



**Impact Hire Australia Pty Ltd**  
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## **TERMS AND CONDITIONS**

Deletions or additions by the Hirer to the following conditions will be of no effect unless the same are in writing and signed by the Owner.

### **DEFINITIONS**

- (a) the "owner" is Impact Hire Australia Pty Ltd.
- (b) the "hirer" refers to the person, firm or corporation hiring plant from the owner;
- (c) "plant" means all equipment, including tools, accessories and parts supplied;
- (d) "parties" means the owner and the hirer and "party" shall mean either one of them.

### **1. PERIOD OF HIRE**

The period of hire shall commence on the day the plant or equipment (hereinafter called "the plant") leaves the owner's depot and shall terminate on the day it is returned to the owner's depot, both such days being included in the period of hire. The Hirer shall be responsible for the return of the plant to the owner at the Owner's depot.

### **2. HIRE CHARGES**

(a) The Hirer shall pay the owner hire charges for the full period of hire at the rate quoted. Should a price not be quoted it is agreed that the list rate of the Owner will be paid. All amounts payable by the Hirer hereunder shall be paid within 30 days of date of invoice.

(b) If the Hirer does not on the relevant due date pay to the Owner any amount payable under this contract for hire or if the Owner shall expend any money consequent upon any breach hereof by the Hirer which amount shall be due on the date that such expenditure is incurred by the owner, the Hirer shall pay the Owner interest on all such amounts from the due date until all such moneys and all accrued interest thereon are repaid in full at the interest rate of two percent (2%) per month.

### **3. CONDITION, CARE AND REPAIR**

The hirer shall be responsible for the safe keeping of the plant, its use in a skilful and workmanlike, manner, its servicing, cleaning and maintenance and its return to the Owner at the end of the period of hire in the same condition, except for fair wear and tear, in which it was at the commencement of hire. The Hirer shall be responsible for the supply of all fuel and oil (which shall be to the Owner's specifications) for the plant and for the supply of electricity for the plant where necessary and for connection to an electrical supply in accordance with electrical authority standards. The Hirer shall allow the Owner and its agents free and full access to the plant and if in the opinion of the Owner special transport on site is necessary, the Hirer shall provide the same for any purposes including inspection and repair of the plant when necessary. The Hirer shall not allow the plant to be used for a purpose beyond its capacity or in a manner likely to result in undue deterioration. The Hirer shall bear and pay the costs of repairs, replacements or servicing which the Owner considers necessary as a result of or arising from the Hirer's negligence misuse or failure to comply with its obligations hereunder. The Hirer shall remain responsible hereunder to the Owner wherever the plant may be situated until its return to the Owner.

### **4. OPERATIONS AND SUPERVISORS**

The Hirer shall be responsible for the provision of operators and supervisors at all times during the period of hire. At the Hirer's request, the Owner may provide personnel in accordance with paragraph 7 hereof to operate the plant on the condition that the work of such personnel shall be under the direction and control of the Hirer who shall be wholly responsible for their acts and omissions.

### **5. PROTECTION OF PLANT**

The Hirer shall not transfer or assign this contract of hire to any person without the prior written consent of the Owner and the Hirer shall not without the prior written consent of the Owner, sell, assign, pledge, mortgage, lend, hire or otherwise part with the possession of the plant or otherwise allow any third party to acquire any lien, right, title or interest in the plant.

### **6. WARRANTIES AND RESPONSIBILITY - To the full extent permitted by law:**

- (a) The Owner does not agree to or give any warranty or make any representations whatsoever as to the condition, merchantability or fitness for any use or purpose;
- (b) It is the responsibility of the Hirer to satisfy himself as to the condition, quality, suitability and fitness of the plant for his purpose before hiring the plant;
- (c) The Hirer shall be, and the Owner shall not be, responsible for all (including consequential) damage, loss and injury to any person or thing whatsoever arising out of or in relation to the plant or its use or operation during the period of hire and the Hirer shall indemnify the Owner against all claims, losses, damages, liabilities, costs and expenses howsoever arising or incurred in respect thereof: and

Without prejudice to the preceding paragraphs, the Owner shall not be responsible for any loss or damage howsoever as a result of any defective performance or breakdown of the plant or delay in repairing or delivering the plant and in no circumstances shall the Owner be liable to the Hirer or any third party for special, indirect or consequential damage or damages however caused, comprising or resulting from loss of business, revenue or profit.

This contract for hire shall be governed and interpreted under the laws of the State of New South Wales.

The Hirer is responsible for the transportation of the plant from the Owners depot and for the return to the Owners depot. Risk of loss of and damage to the plant shall at all times during the period of hire be the responsibility of the Hirer.

The Hirer is responsible for the plant at all times whilst the plant is under their care and responsibility, that is, at all times the plant is outside the owner's depot. The hirer is responsible for ensuring that the hirer is appropriately insured against all risks, including but not limited to public liability, and comprehensive insurance for loss or damage sustained to the plant, whilst it is on hire. The hirer accepts full responsibility for the equipment at all times whilst it is on hire, whether such equipment is being used or not.

**NOTE:**

In respect of certain goods, provisions of the Trade Practices Act, 1974 and other applicable consumer legislation may in the circumstances therein imply conditions and warranties into the contract of hire, confer rights upon the Hirer and impose obligations on the Owner in favour of the Hirer which cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. The provisions of this paragraph 6 must be read and construed subject to any such statutory provisions that apply, then, to the extent to which the Owner is entitled to do so, its liability under those statutory provisions shall be limited at his option to either:

- (i) The replacement of the plant or the supply of equivalent plant or the payment of the cost of replacing the plant or of acquiring equivalent plant: or
- (ii) The repair of the plant or payment of the cost of having the plant repaired.

**7. EXTRA CHARGES**

Hire charges cover only the fee for hiring the plant to the Hirer. The Hirer shall pay in addition to the Owner all freight charges incurred in transporting the plant including loading and unloading at site. The Hirer shall also pay the rate quoted for operator's supplied to operate equipment under the Hirer's direction.

The Hirer shall pay all Government charges and taxes (including, without limitation, GST) incurred by the Owner as a result of the execution or performance of this contract for hire.

An additional charge of 10% of hire charges is applicable for Theft & Damage Waiver. This charge is automatically incurred unless Impact Hire is advised in writing prior to the commencement of hire. The Theft and Damage Waiver is set out in the attached Theft & Damage Waiver Option and you should satisfy yourself regarding the terms, conditions and limitations of such cover.

**8. TERMINATION**

- (a) This contract of hire shall terminate on notice from the Hirer that the equipment is off hired and returned to the Owners depot.
- (b) The Owner shall be entitled to terminate this contract of hire at any time without notice if the Hirer fails to pay any hire charges as they fall due for payment or otherwise breaches a term or condition of this contract of hire.
- (c) The Owner may terminate this contract of hire without liability on its part if the Hirer becomes insolvent or bankrupt, if any execution or distress be levied or threatened upon any property in his possessions, if a receiver and or manager be appointed over him or his business, or it, being a company, a resolution or petition for liquidation be proposed or applied for.
- (d) If installation of de-watering plant cannot be effected within a particular time or at all due to ground conditions or if such plant fails for any reason (other than fault of the Hirer to lower or keep lowered the water table at the site) the Hirer shall be entitled to terminate this contract of hire or to hire additional plant but shall have no other rights or claims against the Owner of any kind whatsoever.
- (e) Upon termination the Hirer shall return the plant to the Owner's depot and in default thereof the Owner shall be entitled to re-take possession of the plant for which purposes the Owner is granted by the Hirer an irrevocable licence to enter any premises or site where the plant is or believed to be situated and Hirer shall pay to the Owner such additional amounts as may be necessary to compensate the Owner for any reasonable costs incurred by the Owner in exercising its rights of seizure.
- (f) Where the Hirer remains in possession of the plant after termination of this contract of hire for any reason, he shall remain bound by all conditions on his part contained herein, unless otherwise notified by the other party.

**9. ACCEPTANCE OF PLANT**

Acceptance of the plant by the Hirer when delivered shall be deemed to be acceptance of these conditions.

**10. SEVERABILITY**

If any one or more provisions of this contract for hire should be invalid or unenforceable such provision(s) shall be severed and shall be deemed to have formed no part hereof shall subsist and remain enforceable unless the basic purpose of this contract for hire would thereby be defeated.

**11. WAIVER**

The failure of any party to enforce or to exercise, at any time or for any period of time, any term of or any right arising pursuant to this contract for hire does not constitute, and shall not be construed as a waiver of such term or right and shall in no way affect that party's right to enforce or to exercise it later.

Company: .....

A.B.N: .....

Signature: .....

Name: .....

Date: .....