental or semi-governmental or local government authority, public agency, statutory corporation or other utility of legal entity having statutory right in respect of approvals.  
**Claim** means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

**Commencement Date** means the date upon which the Equipment is hired as specified in the Hire Schedule or the date the Equipment commences being disassembled for transport, whichever the earlier.

**Consequential Loss** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of this agreement and whether or not foreseeable at the time of entering into this agreement.

**Customer** means the person or entity specified in the Hire Schedule and includes the Customer's employees, executors, administrators and representatives.

**Equipment** means any kind of equipment hired by the Customer from the Owner, including the equipment specified in the Hire Schedule and any other accessories or items supplied by the Owner to the Customer.

**Goods** means anything handled, lifted or carried by the Equipment.

**Hire Rate** means the amount specified in the Hire Schedule payable by the Customer to hire the Equipment based on an average of 40 hours per week with a minimum hire period stated in the Hire Schedule with any additional hours being charged on a pro-rata basis.

**Hire Period** means the period from the Commencement Date until the conclusion of the hire as specified in the Hire Schedule or the date upon which the Equipment is returned to the Owner, whichever the later. The Owner may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

**Hire Schedule** means the document that specifies the Equipment to be hired, the Hire Period, the Hire Rate and other details relating to the hire of the Equipment.

**LTD Waiver** Has the meaning set out in clause 13

**Owner** means Project Dry Hire Pty Ltd ABN 24 145 636 264 and any subsidiary company, business successor, subcontractor or assignee.

**Personnel**, in relation to a party, means the party's officers, office-holders, employees, agents and contractors.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**Site** means the location specified in the Hire Schedule that the Equipment will be located for the duration of the Hire Period.

**Tax Invoice** has the same meaning as in the *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

**2. The Owner's obligations**

**The Owner will:**

- 2.1 conduct a survey of the Equipment prior to the Commencement Date ('On-Hire Survey') and provide a copy of the On-Hire Survey to the Customer for certification as accurate;
- 2.2 deliver the Equipment to the Customer on the Commencement Date at the Customer's expense;
- 2.3 provide the Equipment to the Customer in a clean condition and in good repair and working order;
- 2.4 retrieve the Equipment from the Customer at the end of the Hire Period at the Customer's expense; and
- 2.5 conduct a survey of the Equipment at the end of the Hire Period ('Off-Hire Survey') and provide a copy of the Off-Hire Survey to the Customer for certification as accurate.

**3. Obligations of the Customer**

**The Customer must:**

- 3.1 conduct a thorough hazard and risk assessment before using the Equipment and comply with all occupational health and safety laws relating to the Equipment and its operation;
- 3.2 supply the necessary oil, lubricants, coolant, water and fuel to enable the safe operation of the Equipment;
- 3.3 ensure the Equipment is operated by a suitably trained, licensed, experienced and (if necessary) certified operator and is operated in a skilful manner and only for its intended use and in accordance with manufacturer's instructions;
- 3.4 promptly enter all usage, maintenance and other matters in the log book supplied with the Equipment;
- 3.5 obtain the necessary licenses, permits, consents, approvals, dogging or rigging certificates, or permissions from the relevant Authority in order to use the Equipment;
- 3.6 not use the Equipment to handle, lift, carry or otherwise deal with anything of a noxious, flammable, hazardous, dangerous or explosive nature without first obtaining the Owner's consent which may be withheld at the Owner's discretion;
- 3.7 ensure the Equipment is at all times operated only on the Site and is stored safely and protected from theft, loss or damage;
- 3.8 immediately notify the Owner verbally and in writing of any loss, theft, breakdown or damage to the Equipment;
- 3.9 ensure the Equipment undergoes full maintenance and standard services on a regular basis (250, 500, 750 and 1000 hours) and in accordance with the manufacturer's instructions throughout the Hire Period;
- 3.10 not repair, modify or alter the Equipment in any manner without the Owner's prior written consent;
- 3.11 maintain the Equipment in good and substantial repair and condition in accordance with the On-Hire Survey;
- 3.12 provide the Owner with unfettered access to the premises where the Equipment is located in order to inspect the Equipment, repossess the Equipment or exercise any of its rights under this agreement;
- 3.13 ensure the Equipment is available for collection at the end of the Hire Period in a clean state, including free from graffiti, labels and other markings and in good repair.

**4. Payments by the Customer to the Owner**

- 4.1 Subject to any other agreement between the parties and unless specified by the Owner in writing, the Hire Rate must be paid by the Customer and is due for payment within 30 days of the date that the Owner delivers a Tax Invoice to the Customer for the hire of the Equipment.

- 4.2 If the Customer does not pay the Hire Rate by the due date for payment under this agreement, the Owner may charge the Customer interest on the outstanding amount calculated at 1.5% per month, compounding daily, on all amounts owing by the Customer until the outstanding amount is paid in full.
- 4.3 The Owner may vary the interest rate under clause 4.2 from time to time by notifying the Customer.
- 4.4 The Customer must pay all amounts specified on the Tax Invoice, including the Hire Rate and:
  - (a) the replacement price of the Equipment that is for whatever reason not returned to the Owner, whether by theft or loss or some other reason;
  - (b) all costs incurred in cleaning the Equipment, including the removal of labels, graffiti and other markings, if the Equipment is not returned to the Owner in a clean state, together with a 10% handling fee;
  - (c) the cost of repairing any damage to the Equipment unless expressly agreed otherwise in this agreement;
  - (d) the cost of any delays associated with the transportation of the Equipment to the Customer arising as a result of difficulty accessing the Customer's premises;
  - (e) all costs associated with or incurred by the Owner in recovering possession of the Equipment;
  - (f) a late payment fee calculated daily at 1.5% per month, compounding daily, on all amounts owing by the Customer not paid on time;
  - (g) any additional Hire Rates whether for special lifting machinery or site, meal or living away allowances or usage of the Equipment for greater than 50 hours per week charged on a pro-rata basis;
  - (h) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this agreement or arising from the Owner's supply or the Customer's use of the Equipment; and
  - (i) any costs and expenses incurred by the Owner in enforcing this agreement.
- 4.5 The Customer irrevocably and unconditionally authorises the Owner to charge the Customer's credit card with the sum specified on the Tax Invoice.
- 4.6 If the delivery of the Equipment is delayed at the Customer's request or as a result of any act or omission on the part of the Customer, the Hire Rate will be due and payable from the date specified in the Hire Period as the Commencement Date.
- 4.7 If the return of the Equipment to the Owner is delayed for any reason whatsoever, the Customer will be liable for additional Hire Rates that continue to accrue until the Equipment is returned to the Owner.
- 4.8 If the Customer terminates this agreement before the end of the Hire Period, the Customer will pay the Hire Rate to the Owner, plus all other associated amounts, in respect of the balance of the Hire Period as if this agreement had not been terminated.

**5. Personal Property Securities Act**

- 5.1 All terms capitalised in this clause that are not defined in these terms and conditions take their meaning as defined in the PPS Act.
  - 5.2 This agreement:
    - (a) constitutes a Security Agreement for the purposes of the PPS Act; and
    - (b) creates a Security Interest in:
      - (i) the Equipment previously supplied by the Owner to the Customer; and
      - (ii) all future Equipment supplied by the Owner to the Customer.
  - 5.3 The Customer must do all things necessary to assist the Owner to continuously perfect any Security Interest arising under this agreement, including signing any documents or providing any information the Owner reasonably requests for the purposes of protecting its interest under the PPS Act.
  - 5.4 Any Equipment supplied by the Owner to the Customer will constitute a Purchase Money Security Interest (PMSI).
  - 5.5 The PMSI will continue for any Equipment coming into existence or for the Proceeds from the sale of the Equipment.
  - 5.6 Until title passes from the Owner to the Customer under this agreement, the Customer will not permit any Security Interest to be created in the Equipment without the Owner's written consent.
  - 5.7 If the Equipment supplied by the Owner to the Customer are commingled with any other property, the Owner will have a Security Interest in those commingled Equipment including the Equipment supplied under this agreement.
  - 5.8 The Customer must not lodge or permit the lodgement of a Financing Change Statement or an Amendment Demand in respect of the Equipment without the Owner's consent.
  - 5.9 The Customer must immediately notify the Owner in writing of any change in the Customer's name or other identifying characteristics of the Customer or the Equipment in which the Owner holds any Security Interest.
  - 5.10 To the maximum extent permitted by the PPS Act:
    - (a) the Owner does not have to give a notice to the Customer of any action the Owner takes in accordance with sections 95 or 121(4) of the PPS Act;
    - (b) the Owner does not have to give a notice under section 130 of the PPS Act;
    - (c) the Owner does not have to give the details required under section 132(3)(d) of the PPS Act;
    - (d) the Owner does not have to give a written statement of account under section 132(4) of the PPS Act;
    - (e) the Owner does not have to give a notice required under section 135 of the PPS Act;
    - (f) no person can redeem the Security Interest in the Equipment under section 142 of the PPS Act without the Owner's consent; and
    - (g) no person may reinstate the Security Agreement under section 143 of the PPS Act without the Owner's consent.
  - 5.11 For the purposes of section 275(6) of the PPS Act, the Customer must keep confidential any information relating to this agreement that is in the nature of information that an interested person could access under section 275(1) of the PPS Act.
- 6. Defects in the Equipment**
- 6.1 The Equipment will be deemed received by the Customer in good condition unless written notice of shortages or defects are received by the Owner within two days of the Equipment being delivered to the Customer at the commencement of the Hire Period.
  - 6.2 The Customer agrees that the On-Hire Survey and the Off-Hire Survey are determinative of the condition of the Equipment at all material times.

## 7. Termination

- 7.1 If the Customer becomes bankrupt, insolvent, has a controller or administrator appointed, is the subject of winding up proceedings, ceases business or breaches any term of this agreement then the Owner will be entitled to:
- terminate this agreement;
  - sue for recovery of all money owing by the Customer,
  - repossess the Equipment; and
  - exercise any or all of its other rights in accordance with the law.
- 7.2 The Owner may terminate this agreement without penalty prior to delivery of the Equipment if, for any reason, it considers that it cannot supply the Equipment to the Customer.
- 7.3 Upon termination of this agreement:
- all amounts owing by the Customer, whether actually or contingently, become payable within seven days; and
  - the Customer must return any Equipment in its possession or control to the Owner within seven days.
- 7.4 The Owner may terminate this agreement at its sole discretion, without penalty or cause, by giving two days written notice of the termination to the Customer.

## 8. Limitation of liability

- 8.1 The Owner gives no warranties and makes no representations whatsoever relating to the Equipment's condition, quality, suitability or fitness for any ordinary or special use of the Equipment.
- 8.2 Nothing in this agreement excludes, restricts or modifies any rights the Customer may have under the Australian Consumer Law or any other law that operates to protect the hirers of Equipment in various circumstances.
- 8.3 The Owner's liability for breach of any condition or warranty is limited to the supplying of the Equipment again to the Customer or to the repair of the Equipment at the Owner's expense.

## 9. Disputes

The Customer must immediately check all Hire Rates, and any disputes in relation to those Hire Rates must be communicated to the Owner in writing within 30 days of the date of the Tax Invoice. In the event that no communication is received from the Customer within that 30 day period, the Hire Rates are deemed to be accepted by the Customer.

## 10. Governing law

The Owner and the Customer agree that this agreement will be construed in accordance with the laws in force in New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.

## 11. Risk

- 11.1 The Customer holds the Equipment as a bailee only and title to and in the Equipment remains with the Owner at all times.
- 11.2 The Equipment will be entirely at the risk of the Customer from the moment in time that it leaves the Owner's premises or control and until it is returned to the Owner's address or an address nominated by the Owner.
- 11.3 The Owner's maximum aggregate liability for all Claims under or relating to this agreement, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on breach or on any other basis, is limited to the amount paid to the Owner for the hire of the Equipment.
- 11.4 The Owner is not liable (under any circumstances) for:
- special, indirect, Consequential Loss, incidental or punitive damages; or
  - damages for loss of profits, revenue, goodwill, bargain, anticipated savings or loss, personal injury, death, the costs arising from the loss of use of the Equipment and the costs of any substitute Equipment that the Customer obtains.
- 11.5 In no event will the Owner be liable for:
- any loss or damage that the Customer suffers arising from, or caused or contributed to, by the Owner's negligence or the negligence of the Owner's agents or servants; or
  - special, indirect or Consequential Loss or damage as a result of a breach by the Owner of this agreement including, without limitation, loss of profits or revenue, personal injury, death, the costs arising from the loss of use of the Equipment and the costs of any substitute Equipment that the Customer obtains.
- 11.6 The Customer agrees to indemnify and hold harmless the Owner and its Personnel from any liability whatsoever arising out of or in any way connected with this agreement or the breach by the Customer of this agreement or any part of it.

## 12. Insurance

- 12.1 The Customer must take out and maintain:
- insurance against loss or damage to the Equipment by fire, theft or accident during the Hire Period (the limit of which insurance must be for an amount identified in the Hire Schedule);
  - a comprehensive public liability policy of not less than a \$5 million limit for any one claim and unlimited in the aggregate to cover all sums that the Customer may become legally liable to pay as compensation consequent upon:
    - death of, or bodily injury (including disease or illness) to any person; and
    - loss of, or damage to, property, happening anywhere arising out of or in connection with the operation of the Equipment by the Customer or the Customer's Personnel.
- 12.2 The insurance cover must contain an absolute waiver of subrogation rights in favour of the Owner.
- 12.3 During the Hire Period, the Customer must not do any act or thing that might invalidate or prejudice any such insurance or the Owner's interest in the Equipment.
- 12.4 The Customer must produce a current certificate of insurance upon request 24 hours prior to the Commencement Date.
- 12.5 The Customer is liable to pay the amount of all insurance policy excesses or deductibles as the case may be in respect of any and all Claims arising in the Hire Period.

## 13. Loss Theft Damage Waiver

- 13.1 Loss Theft Damage Waiver ('LTD Waiver') is not insurance, but is an agreement by Us to limit your liability in certain circumstances for loss, theft or damage to the equipment to an amount called the LTD Waiver Excess. The LTD Waiver excess is explained below in clause 13.5. note the limitations set out in clause 13.6
- 13.2 Subject to clause 13.3, the LTD waiver will be automatically charged to you in addition to Your Hire Charges and will be set out in Your hire Schedule. The LTD Waiver is calculated as a percentage of the Hire Charge
- 13.3 You are not required to pay the LTD Waiver Fee from the date You produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the equipment during the Hire period for an amount not less than the replacement value of the Equipment. ('Your

Insurance'). For the avoidance of doubt, You are liable to pay the LTD Waiver Fee for that portion of the Hire Period here a certificate of currency required pursuant to this clause 13.3 remains outstanding ('Uninsured Period') and you are not entitled to any credit and/or reimbursement of the LTD Waiver Fee Charged. You are responsible to any excess and any other costs associated with your insurance and You are responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under Your Insurance. Including any loss we suffer as a result of not being able to hire the equipment.

- 13.4 Where you have paid the LTD Waiver, we will waive our right to Claim against You for loss, theft or damage to the Equipment if:
- For theft you have promptly reported the incident to the police and provided Us with a written police report
  - You have Co-operated with Us and provided Us with the details of the incident including any written or photographic evidence We require
  - The loss, theft or damage does not fall into one or more of the circumstances set out in clause 13.6, and
  - You have paid the Us the LTD Waiver Excess
- 13.5 The LTD Waiver Excess for each item of the Equipment is the amount calculated as follows:
- 20% of the New Replacement cost where the equipment is lost, stolen or damaged beyond repair
  - 20% of the Repair Cost. You will responsible for the hire cost until the repair is completed.
- 13.6 Where Even if You have paid the LTD Waiver. We will not waive Our Rights to Claim against you for Loss, Theft of damage to the equipment and LTD Waiver Fee will not apply if Loss, Theft or Damage
- Has arisen as a result of your breach of a cluse of this hire agreement
  - Has been caused by Your negligent act or omission
  - Has arisen as a result of Your use of the Equipment
  - Has been caused by your failure to use the equipment for its intended purpose or in accordance with our instructions or the manufacturers instructions.
  - Occurs to the equipment whilst it is located, used, loaded, unloaded transported on or over water wharves bridges or vessels of any kind
  - Has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment
  - Has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure due to insufficient clearance
  - Has been caused buy thte overloading of the equipment in any way
  - Is caused by exposure to caustic or abrasive substances such as chemicals or concrete products
  - Is caused by vandalism
  - Is to tyres, windscreens, glass or Perspex.

## 14. Miscellaneous

- 14.1 The Customer must not assign or sub contract all or any of its rights under this agreement or part with possession or control of the Equipment or sell, transfer, charge or encumber the Equipment.
- 14.2 The Owner may subcontract its rights under this agreement in its absolute discretion.
- 14.3 The Equipment will not be or become a fixture under any circumstances whatsoever.
- 14.4 The Owner may vary the Hire Rate in its absolute discretion by providing the Customer with 48 hours written notice of the varied Hire Rate.
- 14.5 If the Customer retains possession of the Equipment at the end of the Hire Period, the hire will continue on a month to month basis on the same terms and conditions as in this agreement save that the Customer must provide the Owner with seven days' written notice of its intention to terminate the agreement.
- 14.6 The Customer is not entitled to withhold any payment under this agreement for any reason or claim a set-off or counterclaim as a basis for non-payment of the Hire Rate.
- 14.7 This agreement may be changed from time to time by the Owner giving notice of the amendment to the Customer.
- 14.8 This agreement, together with the Hire Schedule, constitutes the entire agreement between the Owner and the Customer.
- 14.9 Time is of the essence in this agreement.
- 14.10 Effective May 2020