

# Plant Hire Agreement – General Terms and Conditions

## 1. Agreement

- 1.1 These General Terms & Conditions govern the rights and obligations of the Supplier and the Hirer under the Plant Hire Agreement (“**Agreement**”).
- 1.2 Capitalised terms have the meanings given in the Schedule to this Agreement or these General Terms & Conditions, as applicable.
- 1.3 This Agreement contains the entire agreement between the parties and no regard shall be had to any prior dealings.
- 1.4 This Agreement commences on the Date of the Agreement, being the date the booking is made.

## 2. Hire of plant

- 2.1 The hiring of the Plant will commence from the Commencement Date and continue for the Term of Agreement specified in the Schedule.
- 2.2 The Hirer is entitled to use the Plant for the Term of Agreement, at the Hire Location and for any agreed extension of the Term of Agreement.
- 2.3 The Hirer must not remove the Plant from the Hire Location without the prior approval of the Supplier.
- 2.4 The Plant shall at all times remain the property of the Supplier or where relevant, a Licensor.
- 2.5 The Hirer acknowledges that the Supplier or Licensor (where relevant) retains all title to the Plant and that the Hirer has rights to use the Plant as a mere bailee only. The Hirer does not have any right to pledge the Supplier’s or Licensor’s credit in connection with the goods and agrees not to do so.
- 2.6 The Hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the Plant and not to conceal or alter the goods or make any addition or alteration to, or repair of, the Plant.

## 3. Payment for rental

- 3.1 The Hirer must pay the Hire Rates, being the Flat Rate and Wet Hire Fee (where applicable) on the payment terms to the Supplier.
- 3.2 Unless otherwise agreed in writing between the parties, the Hirer must pay the Hire Rates and Delivery Cost (where applicable) at the time of booking the Plant.
- 3.3 A reasonable cancellation fee may be charged in accordance with clause 3.4 by the Supplier where Plant has been booked and the Hirer cancels the booking without the required notice or fails to take delivery of the Plant.
- 3.4 If a booking is cancelled within 24 hours of the Commencement Date, the Hirer must pay the Hire Rates in full, unless the Supplier accepts a replacement booking of the Plant within that 24-hour period. If a booking is cancelled more than 24 hours before the Commencement Date, a full refund will be offered.
- 3.5 The Hirer authorises the Supplier to charge a cancellation fee to a credit or debit card supplied by the Hirer if they cancel.
- 3.6 The Supplier may charge the hirer a reasonable fee for accepting payment by credit card and this may be up to the applicable permissible charge under applicable legislation.

## 4. GST

- 4.1 The Hire Rates and Delivery Costs are GST Inclusive.
- 4.2 Unless this Agreement provides otherwise, and subject to this clause, any consideration that may be provided for under the Agreement is exclusive of goods and services tax (“GST”) pursuant to the A New Tax System (Good and Services Tax) Act 1999 (Cth). If a party makes a taxable supply in

connection with this Agreement for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

## **5. Delivery**

- 5.1 The Supplier will either deliver the Plant to the Hire Location for the Supplier Delivery Cost A as set out in the Schedule or the Hirer may elect to collect the Plant.
- 5.2 On delivery or upon collection, the Hirer and Supplier shall jointly inspect the Plant and record the details of the inspection. Any approval of the Plant by the Supplier shall not relieve the Hirer of its obligations and liabilities under this Agreement.
- 5.3 At the end of the Term of Agreement the Hirer must deliver the Plant to the address nominated by the Supplier or the Hirer may elect for the Supplier to collect the Plant from the Hire Location for the Delivery Cost B specified in the Schedule.
- 5.4 If the Hirer is collecting and delivering the Plant, the Hirer accepts all responsibility for the safe transport and unloading of the Plant.
- 5.5 The Hirer and Supplier shall jointly inspect the Plant and record the details of the inspection.

## **6. Condition**

- 6.1 At the Commencement of this Agreement the Hirer must inspect the Plant and satisfy itself that the Plant is in good repair and is suitable and fit for the intended purpose and use.
- 6.2 The Hirer is responsible for all maintenance, of the Plant including routine maintenance, all oiling, greasing and other care and maintenance of the Plant, required to ensure its satisfactory performance for the Term of the Agreement.
- 6.3 The Hirer must repair the Plant (including replacement of parts) where the Hirer (or its agents, employees, or contractors) has caused damage to the Plant.
- 6.4 The Supplier accepts no responsibility for loss or damage to the Plant, except to the extent it actually recovers under an insurance policy it has effected under this Agreement.

## **7. Use, operation and maintenance**

- 7.1 The Hirer agrees that the use of the Plant carries with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.
- 7.2 The Plant shall not be used by anyone other than the Hirer without the express permission of the Supplier including any sub-hiring.
- 7.3 The Hirer must:
  - (a) operate, maintain and store the Plant strictly in accordance with any instruction provided by the Supplier, with due care and diligence, only for its intended use and in accordance with any manufacturer's instructions and recommendations whether supplied by the Supplier or posted on the Plant as to the operations, maintenance and storage thereof;
  - (b) maintain the Plant in the condition as at the Commencement Date, fair, wear and tear excepted.
- 7.4 The Hirer shall ensure the Plant is returned to the Supplier clean of soil or any other foreign matter. The Hirer must also ensure that the Plant is refuelled. If these requirements are not complied with the Hirer shall pay the Supplier on demand, the reasonable costs of compliance with these requirements.

## **8. Health and safety**

- 8.1 Each party must carry out its obligations under the Agreement safely and so as to protect persons and property.
- 8.2 At the commencement of this Agreement the Supplier must so far as is reasonably practicable advise of any conditions for the safe and proper use and storage of the Plant.

- 8.3 The Hirer:
- (a) must comply with all relevant Safety Legislation and Safety Requirements;
  - (b) warrants that it is familiar with and has the capability and resources to comply with all relevant Safety Legislation and Safety Requirements; and
  - (c) must perform all relevant functions and fulfil all relevant duties under all relevant Safety Legislation of an employer, or person conducting a business or undertaking.
- 8.4 The Hirer must (and must ensure that its contractors and all subcontractors engaged by it to perform works on its behalf) at all times identify and exercise all necessary precautions to ensure its employees, contractors, subcontractors and its employees, and members of the public are not exposed to risks to their health or safety from the conduct of its undertaking, use and storage of the Plant.
- 8.5 The Hirer must ensure that the risks to the health or safety of any persons arising from the use of the Plant have been identified and relevant control measures have been put in place, so far as is reasonably practicable, in order to eliminate or minimise the risks associated with the use of the Plant.
- 8.6 Without limiting obligations in relation to insurance, the Hirer must provide the Supplier with access to all safety related information on request, including:
- (a) relevant licenses, certifications, authorisations and approvals;
  - (b) work method statements in respect of the supply of Plant;
  - (c) job safety analyses in respect of the supply of Plant;
  - (d) plant risk assessments;
  - (e) induction and training records; and
  - (f) incident records and reports.
- 8.7 Without limiting its obligations elsewhere in this Agreement, the Hirer indemnifies on demand and holds harmless the Supplier from and against any cost, expense or liability incurred by the Hirer arising out of or as a result of non-compliance or breach by the Hirer or any of its employees, contractors, subcontractors, or other third persons utilising the Plant under the Agreement. This shall extend to any costs incurred by Supplier in taking steps to ensure compliance by it or the Hirer or its employees, contractors or subcontractors with Safety Legislation, where such or equivalent steps should have been taken by the Hirer, its contractors or subcontractors in compliance with the Safety Legislation or Safety Requirements.
- 9. Plant Operator**
- 9.1 Where the Hirer is responsible for the supply of a Plant operator, the Hirer must ensure at all times that the Plant operator:
- (a) is covered by the Hirer's insurance;
  - (b) is experienced, competent and fit to operate the Plant;
  - (c) holds appropriate qualifications, licenses and certificates;
  - (d) complies with all safety, environmental and industrial relations legislative and site-specific requirements, all relevant Australian Standards and Supplier's directions;
  - (e) participates in and comply with site inductions;
  - (f) secures the Plant;
  - (g) uses appropriate personal protective equipment (to be provided by the Hirer); and

(h) adopts and adheres to safe working procedures.

9.2 Where the Hirer engages a contractor or subcontractor to operate the Plant, the Hirer must ensure that the contractor or subcontractor complies with the requirements set out in this clause 9.

## **10. Compliance**

10.1 In performing their obligations under this Agreement, the Hirer agrees to comply with all laws and regulations applying to the Agreement, and the Plant generally.

## **11. Damage and Insurance**

11.1 The Hirer shall indemnify and keep indemnified the Supplier against all loss or damage including claims made on the Supplier by third parties and including all physical loss or damage to property, and all loss or damage resulting from death or personal injury arising out of or resulting from the operation of the Plant or from any other act, error, omission or neglect of the Hirer.

11.2 The Hirer must promptly make good the loss of damage at its own expense.

11.3 The Hirer must effect for the Term of the Agreement:

(a) public liability insurance to the value of \$20 million per event to cover the Hirer for their respective rights and interests against liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person;

(b) workers compensation insurance; and

(c) any insurance policy that a prudent person in the position of the Hirer would take out.

11.4 The Hirer must maintain insurance during the Term of Agreement against liability for death or injury to persons employed by the Hirer including liability by statute and at common law. The Hirer shall ensure that all of its subcontractors are similarly insured.

11.5 If there is a breakdown or failure of the Plant then the Hirer shall return the Plant to the Supplier at the Hirer's expense and the Hirer shall not attempt to repair the Plant.

11.6 Before commencing the Term of Agreement and whenever requested by Supplier, the Hirer shall produce evidence that it has satisfied all of its insurance obligations under this Agreement.

11.7 Effecting or failing to effect insurance does not limit the Hirer's other liabilities under this Agreement or otherwise.

11.8 The Hirer is responsible for the care and safekeeping of the Plant until collected by or delivered to the Supplier, and must advise the Supplier immediately if the Plant has or is at risk of being damaged or stolen.

## **12. Hirer's and Suppliers Warranties**

12.1 The Hirer warrants that:

(a) the particulars in the Schedule are correct and are not misleading in any way including, without limitation, by omission;

(b) any individual taking delivery of the Plant on behalf of the Hirer is authorised by the Hirer to do so and the Hirer will not allege that any such individual is not authorised to do so;

(c) the Plant will not be used for any illegal purpose;

(d) the Hirer will not, without prior written consent of the Supplier, modify, or permit any modification of, the Plant in any way; and

(e) the Hirer agrees that the Plant complies with its description, is in merchantable condition and is fit for the Hirer's purpose.

12.2 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, the Supplier makes no representations and gives no warranties other than those set out in this Agreement, and will not be liable to the Hirer for any damages, costs or other liabilities

whatsoever (including for consequential loss) in relation to the hiring of the Plant by the Hirer.

### **13. Indemnity**

- 13.1 To the full extent permitted by law the Hirer releases, discharges and indemnifies the Licensor (where applicable), the Supplier from all claims and demands on the Licensor or Supplier arising out of or consequent on:
- (a) the use or misuse of the Plant (including any injury to or death of a person and any damage to property); and
  - (b) the Hirer's breach of any warranty or obligation under this Agreement, during the Term of Agreement.
- 13.2 Upon completion of the hire and payment of the final payment to the Hirer, the Hirer fully releases and discharges the Licensor (where applicable), the Supplier and its employees and agents from and against all claims, demands and causes of action and proceeding of every kind and nature which the Hirer may or might have had or might assert to have.

### **14. Default**

- 14.1 A party is in default of this Agreement if:
- (a) an Insolvency Event occurs in respect of the party;
  - (b) without reasonable cause, wholly or substantially suspends performance of its obligations under this Agreement;
  - (c) a party fails to comply with a notice from the other party; or
  - (d) a party fails to perform or observe any other obligation contained in this Agreement to be performed by that party.
- 14.2 The Supplier is in default of this Agreement if:
- (a) the Supplier fails to deliver the Plant to the agreed address by the Commencement Date and in accordance with this Agreement;
  - (b) the Supplier fails to replace defective Plant in accordance with this Agreement.
- 14.3 In this clause, "Insolvency Event" includes the following events—
- (a) the party informs the other party or creditors generally that it is insolvent or is financially unable to proceed with the Agreement;
  - (b) execution is levied against the party by a creditor which is not satisfied, set aside or withdrawn within 14 days of its issue;
  - (c) an order for payment is made or judgment entered against the party which is not satisfied within 14 days;
  - (d) the party suspends payment of its debts;
  - (e) where the party is a corporation and:
    - (i) notice is given of a meeting of creditors with a view to the party entering a deed of company arrangement, entering a scheme of arrangement or composition with creditors or placing the party under official management;
    - (ii) the party enters a deed of company arrangement or scheme of arrangement or composition with creditors;
    - (iii) a controller (as defined in section 9 of the Corporations Act 2001) is appointed of any of the property of the party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);

- (iv) an application is made to a court for the winding up of the party and not stayed within 14 days; or
  - (v) a winding up order is made in respect of the party.
- (f) If the Hirer is in default, subject to clause 14.4, the Supplier may in addition to any other rights the Supplier may have, terminate this Agreement and take possession of the Plant at the Hirer's expense.
- (g) If the Supplier is in default of this Agreement, subject to clause 14.4, the Hirer may:
- (i) suspend any payment due to the Supplier until the default has been remedied;
  - (ii) cancel the order for the Plant in part; or
  - (iii) terminate the Agreement.
- (h) Subject to clause 14.4, before a party can exercise a right under this clause it must give notice to the other party specifying the default and stating the right it intends exercising if that default is not remedied within 7 days of the notice.
- (i) Where the Agreement is terminated by either party, the Hirer grants the Supplier permission to enter any premises where the Plant is situated to disconnect, and/or remove that Plant.
- 14.4 A party ("**Party A**") will not be entitled to exercise its rights in clause 14.3 due to an Insolvency Event affecting the other party, to the extent that the event, or the rights of Party A are subject to a stay on enforcement of rights in accordance with the Corporations Act 2001 (Cth).

## **15. PPSA**

- 15.1 A term defined in the Personal Property Securities Act 2009 (Cth) ("PPSA") and any regulations made under the PPSA (together, the "PPS Law") has the same meaning when used in this clause.
- 15.2 The Hirer acknowledges that the Supplier or where relevant the Licensor wishes to take all reasonable steps which are prudent for the Supplier's business under or in relation to the PPSA. The Hirer must take reasonable steps to assist the Supplier or Licensor to register, perfect and protect any security interest in the Supplier's or Licensor's favour in connection with this Hire Agreement, except to the extent it is reasonable not to do so, taking into account the costs and risks involved.

## **16. Severability**

- 16.1 If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.
- 16.2 If any provision in this Agreement is unenforceable, illegal or void in one jurisdiction but not in another jurisdiction or makes this Agreement or any part of it unenforceable, illegal or void in one jurisdiction but not in another jurisdiction, then that provision is severed only in respect of the operation of this Agreement in the jurisdiction where it is unenforceable, illegal or void unless this would change the underlying principal commercial purposes of the Agreement.

## **17. Notices**

- 17.1 A notice, consent or other communication under this Agreement is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or email address provided in the Schedule. It is regarded as received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5.00 pm on a Business Day it is regarded as received at 9.00 am on the following Business Day.
- 17.2 A notice served by email is not regarded as having been received if the party sending the email receives a notice that the transmission was impaired or not completed.

## **18. Variation to agreement terms**

18.1 None of the terms of the Agreement shall be varied, waived, discharged or released either at law or in equity, except by the express written agreement of the Supplier.

## 19. Governing law

19.1 This Agreement is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

## 20. Interpretation

20.1 In this Agreement, unless the context otherwise requires:

- (a) A reference to the singular includes the plural and vice versa;
- (b) A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assignees, and where applicable, its servants and agents;
- (c) A reference to an individual shall include corporations and vice versa;
- (d) If a word or expression is defined, its other grammatical forms have a corresponding meaning; and
- (e) In this Agreement, headings are for convenience only and do not affect interpretation.

20.2 In this Agreement:

- (a) **Agreement** means this agreement and includes the Schedule and General Terms and Conditions.
- (b) **Business day** means a day that is not a Saturday, Sunday or a public holiday in the State identified in the Location of Hire.
- (c) **Commencement Date** means the date detailed in Schedule 1, and for the avoidance of doubt commences at the time the Plant is to be collected by the Hirer or delivered by the Service Provider on that date. Where no time is specified, the Commencement Date commences at 8am.
- (d) **Dry Hire** means where the Supplier is not responsible for the provision of an Operator for the Plant.
- (e) **Licensor** means the legal owner of the Plant from time to time or other third party who owns the Plant and has entered into an equipment licence with the Supplier.
- (f) **Plant** means the Description and Equipment Inclusions detailed in the Schedule.
- (g) **Safety Legislation** means any legislation covering work health and safety, environment protection and dangerous goods safety that is application to the supply and operation of the Plant in the Location of Hire and includes all regulations, codes of practices, compliance codes or any directions on safety or notices issued by any relevant authority.
- (h) **Safety requirements** means any direction, instruction, request or requirement relevant or necessary for compliance by Hirer or the Supplier with Safety Legislation, and including any such matter of which the Supplier has been informed by Hirer orally or in writing.
- (i) **Schedule** means the items in the Schedule to this Agreement on page 1 and for online bookings refers to the details of the booking including Date, Hirer name and ABN, Commencement Date of booking, Term of the Agreement, Basis of Hire (Wet Hire/Dry Hire), Hire Rates, Plant details, Hire Location and Delivery Cost.
- (j) **Wet Hire** means where the Supplier will provide an operator for the Plant.