

TERMS & CONDITIONS

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BAY HIRE

1. Definitions

In the Hire Agreement, words importing the singular include the plural and vice versa. References to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity and a reference to a party to this document includes the party's successors, permitted substitutes and permitted assigns.

- (a) 'Credit Approved' means the Customer has completed the Bay Hire NSW 'Application for 30 Day Credit Account' application form and Bay Hire NSW (in their sole have discretion) have approved that application;
- (b) 'Customer' means the person, firm, organisation or corporation hiring the Equipment from Bay Hire NSW as set out in the Hire Contract;(c) 'Damage Waiver Amount' means the amount set out in Bay Hire NSW 'Application for 30 Day Credit Account' application form;
- (d) 'Damage Waiver Excess' means an amount equal to 10% of the cost to repair or replace the Equipment, capped at \$500.00;
- (e) 'Equipment' means all equipment including tools, portable buildings, accessories and parts supplied by Bay Hire NSW to the Customer, from time to time, as set out in the Hire Contracts;
- (f) 'Hire Agreement' means this document and the Hire Contracts entered by the Customer from time to time;
- (g) 'Hire Amount' means all amounts payable by the Customer from time to time as set out in the Hire Contracts or calculated using the rates set out in the Hire Contracts;
- (h) 'Bay Hire NSW' means Bay Hire NSW Pty Ltd or any other entity trading under licence as 'Bay Hire NSW';(i) 'PPS Act' means the Personal Property Securities Act 2009 (Cth) and all related regulations.

2. Hire of Bay Hire NSW Equipment

- 2.1 The hire of the Equipment commences from the start date specified in the Hire Agreement and continues until the Equipment is back in Bay Hire NSW's possession and control and fit for the purpose of hire again, and includes all weekends and public holidays during that period (the Hire Period).
- 2.2 The Customer is entitled to use the Equipment for the Hire Period.
- 2.3 Any extension of the Hire Period must be agreed to by Bay Hire NSW.
- 2.4 A minimum Hire Period may apply. If such a minimum period applies Bay Hire NSW will notify the Customer.
- 2.5 The Customer agrees to return the Equipment upon demand from Bay Hire NSW and that the Hire Agreement may be terminated at any time by Bay Hire NSW without giving any reason.
- 2.6 The Customer acknowledges that Bay Hire NSW has the right to inspect the Equipment at all times during the Hire Period and to allow this, the Customer gives Bay Hire NSW the right to enter any property where the Equipment may be located.
- 2.7 Unless otherwise stated, daily rates quoted are for eight hours operation per day. Use of Equipment over and above eight hours per day will attract an increased Hire Fee at Bay Hire NSW's discretion.

3. Payment for Hire

- 3.1 The Customer agrees to pay Bay Hire NSW the Hire Amount and any Damage Waiver Amount (where applicable) specified in the Hire Agreement for the Equipment for the Hire Period plus any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to the Hire Agreement and the hire, including other charges set out in clause 4 below (collectively the Hire Fees).
- 3.2 Unless the Customer is Credit Approved, the Hire Fees must be paid to Bay Hire NSW at the start of the Hire Period.
- 3.3 If the Customer is Credit Approved, the Customer must pay their account within 30 days from the end of the month of the date of issue.
- 3.4 The Customer agrees that any deposit paid by them for the hire of the Equipment can be used by Bay Hire NSW in payment of the Hire Fee or other charges payable by the Customer under the Hire Agreement.

4. Other Charges

- 4.1 A cancellation fee may be charged by Bay Hire NSW where the Equipment has been reserved by booking and the Customer cancels the booking without reasonable notice, or fails to take delivery of the Equipment.
- 4.2 Bay Hire NSW may charge the Customer a fee at their discretion for any payment of the Hire Fee made by credit card.
- 4.3 The Customer is responsible for the payment of parking fines or any traffic violations, including penalties for any vehicles hired to the Customer where the Equipment or any part thereof is a vehicle and the parking fines, or traffic violations or penalties are incurred on the vehicle during the Hire Period, and even if the fines or penalties are received after the Hire Period.
- 4.4 In addition to the Hire Fees and charges set out in the Hire Agreement, the Customer is responsible for any physical damage to the Equipment (subject to clause 5), reasonable fees associated with any necessary cleaning on return of the Equipment, consumables, fines arising out of use of the Equipment, parts/labour/ materials required to modify Equipment at the Customer's request (if Bay Hire NSW agrees to the modification) and any operation training requested by the Customer.
- 4.5 If the Customer does not pay the Hire Fees in full by the due date, Bay Hire NSW may:
- (a) charge the Customer, in addition to any other costs recoverable under this agreement, interest of 1.5% compounding monthly on the total outstanding balance.
- (b) charge the Customer 100% of all costs and expenses incurred by Bay Hire NSW in recovering any unpaid amounts under the Hire Agreement, along with interest of 1.5% compounding monthly.
- 4.6 If the Customer requires Bay Hire NSW to deliver the Equipment at the start of the Hire Period and/or collect the Equipment at the end of the Hire Period, Bay Hire NSW will charge the Customer an additional delivery/collection fee(s) as applicable and as set out in the Hire Contract.

5. Damage Waiver

- 5.1 The Customer understands and accepts that an additional Damage Waiver Amount will automatically be charged in addition to the Hire Fee unless:
- (a) The customer indicates on the Bay Hire NSW 'Application for 30 Day Credit Account' application form that the damage waiver for any Equipment is not required and that the Customer accepts the full replacement or reinstatement costs (whichever applicable) for any loss, theft or damage to Bay Hire NSW's Equipment based on the then current purchase price of the Equipment.
- 5.2 In the event that written acknowledgement is received from the Customer on the application form, Bay Hire NSW may, at its discretion, require evidence that the Customer has current insurance policies which insure the Equipment during the Hire Period for its full replacement or reinstatement cost and note Bay Hire NSW's interest and have a waiver of subrogation against Bay Hire NSW. When the Customer advises that they have a current insurance policy, they also agree that their insurance policy must remain in full force for the duration of the Hire Period.
- 5.3 Where the Damage Waiver Amount has been charged to the Customer, Bay Hire NSW agrees to waive its right to claim for loss and damage to the Equipment caused by fire, storm, collision, accident, theft or burglary, provided that the Customer has paid the Damage Waiver Excess promptly, submitted to Bay Hire NSW a written police report (where necessary) and adequate precautions had been taken to protect the Equipment, including that the Equipment was reasonably locked and secured.
- 5.4 Expressly excluded from clause 5.3 are losses and damage caused by the Customer as defined below: a) loss or damage caused by the negligent act or omission of the Customer;
- (b) loss or damage caused by the misuse, abuse or overloading of the Equipment of any components thereof;
- (c) damage caused to tyres and tubes by blow out, bruises, cuts or other causes inherent in the use of the Equipment;(d) glass breakage;
- (e) loss or damage relating to the lack of lubrication or other normal servicing of the Equipment;
- (f) loss or damage to the Equipment whilst being loaded, unloaded, transported on or over land, water, wharves, bridges or vessels of any kind;

(g) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;

(h) damage caused by exposure to any corrosive or caustic substances, such as cyanide, salt water, acid etc; (i) theft of the Equipment unless reasonably locked and secured;

(j) loss or damage to Equipment during transport, except where transported by the Bay Hire NSW. This sub-clause shall not apply to trailers, toilet trailers, caravans or trailerised Equipment;

(k) loss or damage from use in violation of any statutory laws and regulations; and

(l) loss or damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels, shoring equipment, testing plugs, confined space equipment and other similar accessories.

5.5 Clause 5.3 shall not apply where Bay Hire NSW determines that one of the exclusions in Clause 5.4 applies unless the Customer is able to establish to the reasonable satisfaction of Bay Hire NSW that the exclusion does not apply. The Customer must provide Bay Hire NSW with all the information requested by Bay Hire NSW for the purpose of establishing whether one of the exclusions in clause 5.4 applies.

6. Cross-hire

6.1 The Customer must not on-hire the Equipment to any third party unless the Customer is known to Bay Hire NSW as an on-hire customer, by indicating this in the 'Type of Business' field on the Credit Application Form. In the event of a third party on-hire being agreed by Bay Hire NSW, the Customer shall remain liable to Bay Hire NSW in accordance with the terms of the Hire Agreement as though the on-hire agreement did not exist.

6.2 When Equipment is hired to other hire companies (with Bay Hire NSW's consent pursuant to clause 6.1), that are recognised by Bay Hire NSW to carry on that role, then the Customer has the right to re-hire for value.

6.3 Any agreement by Bay Hire NSW to the Customer entering into an on-hire agreement with a third party, is conditional upon the third party agreeing to operate under the same terms and conditions as contained in the Hire Agreement.

6.4 The Customer must take all steps necessary, including registration under the PPS Act to:

(a) ensure that any security interest arising under or in respect of any on-hire is enforceable, perfected and in all respects effective in accordance with the PPS Act;

(b) enable the Customer to gain (subject to Bay Hire NSW's rights) first priority for the security interest; and

(c) enable the Customer and Bay Hire NSW to exercise their respective rights in connection with the security interest.

6.5 Bay Hire NSW may charge the Customer for any cost or expense incurred by them in relation to anything that needs to be done by Bay Hire NSW under this clause.

7. Customer warranties

7.1 The Customer warrants that:

(a) the Equipment will be used in accordance with the conditions outlined in the Hire Agreement and only for the purpose for which it was intended;

(b) the particulars in the Hire Agreement are correct in every respect and are not misleading in any way including, without limitation, by omission;

(c) it is the Customer's responsibility to ensure that the operator of the Equipment currently holds the current licences and all necessary approvals to operate the Equipment. Bay Hire NSW does not accept any responsibility or liability for operator licensing;

(d) the Equipment will not be used for any illegal purpose;

(e) the Customer vehicle is suitable for towing the Equipment if required;

(f) the Customer will not, without Bay Hire NSW's prior written permission, tamper with, repair or modify the Equipment in any way, or permit another to do so;

(g) the Customer agrees that the Equipment complies with its description, is in merchantable condition and is fit for the Customer's purpose; and

(h) the Customer agrees that the Equipment has been received by the Customer in clean and good working order.

8. Customer Indemnities

8.1 To the full extent permitted by law, the Customer releases, discharges and indemnifies Bay Hire NSW from all claims and demands by third parties upon Bay Hire NSW arising out of or consequent on the use or misuse of the Equipment during the Hire Period.

8.2 The Customer indemnifies Bay Hire NSW from any claims arising out of the use of the Equipment including damage to property or livestock or injury to persons.

8.3 Without limiting clause 8.1 of the Hire Agreement, the Customer agrees that to the full extent permitted by law, no warranties are given by Bay Hire NSW in respect of the Equipment. Any liability of Bay Hire NSW pursuant to any warranty which cannot be

excluded by law will not exceed either the cost of repairing the Equipment or for the cost of resupplying the Equipment, at Bay Hire NSW's sole discretion.

9. Customer Responsibility

9.1 Subject only to Bay Hire NSW's obligations following payment of the Damage Waiver Amount by the Customer in accordance with the Hire Agreement, the Customer will be responsible for any loss or damage to the Equipment irrespective of how the loss or damage occurred, including all wear and tear, during the Hire Period.

9.2 Bay Hire NSW gives no guarantee as to the condition, safety or suitability of the Equipment. Bay Hire NSW will rectify minor faults where possible on the job sites. In case of major breakdown, Bay Hire NSW will attempt to replace the Equipment as soon as possible. The Customer releases Bay Hire NSW from any liability for the loss caused by break down of any of the Equipment.

9.3 The Customer is liable for the payment of the new purchase price of any Equipment not returned to Bay Hire NSW.

9.4 The Customer agrees to fully reimburse Bay Hire NSW in the event of damage or loss of the Equipment.

9.5 If the Equipment is damaged the Customer must notify Bay Hire NSW within 24 hours of becoming aware of the damage.

9.6 The Customer accepts full responsibility for any damage caused to any underground services when using the Equipment.

9.7 If there is a breakdown or failure of the Equipment, the Customer must immediately stop using the Equipment and notify Bay Hire NSW in writing.

9.8 The Customer must take all necessary steps to prevent injury occurring to persons or property as a result of the condition of the Equipment.

9.9 The Customer must take all necessary steps to prevent any further damage to the Equipment itself.

9.10 The Customer must not repair or attempt to repair the Equipment.

9.11 The Customer holds a valid current driver's licence, operating licence or permit valid for the type of Equipment hired.

10. Customer Liability

10.1 The Customer will assume all risks and liabilities for, and in respect of, the Equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the Customer's possession, use, maintenance, repair, storage or transport of the Equipment.

11. PPS Act

11.1 In relation to any security interest constituted or contemplated in the Equipment by the Hire Agreement, and in relation to any proceeds arising from any dealing in the Equipment, the Customer consents to Bay Hire NSW affecting and maintaining a registration on the register (in the manner Bay Hire NSW considers necessary, including a Bay security interest registration that stays on the Customer's record at all times, even if no Equipment is currently being hired by the Customer from Bay Hire NSW) of that security interest.

11.2 The Customer also agrees to sign any documents and provide all cooperation to Bay Hire NSW required to facilitate that registration and maintenance. At Bay Hire NSW's sole discretion, Bay Hire NSW may register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest) at any time. The Customer's right to receive notice of a verification statement regarding the registration of a security interest on the register in respect of the Equipment is hereby waived.

11.3 The Customer agrees not to register a financing change statement in respect of a security interest contemplated or constituted by the Hire Agreement, or in favour of a third party, without Bay Hire NSW's prior written consent.

11.4 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with the Hire Agreement and sections 115(1) or 115(7) of the PSS Act allows for contracting out, then the following provisions of the PPS Act will not apply and the Customer will have no rights under them:

(a) in respect of section 115(1), section 95 (to the extent of notices to the grantor); section 96; section 118 (to the extent of notices to the grantor); sections 121(4); 125; 130; 132(3)(d); 132(4); 135; 142; and 143; and

(b) in respect of section 115(7): sections 127; 129(2); 129(3); 130(i); 132; 134(s); 135; 136(3); 136(4); 136(5); 137; and 275(7)(c).

11.5 The Customer and Bay Hire NSW agree not to disclose information of the kind referred to in section 275(1) of the PPS Act.

11.6 For the sake of clarity, the Equipment is the collateral and the security agreement is the Hire Agreement pursuant to the PPS Act.

11.7 Money received from the Customer in connection with the Hire Agreement may be applied by Bay Hire NSW towards the Customer's obligations under any security interest contemplated or constituted by the Hire Agreement in any way as Bay Hire NSW determines.

11.8 The Customer agrees to notify Bay Hire NSW immediately in writing of any material change to the information contained in or associated with the Credit Application.

11.9 Subject to clause 6 of the Hire Agreement the Customer must not create, purport to create or allow to be created any security interest in the Equipment without Bay Hire NSW's prior obtained express written consent.

12. Disclaimer

12.1 To the extent permitted by law, Bay Hire NSW disclaims all liability for and do not give any warranties to the Customer as to the condition of the Equipment.

13. Bay Hire NSW own the Equipment

13.1 The Customer acknowledges that Bay Hire NSW retains title to the Equipment (which shall not be deemed to be a fixture), and that the Customer has rights to use the Equipment as a mere bailee only. The Customer agrees that the Customer has no rights to pledge Bay Hire NSW credit in connection with the Equipment.

13.2 Subject to clause 6, the Customer agrees not to offer to sell, assign, sub-let, charge, lend, pledge, mortgage, let or hire or otherwise part with or attempt to part with personal possession of, or create any security interest over, the Equipment.

13.3 The Customer agrees not to conceal, alter or make any addition to the Equipment.

14. Customer default

14.1 Bay Hire NSW may retake possession of the Equipment if:

- (a) the Customer is in breach of any provision of the Hire Agreement; or
- (b) the Customer does not pay the account for the Hire Fee in the time agreed; or
- (c) the Hire Period ends and the Customer has not returned the Equipment to Bay Hire NSW.

14.2 All costs incurred by Bay Hire NSW in repossessing due to a breach are to be paid by the Customer.

14.3 In the case of repossession due to a breach of the Hire Agreement the Customer agrees to grant Bay Hire NSW permission to enter any premises where the Equipment listed in the Hire Agreement is situated to disconnect, decommission and/or remove that Equipment.

14.4 In addition to Bay Hire NSW's right to retake possession Bay Hire NSW are entitled (in Bay Hire NSW's sole discretion), following any breach of any provision of the Hire Agreement by the Customer, to terminate the Hire Agreement and/or sue for recovery of any damages or charges or loss suffered by Bay Hire NSW, and/or to cancel any insurances effective in respect of the Equipment.

15. End of Hire Period

15.1 The Customer must ensure the Equipment is:

- (a) returned to Bay Hire NSW at the end of the Hire Period in a clean condition otherwise, the Customer agrees to pay a reasonable cleaning fee if the Equipment is not returned in a clean condition (to be determined by Bay Hire NSW);
- (b) returned to Bay Hire NSW fully fuelled otherwise, the Customer agrees to pay for the cost of refuelling the Equipment if it not returned full; and
- (c) maintained, oiled and greased during the Hire Period in accordance with information provided by Bay Hire NSW, written, verbal, or displayed on the Equipment; For the sake of clarity any consumables used by the Customer are to be charged at a reasonable commercial rate by Bay Hire NSW.

15.2 The Customer agrees to return the Equipment to Bay Hire NSW's address on or before the end of the Hire Period and any failure to do so can be criminal theft and may be immediately reported to the police.

16. Force Majeure

16.1 Subject to clause 16.2, neither the Customer or Bay Hire NSW will be responsible for any delays in delivery, installation or collection of the Equipment due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

16.2 Nothing in clause 16.1 will limit or exclude the Customer responsibilities and liabilities under the Hire Agreement for Equipment that is lost, stolen, or damaged during

the Hire Period, or has broken down or become unsafe to use as a result of the Customer conduct or negligence or breach of the Hire Agreement.

17. Variation

17.1 If Bay Hire NSW intends to amend the terms of the Hire Agreement, Bay Hire NSW will give the Customer 30 days notice of the intended amendments. Any failure by the Customer to dispute the amendments within 7 days of notice means the Customer accepts the amendments.

17.2 Any other variations to these terms and conditions shall be agreed in writing between the parties.

18. Security

18.1 As security for the Customer obligations and liabilities under the Hire Agreement, the Customer agrees to charge all of the Customer's legal and equitable interests (both present and future) of any nature, however held, in any and all real property.

18.2 The Customer agrees to sign any documents and do all things reasonably required by Bay Hire NSW to register a mortgage security or other instrument of security (including a caveat noting Bay Hire NSW interest) over any real property and if the Customer fails to do so immediately, the Customer irrevocably appoints any solicitor engaged by Bay Hire NSW to be the Customer lawful attorney to sign and register such instruments of security.

18.3 The Customer agrees to indemnify Bay Hire NSW on an indemnity basis against all costs and expenses incurred by Bay Hire NSW in connection with the preparation and registration of any such instrument of security.

19. Non-merger

19.1 The covenants, agreements and obligations contained in the Hire Agreement will not merge or terminate upon the termination of the Hire Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

20. Severance

20.1 If any provision of the Hire Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, the Hire Agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

21. Governing law

21.1 The Hire Agreement is governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the courts of that State. 22.1 The Customer agrees to pay to Bay Hire NSW with and in addition to any fees and charges pursuant to this agreement any goods and services tax on the supply of any good or service by Bay Hire NSW to the Customer which may be assessed on such transaction pursuant to the A New Tax System (Goods and Services Tax) Act 1999 and its associated legislation.

22. Provisions of the Hire Agreement Excluded from Consumer Contracts

22.1 Where the Customer is an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of the Hire Agreement will not apply:

- (a) Variation clause (clause 17) and
- (b) Security clause (clause 18).



TOOL & EQUIPMENT HIRE

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