

CONDITIONS OF HIRE

1. DEFINITIONS

Commencement: The time when the customer takes possession of the Equipment or the Equipment is delivered according to the customer's instructions.

Customer: The person, organisation or entity hiring the Equipment, as stated on the hire invoice, or any representative thereof.

Equipment: Any equipment, tools, vehicles, and/or accessories hired to the customer.

Hire agreement: Includes these Conditions of Hire, and any other Hire or Credit Agreement given to the Customer by the Owner, whether signed or unsigned.

Hire period: The period from commencement until the Equipment is returned to the Owner's possession in the same condition as when it was hired.

Owner - Stirling Equipment Hire Company Pty Ltd

2. THE HIRE OF EQUIPMENT

2.1 The Customer is entitled to use the equipment for the hire period. The Owner must agree to any extension of the hire period.

2.2 The Customer agrees to return the equipment to the Owner's possession on or before the end of the hire period and agrees that failure to do so can be criminal theft and may be immediately reported to the police.

3. PAYMENT FOR HIRE.

3.1 The Customer agrees to pay the Owner the hire fee specified in the Invoice for the Equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to the Hire Agreement.

3.2 The required fees must be paid to the Owner prior to or on the commencement date of the hire period. Account customers who do not pay their account on the terms agreed will be deemed to be in default. Equipment not returned on time and in accordance with this agreement will be subject to a continuance of the agreed hire until return is complete.

3.3 A cancellation fee may be charged by the Owner where Equipment has been reserved by booking and the Customer cancels the booking without reasonable notice or fails to take delivery of the Equipment.

3.4 The Owner may charge the Customer a fee for accepting notice to revise the hire charges.

4. LOSS, DAMAGE OR BREAKDOWN OF EQUIPMENT

4.1 The Customer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred, except for fair wear and tear, during the Hire Period.

4.2 The Customer is liable for the payment of the new list price of any Equipment not returned to the Owner and for the new list price or the cost of repairs (at the Owner's discretion) of any Equipment damaged by the Customer.

4.3 If there is a breakdown or failure of the Equipment the Customer shall notify the Owner immediately for the appropriate action to be taken.

5. USE, OPERATION AND MAINTENANCE

5.1 The Customer agrees that the use of the Equipment carries with it dangers and risks of injury and the Customer agrees to accept all dangers and risks.

5.2 The Equipment will not be used by anyone other than the Customer without the express permission of the Owner.

5.3 The Customer will ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required hold a valid Certificate of Competency or are fully licensed to use it.

5.4 The Customer agrees to operate, maintain, store and transport the Equipment in a proper manner and where required strictly in accordance with any instruction provided by the Owner and with due care and diligence.

5.5 The Customer agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by the Owner or posted on the Equipment in regards to its operation, maintenance and storage.

5.6 The Customer agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.

5.7 The Customer shall ensure the Equipment is returned to the Owner clean of all foreign matter or agrees to a reasonable fee being charged by the Owner.

5.8 The reasonable costs of fuel or other consumables provided by the Owner and used by the Customer are to be paid to the Owner at the end of the hire period.

6. CUSTOMER WARRANTIES

6.1 The Customer warrants that the equipment will be used in accordance with the conditions outlined in the Hire Agreement, Invoice and Safety Information.

6.2 The Customer warrants that the particulars in the Invoice and Credit Agreement are correct in every respect and are not misleading in any way including, without limitation, by omission;

(i) the Customer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;

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

(iii) the Customer's vehicle is suitable for towing the Equipment if required;

(iv) the Customer will not, without prior written consent of the Owner, tamper with, repair or modify the Equipment in any way, or permit another to do so;

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

(vi) the Customer will not in any way part with possession of the Equipment, nor assign this hire contract, nor remove the Equipment from the State without the prior approval of the Owner.

7. INDEMNITY

7.1 To the full extent permitted by the law the Customer 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.

7.2 Without limiting clause 7.1 of this agreement, the Customer agrees that to the full extent permitted by law, no warranties are given by the Owner in respect of the Equipment. Any liability of the Owner pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the Equipment or the cost of resupplying the Equipment, at the discretion of the Owner.

8. TERMINATION

8.1 Without prejudice to any other remedies the Owner may have against the Customer and notwithstanding the Hire Period specified in the Invoice, the Hire Agreement may be terminated by the Owner as follows;

(i) Upon giving the Customer two days written notice of termination at any time during the Hire Period.

(ii) Without notice if the Customer is about to go or does go into involuntary or voluntary liquidation, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if the business is placed under official management or if it ceases to carry on business.

(iii) Without notice if the Customer commits a breach of any part of this Hire Agreement in accordance with Clause 12.5

9. LIABILITY

9.1 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 how-so-ever arising from the Customer's possession, use, maintenance, repair, storage or transport of the Equipment.

10. DISCLAIMER

10.1 To the extent permitted by law the Owner disclaims all liability for and does not give any warranties to the Customer as to the condition of the Equipment.

11. TITLE TO EQUIPMENT

11.1 The Customer acknowledges that the owner retains title to the Equipment 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 the Owner's credit in connection with the Equipment.

12. REPOSSESSION AND REMEDIES ON DEFAULT

12.1 The Owner may retake possession of the Equipment if the Customer breaches any provision of this agreement or does not pay their account in the time agreed, notwithstanding anything else herein contained.

12.2 If repossession takes place, the Owner shall only charge the hire fee up to and including the time of repossession.

12.3 All costs incurred by the Owner in repossessing due to a breach are to be paid by the Customer.

12.4 In the case of repossession due to a breach of this agreement the Customer agrees to grant the Owner permission to enter any premises where the Equipment listed in the Invoice is situated to disconnect, decommission and/or remove that Equipment.

12.5 In addition to the Owner's right to retake possession the Owner is entitled in its discretion, following any breach of any provision of this agreement by the Customer, to terminate this agreement and/or sue for recovery of any damages or charges or loss suffered by the Owner, and/or to cancel any insurances effective in respect of the Equipment hired.

13. NON-MERGER

13.1 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.

14. SEVERANCE

14.1 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.

15. DISPUTES

15.1 Both the Owner and the Customer agree that any disputes arising from the hire and use of the Equipment (except in regard to payment of fees and charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited before litigation is pursued