

CONDITIONS OF HIRE

1. DEFINITIONS

In these Conditions of Hire:-

- (a) The "Owner" is Mac's Plant Hire Pty Ltd.
- (b) The "Hirer" means and includes the company, firm or person, the name of which is set out on the face of this document as the Hirer and any person whether as employee, agent or otherwise, who makes this contract on behalf of such company, firm or person.
- (c) "Equipment", unless a contrary intention appears, includes all goods, articles, machinery or motor vehicles supplied by the Owner to the Hirer for a fee pursuant to this contract.
- (d) "Off Hire No" is the number given to the Hirer when the Hirer notifies the Owner in writing or by phone that the Equipment is available for return and the location at which it shall be available.
- (e) The "Period of Hire" shall:-
 - (i) **commence** from:
 - (A) the commencement date and time as shown overleaf; or
 - (B) the time the Equipment is delivered to the Hirer whichever is the latter; and
 - (ii) **cease**:
 - (A) when the equipment is returned to the Owner (either on the date and at the time specified overleaf or 24 hours from the date of commencement of the period of hire); or
 - (B) at the time a "Off Hire" number is given; or
 - (C) on the Owner repossessing the Equipment pursuant to Condition 8 of these Conditions of Hire
 - (D) Deposit. The Owner shall hold the deposit as security for the due performance by the Hirer of its obligations and may apply the whole or part of the deposit at any time against and moneys due but unpaid or any expenses, loss or damage incurred by the Owner as a result of a failure by the Hirer to perform properly its obligations. Application by the Owner of the whole or any part of the deposit pursuant to this clause shall be without prejudice to any other rights of the Owner arising out of this Contract.

2. USE OF EQUIPMENT

- (a) (i) The Hirer shall at all times use the Equipment in a skillful and proper manner and shall at his own expense service, clean and maintain the Equipment in good and substantial repair and condition, reasonable wear and tear excepted.
- (ii) The whole or any part of the cost incurred by the Owner arising out of any failure by the Hirer to properly clean the Equipment will be added to the invoice total.
- (iii) The Hirer shall not permit the Equipment to be used outside of New South Wales.
- (b) Before using the Equipment the Hirer shall examine the Equipment and satisfy himself as to the quality of fitness for the purpose of the Equipment. If in any way the Equipment is defective or unsuitable for the purpose of the Hirer:-
 - (i) it shall be returned immediately to the Owner with written notice of the defect or unsuitability; or
 - (ii) the Hirer shall notify the Owner who shall exchange the Equipment.
- (c) The Hirer acknowledges that he is not relying upon any representations made by or on behalf of the Owner in respect of the Equipment or its performance.
- (d) The Hirer shall at all times ensure that the person operating the plant and/or Equipment as described overleaf, is an approved or licensed operator as required by Work Cover Authority Regulation

3. FREIGHT

The Hirer shall be responsible for freight and other charges whether incurred by the Owner or the Hirer in respect of the delivery and return of the Equipment PROVIDED THAT the Owner shall be responsible for freight and other charges in respect of the Equipment where it is returned due to a breakdown or failure and not by the Hirer's negligence or misuse.

4. DAMAGE TO EQUIPMENT AND LOSS OF EQUIPMENT

- (a) During the Period of Hire the Hirer shall be responsible for any loss or damage to the Equipment whether such loss is caused by the negligence of the Hirer or any person under his control or the Nominated Driver or for any other reason whatsoever. Where an "Off Hire" number has been given the Hirer's responsibility shall continue until the Equipment is picked up by the Owner.
- (b) Where the Hirer is responsible for damage to the Equipment the whole or any part of the cost of replacement or repair to the Equipment will be added to the invoice total.
- (c) Where Equipment is not returned to the Owner by the Hirer, or an "Off Hire" number is not sought from the Owner, within two days of the expiration for the Period of Hire the Owner may forfeit the deposit and shall be at liberty to immediately notify the police of the circumstances and may take any civil or criminal action as it deems necessary for the recovery of possession of the Equipment or for the value of the Equipment at the commencement of the Period of Hire. The Owner shall not be responsible to the Hirer for any loss or damage, injury, fines or costs incurred or sustained by the Hirer in respect of any costs, losses or damages arising from such actions.
- (d) The Hirer indemnifies the Owner in respect of all action, claims, suits, demands or expenses of the Hirer or any other person in relation to or arising out of the use or possession of the Equipment by the Hirer or any person under his control or the nominated Driver during the Period of Hire.

5. HIRING CHARGES

Hiring charges at the rate specified overleaf shall commence from the commencement of Period of Hire and shall continue until the Period of Hire ceases.

6. BREAKDOWN AND DAMAGE TO PROPERTY OF AND INJURY TO THIRD PARTIES

- (a) In respect of all Equipment the Hirer shall, during the Period of Hire of the Equipment hired, be responsible for any loss or damage to property of, or personal injury to, third parties resulting from or which is incidental to the use or possession of the Equipment or for any other reason whatsoever, including the use of Equipment on any public road or highway, or if the Hirer or any driver or operator of the Equipment drives or operates that Equipment without a licence required by any statute or regulation or fails to use any prescribed safety apparatus installed in the Equipment, and the Hirer shall indemnify and keep indemnified the Owner in respect of all such action, claims, demands or expenses of the Owner or any other person in relation to or arising out of the use of the Equipment under this Contract;
- (b) (i) In the event of a breakdown or failure of Equipment or defect in the Equipment becoming apparent during the Period of hire, the Hirer shall return it immediately or notify the Owner.

(ii) The Hirer shall not repair or attempt to repair or cause any repair to be made to the Equipment without the prior consent of the Owner.

(iii) If the breakdown or failure is caused by reasonable wear and tear or a defect in the Equipment at the commencement of Hire, and was not caused or contributed to by misuse or negligence of the Hirer or any person under his control or the Nominated Driver, the Period of Hire shall cease on return or notification to the Owner.

- (c) In no event shall the Owner be responsible for any expenditure, damages, sum for delay, inconvenience or loss incurred by the Hirer arising out of any breakdown or failure or defect in the Equipment whether caused by fair wear and tear, lack of repair, negligence or any other reason whatsoever.
- (d) No conditions or warranties shall be implied in the Conditions of Hire except to the extent that any condition of warranty may be included or be implied by statute and may not be excluded by agreement. Any condition or provision inconsistent with such implied condition or warranty shall be of no force and effect to the extent of that inconsistency.
- (e) It is agreed notwithstanding anything to the contrary herein contained that the Owner shall not be liable or deemed to be in default for any delay or failure in performance under this agreement resulting directly or indirectly from causes beyond its reasonable control such as, but not limited to, Acts of God, civil or military authority, acts of public enemy, war, riot, civil disturbance, insurrection, accident, fire explosion, earthquake, flood, the elements, strike, labour dispute, shortage of suitable parts, materials, labour or restrictions and inability to obtain import and export licenses and the Owner shall have the right to elect at any time during such delay to terminate this agreement.

7. TERMINATION BY OWNER

- (a) The Owner may notwithstanding the specified Period of Hire or any waiver of some previous default by the Hirer terminate this Agreement and repossess the Equipment:-
 - (i) if the Hirer shall fail to pay any hiring charge within two days of the due date; or
 - (ii) if the Hirer does or permits any act or thing to be done to the Equipment by way of which the Owner's right in the Equipment may be prejudiced; or
 - (iii) if the Hirer should become or is made insolvent or bankrupt or makes any arrangement or composition with his creditor or should any order be made or resolution passed for its winding up;
 - (iv) if the Hirer commits any breach of these Conditions of Hire.

- (b) For the purposes of repossessing the Equipment the Owner may enter into or upon any premises where the Equipment may be to recover the Equipment from the Hirer, without prejudice to the rights of the Owner and recover from the Hirer in respect of any claims, damages or expense arising out of any action taken under this clause.
- (c) On the Owner repossessing the Equipment the determination of the Period of Hire shall be without prejudice to any claim or demand the Owner may have against the Hirer in respect of any matter or thing arising out of the hire of the Equipment AND the Hirer shall pay to the Owner hiring charges at the rate appearing overleaf for the Period of Hire up to the time of repossession.

8. ASSIGNMENT

The Hirer shall not sell, transfer, assign, part with possession, mortgage, charge or encumber any right or obligation under these Conditions of Hire without prior written consent of the Owner.

9. PAYMENT OF CHARGES

- (a) The Hirer shall pay the Owner on determination of the hiring period the following:-
 - (i) in the case of all other Equipment the Hiring Charge;
 - (ii) the amount of any loss or damage to the Equipment, subject to these Conditions of Hire;
 - (iii) the amount of tolls, levies, charges or like charges paid or payable by the Owner to any government body in respect of use of the equipment;
 - (iv) all GST incurred by the Owner in respect to the hire (see clause 12);
 - (v) the retail price of petrol, diesel and other fuel required at the completion of the Hire to refill the fuel tanks;
 - (vi) any costs incurred by the Owner in repossessing the Equipment in accordance with these Conditions of Hire;
 - (vii) the amount of any fines or penalties paid or payable by the Owner in respect of any traffic, parking or other offenses committed by the Hirer or the Nominated Driver.

10. Any previous negotiations, understandings, written or oral representation, warranties, memorandum or commitments in relation to the Equipment are superseded by these Conditions and no amendment to these Conditions shall bind the parties unless in writing and executed by or on behalf of the Owner. Any duplicate or replacement of the Invoice and Conditions of Hire issued to the Hirer after 14 days from the date of this invoice in respect of the hire of the Equipment shall be deemed to be signed by the Hirer.

11. SAFETY

The Hirer acknowledges that it has received from the Owner advice, information or items (or all of them) which relate to the safe operation or use of the Equipment including but not limited to hazard identification, risk assessment and safe operating procedures on each piece of the Equipment listed above. To the maximum extent permitted by law, the Hirer indemnifies the Owner from any loss, claim, expense, damage cost or proceeding which may arise as a result, directly or indirectly, of the failure of the Hirer to act in accordance with that advice or information and to use in a proper manner as specified by the Owner those items or any of them. Apart from the advice, information or items referred to in this Clause, the Hirer acknowledges that in connection with the Equipment and its use, it is solely responsible for obtaining all advice or information necessary for the safety of and the safe use of the Equipment and for the provision and proper use of all items, tools, plant or other devices necessary for the safe use of the Equipment.

12. GOODS AND SERVICES TAX (GST)

If the Owner incurs a liability to pay Australian goods and services tax (GST) in connection with a supply to the Hirer pursuant to this agreement, the consideration that the Hirer must pay to the Owner for that supply is increased by an amount equal to the GST liability that the Owner incurs in making the supply and that amount is payable at the same time as the consideration is payable in respect of that supply before that increase. If the Hirer does not pay the amount of the GST liability incurred by the Owner by the due date required under this clause, then in addition the Hirer must pay interest on the amount outstanding from the due date until paid at the same rate from time to time as is payable by a tax payer to the Commissioner of Taxation on overdue GST.

HIRE TIMES

GENERAL PLANT EQUIPMENT

1/2 DAY = 4 HOURS

1 DAY = 24 HOURS

1 WEEK = 5 DAYS

1 DAY HIRE OVER WEEKEND

MODULAR & 'A' FRAME SCAFFOLD

1 WEEK = 7 DAYS
(2 WEEKS MINIMUM HIRE PERIOD)