

THE UNCONFORMITY

Equipment Hire Agreement

TERMS

- R1** The owner is the proprietor of the plant and equipment (“equipment”) listed in the Equipment Hire Inventory schedule (“schedule”).
- R2** The hirer will hire the equipment specified in the schedule from the owner upon the terms and conditions of this Agreement.

AGREEMENT

1 Hire of equipment

- 1.1 The hiring of the equipment will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.
- 1.2 The hirer is entitled to use the equipment for the hire period and for any agreed extension of the period.
- 1.3 The hirer agrees to return the goods to the address of the owner at an agreed time on or before the end of the hire period as outlined in the schedule.
- 1.4 Unless agreed in writing, 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.

2 Payment for rental

- 2.1 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.
- 2.2 The hire fee must be paid to the owner prior to, or on the commencement date of, the hire period unless instructed otherwise.

3 Use, operation and maintenance

- 3.1 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.
- 3.2 The equipment shall not be used by anyone other than the hirer without the expressed permission of the owner.
- 3.3 The hirer agrees to transport, 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.
- 3.4 The hirer agrees to comply with all occupational health and safety laws relating to the use of the equipment and related operations.
- 3.5 The hirer shall ensure the equipment is returned to the owner clean of soil or any other foreign matter and any spray tanks and spray equipment shall be thoroughly cleaned. Fuel 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.

4 Hirer's warranties

The hirer warrants that:

- 4.1 The equipment will be used in accordance with the conditions outlined in the schedule;
- 4.2 The particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
- 4.3 The hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
- 4.4 The equipment will not be used for any illegal purpose;
- 4.5 The hirer's vehicle is suitable for transporting the equipment;
- 4.6 The hirer will not, without prior written consent of the owner, modify, or permit any modification of, the equipment in any way; and
- 4.7 The hirer agrees that the equipment complies with its description, is in merchantable condition, and is fit for the hirer's purpose.

5 Indemnity

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.

6 Loss, damage or breakdown of equipment

- 6.1 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.
- 6.2 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.

7 Liability

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.

8 Disclaimer

To the extent permitted by law, the owner disclaims all liability and does not give any warranties to the hirer as to the condition of the equipment.

9 Title to goods

- 9.1 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 connections with the goods and agrees not to do so.
- 9.2 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.

10 Repossession

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

11 Completion of the hire period

11.1 The hire period is completed when the equipment has been returned to the owner:

11.1.1 In the same condition to when it was hired; and

11.1.2 On or by the date and time outlined in the schedule.

12 Non-merger

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.

13 Severance

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.

13 Governing law

This Agreement is governed by the laws of Tasmania. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

14 Interpretation

14.1 In this Agreement, unless the context otherwise requires:

14.1.1 A reference to the singular includes the plural and vice versa;

14.1.2 A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;

14.1.3 A reference to an individual shall include corporations and vice versa;

14.1.4 If a word or expression is defined, its other grammatical forms have a corresponding meaning.