

## Hire Agreement For Plant And Equipment

### **Recitals:**

- R1. The owner is the proprietor of the plant and equipment ("equipment") listed in the schedule to this Agreement ("schedule").
- R2. The hirer will hire the equipment specified in the schedule from the owner upon the terms and conditions in this Agreement.

### **Operative Part:**

#### **1. Hire of plant and equipment:**

- a) The hiring of the equipment will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.
- b) The hirer is entitled to use the equipment for the hire period and for any agreed extension of the period.
- c) The hirer agrees to return the goods to the address of the owner on or before the end of the hire period as outlined in the schedule.
- d) The owner will not refund any hire charge monies if the hirer elects to return the equipment prior to the end of the hire period, regardless of reason.
- e) **Note to customer:** You MUST advise TNO Hire if you require any further instruction on the operation and safe use of the Equipment.

#### **2. Use, operation and maintenance:**

- a) The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- b) The equipment shall not be used by anyone other than the hirer without the expressed permission of the owner.
- c) The hirer agrees to operate, maintain and store the equipment strictly in accordance with any instruction provided by the owner, with due care and diligence, only for its intended use and in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment as to the operations, maintenance and storage thereof.
- d) The hirer agrees to comply with all occupational health and safety laws relating to the use of the equipment and related operations.
- e) The hirer shall ensure the equipment is returned to the owner clean of soil or any other foreign matter.
- f) Tanks on any equipment shall be full of fuel when the equipment is returned to the owner. In the event that these requirements are not complied with the hirer shall pay the owner the reasonable costs of compliance with these requirements.

**3. Hirer warrants that:**

- a) The equipment will be used in accordance with the conditions outlined in the schedule.
- b) The particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission.
- c) The hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired.
- d) The equipment will not be used for any illegal purpose.
- e) The hirer's vehicle is suitable for towing the equipment and does not exceed the recommended or legal load and capacity limits of the Equipment.
- f) Without the prior written consent of the owner, tamper, modify, or permit any modification of the equipment in any way.
- g) The equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.

**4. Hirer will take responsibility in the event of the following circumstances:**

- a) The use or carry of any illegal, prohibited or dangerous substance in or on the Equipment.
- b) Any repercussions associated with exceeding the recommended or legal speed limit for the Equipment.
- c) Any repercussions where the operator was not suitably licensed, or affected by drugs and/or alcohol.
- d) Where the equipment has been wilfully damaged at any time during the hire period.
- e) Where the damage is caused by rolling or detachment while the equipment is being driven or towed.
- f) Where damage is caused from unsecured items loaded in or on the equipment, or in or on the Customer's vehicle, and indemnify TNO Hire in respect of any injury and/or damage caused by items falling from the equipment or from any vehicle or trailer operated by or on behalf of the Customer.
- g) Where the damage is caused while the equipment is being driven or towed on any road that is unsealed or is not a public road.
- h) Where the damage is caused in any way by overloading or towing from an inadequate rated tow vehicle.
- i) Where the damage is caused by flash flooding or general water damage.
- j) Where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance.
- k) Any damage caused by misuse or incorrect operation of the equipment.

**5. Loss, damage or breakdown of plant and equipment:**

- a) The hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred (fair wear and tear excepted) during the hire period and will be liable for the cost to repair or re-instate the equipment.
- b) If there is a breakdown or failure of the equipment then the hirer shall return the equipment to the owner at the hirer's expense and the hirer shall not attempt to repair the equipment.

**6. The hirer will take responsibly for theft of equipment in the following circumstances:**

- a) Where the Customer has failed to keep the equipment in a secure area.
- b) Has failed to properly secure or lock the equipment or.
- c) Where the Customer has failed to submit to TNO Hire a Police Report on the theft within seven days of the theft allegedly occurring.
- d) In the event of Theft, hire fees will be charged to the Customer until the Police Report is provided to TNO Hire.

**7. Liability:**

- a) The hirer 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 hirer's possession, use, maintenance, repair or storage of the equipment.
- b) Have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment.
- c) If any damage is caused by the Customer to any property or goods whatsoever owned by a third party as a result of or during the hire of any TNO Hire Equipment, and if the customer has breached any provision of this contract or if any of the circumstances described in clause 4(a)-(k) have occurred, the Customer will be liable for the full cost of that third party property damage to the extent caused by the customer.
- d) If the Customer has not breached this Contract and none of the circumstances described in clauses 4(a)-(k) have occurred, the customer will be liable for the full cost of the third party property damage to the extent caused by the customer, or \$1,500, whichever is the lesser amount.
- e) A Damage Waiver Excess must be paid by the Customer for each and every separate incident which may occur in any Hire Period, where any Damage Waiver is applicable under this section 4.
- f) A Theft Waiver Excess must be paid by the Customer for each and every separate incident which may occur in any Hire Period, where any Theft Waiver is applicable under this section 4.
- g) Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised.
- h) Ensure that all persons operating or erecting the equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are fully licensed.
- i) 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.
- j) Report and provide full details to TNO Hire of any accident or damage to the Equipment within two business days of the accident or damage occurring.
- k) Sign any documentation requested by TNO Hire at such intervals as reasonably stipulated by TNO Hire, to confirm the customer's acceptance of these hire contract conditions.
- l) Assist and co-operate fully and promptly with TNO Hire and/or its insurer in the investigation, settlement or defence of any claim or matter relating to a Hire Schedule on which the Customer is named.
- m) Remain responsible for the care and safekeeping of the Equipment until collected by or delivered back to TNO Hire.

## 8. Payment for rental:

- a) The hirer agrees to pay the owner the hire fee specified in the schedule for the equipment for the hire period, which includes any applicable GST, if a hire charge is applicable.
- b) On or before Commencement (or as otherwise specifically agreed with TNO Hire), the Customer will pay the Hire Charge.
- c) Immediately on request by TNO Hire, the Customer will pay: the new list price of any Equipment which is for whatever reason not returned to TNO Hire.
- d) **Note to customer:** Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the equipment.
- e) All costs incurred in cleaning the equipment.
- f) The full cost of repairing any damage to the equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract.
- g) Stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the equipment.
- h) All costs incurred by TNO Hire in delivering and recovering possession of the Equipment.
- i) Interest for late payment of amounts owing by the customer, at the prejudgement interest rate set by the Local Court of NSW from time to time.
- j) The cost of fuels and consumables provided by TNO Hire and not returned by the Customer.
- k) Any reasonable expenses and legal costs (including commission payable to a commercial agent) incurred by TNO Hire in enforcing this Contract due to the Customer's default.
- l) All costs of repairing or replacing tyres/wheels, including road service.
- m) Loading costs when equipment hired with an hour meter is used in excess of 8 hours per day.

## 9. Insurance:

- a) TNO Hire will maintain current insurance policies in respect of the equipment to its full insurable value.

## 10. Disclaimer:

- a) To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.
- b) To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

## 11. Title to goods:

- a) The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer does not have any right to pledge the owner's credit in connection with the goods and agrees not to do so.
- b) 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 equipment and not to conceal or alter the goods or make any addition or alteration to, or repair of, the equipment.

**12. Repossession:**

- a) The owner may retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained. If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.

**13. Completion of the hire period:**

- a) The hire period is completed when the equipment has been returned to the owner: in the same condition as when it was hired; and on or by the date and time outlined in the schedule.

**14. Non-merger:**

- a) The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

**15. Severance:**

- a) If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this 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.
- b) If the Customer breaches any significant provision of this Contract and does not remedy the breach within a reasonable period of time (having regard to the breach), or becomes bankrupt, insolvent or ceases business then:  
TNO Hire shall be entitled to:
- Terminate this Contract; and/or
  - Sue for recovery of all monies owing by the Customer; and/or
  - Repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so).
  - The Customer indemnifies TNO Hire in respect of any damages, costs or loss, to the extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

**16. Governing law:**

- a) 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.



**Executed as an Agreement**

For and on behalf of TNO Hire:

Authorised Person: *Trent Osborn*

Signature:

A handwritten signature in black ink, appearing to be 'Trent Osborn', written over a dotted line.

Hirer:

.....

Signature:

..... Date: .....