

Equipment Rental Agreement

In consideration of the mutual covenants set forth in this Agreement, Customer ("You") and Company ("Us") hereby agree as follows:

1. DEFINITIONS

1.1 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 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 **OEM Group** 'Application for 30 Day Credit Account' application form and **OEM GROUP** (in their sole have discretion) have approved that application;

(b) 'Customer' means the person, firm, organisation or corporation hiring the Equipment from **OEM GROUP** as set out in the Hire Contract;

(c) 'Damage Waiver Amount' means the amount set out in **OEM GROUP** 'Application for 30 Day Credit Account' application form;

(d) 'Equipment' means all equipment including tools, portable buildings, accessories and parts supplied by **OEM GROUP** to the Customer, from time to time, as set out in the Hire Contracts;

(e) 'Hire Agreement' means this document and the Hire Contracts entered by the Customer from time to time;

(f) '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;

(g) '**OEM GROUP**' means **OEM GROUP Pty Ltd** or any other entity trading under license as '**OEM GROUP**';

(h) 'PPS Act' means the Personal Property Securities Act 2009 (Cth) and all related regulations.

(i) 'Remote Area' means any location that is more than 50km from the **OEM GROUP** branch where the equipment is hired.

2. HIRE OF OEM GROUP HIRE 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 **OEM GROUP'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 **OEM GROUP**.

2.4 A minimum Hire Period may apply. If such a minimum period applies **OEM GROUP** will notify the Customer.

2.5 The Customer agrees to return the Equipment upon demand from **OEM GROUP** and that the Hire Agreement may be terminated at any time by **OEM GROUP** without giving any reason.

2.6 The Customer acknowledges that **OEM GROUP** has the right to inspect the Equipment at all times during the Hire Period and to allow this, the Customer gives **OEM GROUP** 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 or 40hrs per week for a weekly hire. Use of Equipment over and above these limits will attract an increased Hire Fee at **OEM GROUPS** discretion.

3. PAYMENT FOR HIRE

3.1 The Customer agrees to pay **OEM GROUP** 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 **OEM GROUP** 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 **OEM GROUP** 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 **OEM GROUP** 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 **OEM GROUP** 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 **OEM GROUP** 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, **OEM GROUP** 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 **OEM GROUP** in recovering any unpaid amounts under the Hire Agreement, along with interest of 1.5% compounding monthly.

4.6 If the Customer requires **OEM GROUP** to deliver the Equipment at the start of the Hire Period and/or collect the Equipment at the end of the Hire Period, **OEM GROUP** will charge the Customer an additional delivery/collection fee(s) as applicable and as set out in the Hire Contract.

In consideration of the mutual covenants set forth in this Agreement, Customer ("You") and Company ("Us") hereby agree as follows:

5. CUSTOMER DAMAGE

5.1 The Customer understands and accepts that additional charges may be incurred in the event damage is caused by the customer during the hire period. Damage caused by the Customer is 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) loss or damage relating to the lack of lubrication or other normal servicing of the Equipment;
- (e) loss or damage to the Equipment whilst being loaded, unloaded, transported on or over land, water, wharves, bridges or vessels of any kind;
- (f) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of underrated or excessive length of extension leads on electrical powered tools and machines;
- (g) damage caused by exposure to any corrosive or caustic substances, such as cyanide, salt water, acid etc.
- (h) theft of the Equipment unless reasonably locked and secured;
- (i) loss or damage to Equipment during transport, except where transported by the **OEM GROUP**
- (j) damage caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance.

6. CROSS-HIRE

6.1 The Customer must not on-hire the Equipment to any third party unless the Customer is known to **OEM GROUP** 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 **OEM GROUP**, the Customer shall remain liable to **OEM GROUP** 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 **OEM GROUP**'s consent pursuant to clause 6.1), that are recognised by **OEM GROUP** to carry on that role, then the Customer has the right to re-hire for value.

6.3 Any agreement by **OEM GROUP** 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 **OEM GROUP**'s rights) priority for the security interest; and
- (c) enable the Customer and **OEM GROUP** to exercise their respective rights in connection with the security interest.

6.5 **OEM GROUP** may charge the Customer for any cost or expense incurred by them in relation to anything that needs to be done by **OEM GROUP** 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 licenses and all necessary approvals to operate the Equipment. **OEM GROUP** 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 **OEM GROUP**'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 **OEM GROUP** from all claims and demands by third parties upon **OEM GROUP** arising out of or consequent on the use or misuse of the Equipment during the Hire Period.

8.2 The Customer indemnifies **OEM GROUP** 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 **OEM GROUP** in respect of the Equipment. Any liability of **OEM GROUP** 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 **OEM GROUP**'s sole discretion.

9. CUSTOMER RESPONSIBILITY

9.1 the Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc.) and general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

9.2 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.

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

- 9.4 The Customer is liable for the payment of the new purchase price of any Equipment not returned to **OEM GROUP**.
- 9.5 The Customer agrees to fully reimburse **OEM GROUP** in the event of damage or loss of the Equipment.
- 9.6 If the Equipment is damaged the Customer must notify **OEM GROUP** within 24 hours of becoming aware of the damage.
- 9.7 The Customer accepts full responsibility for any damage caused to any underground services when using the Equipment.
- 9.8 If there is a breakdown or failure of the Equipment, the Customer must immediately stop using the Equipment and notify **OEM GROUP** in writing.
- 9.9 The Customer must take all necessary steps to prevent injury occurring to persons or property as a result of the condition of the Equipment.
- 9.10 The Customer must take all necessary steps to prevent any further damage to the Equipment itself.
- 9.11 The Customer must not repair or attempt to repair the Equipment.
- 9.12 The Customer holds a valid current driver's license, operating license or permit valid for the type of Equipment hired.

10. REMOTE LOCATIONS

10.1 Where the Equipment is at any time hired by the Customer to in a remote location, the Customer will may be required to pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by **OEM GROUP** ('Remote Area Charges'). This determination will made on a case by case basis. The Remote Area Charges will be calculated on a per kilometer rate travelled by **OEM GROUP** staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by **OEM GROUP** and its staff in connection with travel to and from the area.

11. CUSTOMER LIABILITY

11.1 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.

12. PPS ACT

12.1 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 **OEM GROUP** affecting and maintaining a registration on the register (in the manner **OEM GROUP** considers necessary, including a master 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 (**OEM GROUP**) of that security interest.

12.2 The Customer also agrees to sign any documents and provide all cooperation to **OEM GROUP** required to facilitate that registration and maintenance. At **OEM GROUP**'s sole discretion, **OEM GROUP** 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.

12.3 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 **OEM GROUP's** prior written consent.

12.4 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).

12.5 The Customer and **OEM GROUP** agree not to disclose information of the kind referred to in section 275(1) of the PPS Act.

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

12.7 Money received from the Customer in connection with the Hire Agreement may be applied by **OEM GROUP** towards the Customers obligations under any security interest contemplated or constituted by the Hire Agreement in any way as **OEM GROUP** determines.

12.8 The Customer agrees to notify **OEM GROUP** immediately in writing of any material change to the information contained in or associated with the Credit Application.

12.9 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 **OEM GROUP**'s prior obtained express written consent.

13. DISCLAIMER

13.1 To the extent permitted by law, **OEM GROUP** disclaims all liability for and do not give any warranties to the Customer as to the condition of the Equipment.

14. OEM GROUP OWN THE EQUIPMENT

14.1 The Customer acknowledges that **OEM GROUP** 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 **OEM GROUP** credit in connection with the Equipment.

14.2 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.

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

15. CUSTOMER DEFAULT

15.1 **OEM GROUP** 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 **OEM GROUP**.

15.2 All costs incurred by **OEM GROUP** in repossessing due to a breach are to be paid by the Customer.

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

15.4 In addition to **OEM GROUP**'s right to retake possession **OEM GROUP** are entitled (in **OEM GROUP**'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 **OEM GROUP**, and/or to cancel any insurances effective in respect of the Equipment.

16. END OF HIRE PERIOD

16.1 The Customer must ensure the Equipment is:

(a) returned to **OEM GROUP** 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 **OEM GROUP** on a case by case basis)

(b) returned to **OEM GROUP** fully fueled otherwise, the Customer agrees to pay for the cost of refueling the Equipment if it not returned full; and

(c) maintained, oiled and greased during the Hire Period in accordance with information provided by **OEM GROUP**, 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 **OEM GROUP**.

16.2 The Customer agrees to return the Equipment to **OEM GROUP**'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.

17. FORCE MAJEURE

17.1 Subject to clause 17.2, neither the Customer or **OEM GROUP** 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.

17.2 Nothing in clause 17.1 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.

18. VARIATION

18.1 If **OEM GROUP** intends to amend the terms of the Hire Agreement, **OEM GROUP** 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.

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

19. SECURITY

19.1 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.

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

19.3 The Customer agrees to indemnify **OEM GROUP** on an indemnity basis against all costs and expenses incurred by **OEM GROUP** in connection with the preparation and registration of any such instrument of security.

20. NON-MERGER

20.1 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.

21. SEVERANCE

21.1 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.

22. GOVERNING LAW

22.1 The Hire Agreement is governed by the laws of the State of Western Australia and each party submits to the exclusive jurisdiction of the courts of that State.

23. GST

23.1 The Customer agrees to pay to **OEM GROUP** 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 **OEM GROUP** 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.

24. PROVISIONS OF THE HIRE AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS

24.1 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 18) and

(b) Security clause (clause 19).