

Master Agreement for the Hire of Plant and Equipment

In this document:

- Equipment means any item of plant and equipment (including any kind of vehicle) listed in a Schedule as defined below and including parts and accessories;
- Master Agreement means this document and any of its Schedules and/or Annexures; and
- words beginning with a capital letter are defined in the Schedule and have the meaning ascribed to them in that Schedule.

The Owner and the Hirer enter into this Master Agreement to provide for the hiring of all equipment requested by the Hirer from time to time. The Owner may decline to hire equipment in its sole discretion. If the Hirer wishes to hire equipment, the Owner will require the Hirer to sign a hire schedule, order, delivery docket or similar document (Schedule) in the form of Attachment 1 or any other form required by the Owner from time to time. The Schedule may list the particular equipment taken for hire, applicable charges, hire commencement and termination date and such other information and provisions as the Owner requires.

This Master Agreement provides for the terms of each such hire. Each Schedule will not constitute a separate hire agreement but must be read together with and form part of this Master Agreement incorporating all of the provisions of this Master Agreement. The Master Agreement includes the terms and conditions below.

Terms and Conditions

1. Hire of Equipment

- 1.1 For Equipment in which a timing device is installed, the hire will commence from the Commencement Date and the Hire Period must be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the possession of the Hirer.
- 1.2 For Equipment that does not have a timing device, the hire will commence from the Commencement Date and will continue till the expiry of the Hire Period specified in the Schedule.
- 1.3 The Hirer is entitled to use the Equipment for the Hire Period subject to the terms of this document. Any extension of the Hire Period must be made in writing via email to the Owner and be expressly agreed to by the Owner at least 24 hours before the expiration of the Hire Period.
- 1.4 The Hirer agrees to return the Equipment to the address identified by the Owner on or before the end of the Hire Period and acknowledges that failure to do so may be immediately reported to the police as an act of criminal theft.

2. No PPS Lease Without Owner Agreement

Despite anything else in this document, without the express written consent of the Owner, the Hire Period (including any option or extension of it) cannot be longer than two years (or any other period that is the time threshold for a PPS lease under the PPS Law (as defined below)).

3. Payment for Hire

- 3.1 The Hirer agrees to pay the Owner the Hire Fee specified in the Schedule for the use of the Equipment for the Hire Period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this Master Agreement and the Hirer's use of the Equipment.
- 3.2 The required fees must be paid to the Owner prior to or on the Commencement Date of the Hire Period and when otherwise due and payable periodically under the Schedule or as agreed with the Owner. Hirers who do not pay on any terms agreed will be in default.
- 3.3 Equipment not returned on time and in accordance with this Master Agreement will be subject to a continuance of the agreed Hire Fee and other charges until return or pick-up (if agreed) is complete, but this will not constitute an extension of the Hire Period.



- 3.4 A Kilometre Charge may be charged by the Owner to the Hirer where Equipment that is a motor vehicle (including cars, trucks or utilities) has been driven in excess of 100 kilometres during the Hire Period.
- 3.5 A Loading Costs Charge may be charged by the Owner to the Hirer when Equipment that is fitted with a timing device is used in excess of 8 hours. When a timing device is fitted on Equipment, 8 hours is taken is constitute a full day of hire.
- 3.6 A Maintenance Charge may be charged by the Owner to the Hirer, if when Equipment is returned to the Owner at the completion of the Hire Period, the Equipment is not clean of any foreign matter and/or has not been refuelled.
- 3.7 The Owner may charge the Hirer a reasonable fee for accepting payment by credit card and this may be up to the applicable permissible charge under legislation.
- 3.8 Unless otherwise stated, the hire charges payable by the Hirer in relation to the Equipment will be as stated in the applicable Schedule. The Owner reserves the right at any time to revise the Hire Fees by providing the Hirer with notice. However the Hire Fee cannot be increased (except for interest where applicable) during an agreed fixed term hire unless the Hirer agrees to the increase. Where the increase (except for interest) in Hire Fees applies to Equipment already on hire by the Hirer, the Hirer may terminate the hire and return the Equipment to the Owner.
- 3.9 Interest on overdue invoices will accrue daily from the date when payment becomes due until the date of payment at a rate of ten percent (10%) per calendar month.

4. Delivery

- 4.1 The Owner may agree to make delivery and collection arrangements of the Equipment to and from the Hirer's site from time to time. The Hirer agrees to pay to the Owner the Delivery Fee (which includes any charges and expenses incurred in such delivery, installation and/or collection of the Equipment). The Owner will use its endeavours to deliver the Equipment at the requested time but will not be liable to the Hirer for any loss or damage incurred by the Hirer as result of a late delivery or non-delivery.
- 4.2 Where the Owner is to deliver Equipment to the Hirer, the Hirer must make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery.
- 4.3 In the event that the Hirer is unable to take delivery of the Equipment, the Owner is entitled to charge a redelivery fee which is equal to the Delivery Fee.
- 4.4 A cancellation fee may be charged by the Owner to the Hirer where Equipment has been reserved by booking by the Hirer and the Hirer cancels the booking within 48 hours of the booked time or fails to take delivery of the Equipment.





4.5 A cancellation fee will be charged as follows:

- (i) Where the Hirer cancels the booking within 24 hours of the booked time, the Owner is entitled to charge the Hirer a cancellation fee that is equal to double the Hire Fee.
- (ii) Where the Hirer cancels the booking within 48 hours of the booked time, the Owner is entitled to charge the Hirer a cancellation fee that is equal to the Hire Fee.

5. Payment for loss, theft, damage or breakdown of Equipment

5.1 The Owner agrees that the Equipment is covered by the Owner's insurance policy and the Owner must pay the Insurance Excess to make a claim for the Equipment with the Owner's insurance company.

5.2 The Owner and Hirer agree that:

- (i) the Hirer must return the Equipment in the same state and condition as it was when the Hirer takes possession except for fair wear and tear; and
- (ii) the Hirer is liable for the payment of any labour, delivery and replacement fees required to repair or replace the Equipment unless otherwise stated in this Master Agreement.

5.3 From the Commencement Date up to the expiry of the Hire Period:

- (i) the Hirer is liable up to an amount equal to the Insurance Excess (plus the Insurance Levy) for any theft, loss or fire damage caused or allowed to the Equipment by the Hirer (Insurance Excess Waiver); and
- (ii) subject to clauses 5.4, 5.5 and 5.6, the Owner waives the value of any claim over an amount equal to the Insurance Excess that it may have against the Hirer for the cost of repairs or replacement of the Equipment due to theft, loss or fire damage occurring during its use throughout the Hire Period under this Master Agreement.

5.4 The Insurance Excess Waiver in this clause 5 only applies to theft, loss or fire damage to the Equipment and any tools and/or accessories supplied with the Equipment.

5.5 The Insurance Excess Waiver in this clause 5 will not apply to any other damage to the Equipment, including, but not limited to, damage to the Equipment which arises from:

- (i) breach of this Master Agreement where the breach increased the risk of or causes the loss or damage;





- (ii) breach of any statute or other law or regulations in connection with the use of the Equipment by the Hirer where the breach increased the risk of or causes the loss or damage;
 - (iii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Equipment;
 - (iv) lack of lubrication or non-adherence to other normal maintenance requirements that are required by or could reasonably be expected of the Hirer under this Master Agreement;
 - (v) disregard for instructions given to the Hirer by the Owner in respect of the proper use of the Equipment or in contradiction of the manufacturer's instructions if supplied with the Equipment at the commencement of hire; or
 - (vi) loading or off loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of Equipment on any wharf or bridge or over any body of water.
- 5.6 The Hirer agrees to pay the full cost of repairing and/or rectifying any damage to the Equipment that is not covered by the Insurance Excess Waiver in clause 5.4.
- 5.7 Any payment under this clause 5 does not limit the Hirer's obligation to pay any other fee or charge in this Master Agreement.
- 5.8 This clause 5 in no way entitles the Hirer to, or implies the availability of, compensation from the Owner for any liability incurred by the Hirer to any third party in relation to the use of the hired Equipment.
- 5.9 This clause 5 ceases to operate at the end of the Hire Period unless an extension by the Owner is granted in writing and an additional agreed fee is paid.

6. Notification of loss, damage or breakdown of Equipment

If there is a loss, theft, breakdown or failure of the Equipment (including any damage to the Equipment):

- (i) the Hirer must notify the Owner immediately; and
- (ii) the Owner and the Hirer will cooperate to take the appropriate steps to remedy the loss, theft, breakdown or failure of the Equipment in accordance with this Master Agreement.



7. Condition of Equipment prior to first use by the Hirer

7.1 The Owner accepts that:

- (i) the Owner must provide Equipment to the Hirer that is free from fault and in good working order;
- (ii) if any Equipment is delivered to the Hirer in a faulty condition or not in good working order, the Owner will either replace the Equipment, repair the Equipment or refund the Hire Fee;
- (iii) where the delivery of the Equipment is in within a 50 kilometre distance from the Owner's Equipment Storage Location, the Owner will incur all costs associated with the replacement or repair or return of the Equipment that when delivered to the Hirer is in a faulty condition or not in good working order; and
- (iv) where the delivery of the Equipment is outside a 50 kilometre distance from the Owner's Equipment Storage Location, the Hirer will incur all costs associated with the replacement or repair or return of the Equipment that when delivered to the Hirer is in a faulty condition or not in good working order.

7.2 The Hirer accepts that:

- (i) The Owner will take photos of the Equipment prior to any use of the Equipment by the Hirer.
- (ii) the condition of the Equipment in the photos is taken to be the condition of the Equipment when the Hirer took possession of the Equipment.

8. Use, operation and maintenance

The Hirer agrees that:

- (i) that the use of the Equipment carries with it inherent dangers and risks of injury and the Hirer agrees to accept all those dangers and risks;
- (ii) the Hirer must do all things necessary and reasonably required to avoid any theft, loss and/or fire damage to the Equipment;
- (iii) the Hirer must use all appropriate security measures to protect the Equipment including, but not limited to, locked yards, buildings and sheds;
- (iv) the Equipment must not be used by anyone other than the Hirer without the express permission of the Owner;



- (v) any person collecting or taking delivery of the Equipment is the personnel of the Hirer and must be authorised to do so and must comply with the obligations placed on the Hirer;
- (vi) the Hirer and/or all of its relevant personnel hold a valid current driver's licence, Certificate of Competency and operating licence or permit valid for the type of Equipment hired.
- (vii) upon request from the Owner, the Hirer must provide evidence of compliance with clause 8(vi);
- (viii) the Equipment must not be used for any illegal purpose;
- (ix) the Hirer's vehicle is suitable for towing the Equipment if required;
- (x) the Hirer must not, without prior written consent of the Owner, tamper with, repair or modify the Equipment in any way, or permit another to do so;
- (xi) the Hirer must not lose or part with possession of the Equipment for the Hire Period;
- (xii) the Hirer must not remove the Equipment from the State or Territory in which it is hired without the prior approval of the Owner;
- (xiii) the Hirer must ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required hold valid proof of training or are fully licenced to use it;
- (xiv) the Hirer must ensure that all persons operating or erecting the Equipment are not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
- (xv) the Hirer must ensure that all persons operating or erecting the Equipment exercise reasonable care in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
- (xvi) the Hirer must 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;
- (xvii) the Hirer must conduct a thorough hazard and risk assessment before using the Equipment;
- (xviii) the Equipment must not be used in excess of the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers);





- (xix) the Equipment must only be used for its intended purpose and in accordance with the law and any manufacturer's instructions and recommendations, whether supplied by the Owner or posted on the Equipment, in regard to the operation, maintenance and storage of the Equipment;
- (xx) the Hirer must comply with all work health and safety laws and regulations relating to the use of the Equipment and associated operations;
- (xxi) the Hirer must refuel the Equipment prior to returning the Equipment to the Owner or agrees to a reasonable Maintenance Fee being charged by the Owner;
- (xxii) the Hirer must ensure the Equipment is returned to the Owner clean of all foreign matter or agrees to a reasonable Maintenance Fee being charged by the Owner;
- (xxiii) the reasonable costs of fuel or other consumables provided by the Owner and used by the Hirer are to be paid to the Owner when required by the Hirer;
- (xxiv) the Equipment must be used in accordance with any additional conditions outlined in the Schedule; and
- (xxv) the particulars in the Schedule provided by the Hirer are correct in every respect and are not misleading in any way including, without limitation, by omission.

9. Liability

- 9.1 To the full extent permitted by law and except to the extent arising from actions or omissions of the Owner or from things beyond the reasonable control of the Hirer, the Hirer indemnifies the Owner from all claims and demands on the Owner arising out of the use or misuse of the Equipment under the hire, including in respect of injuries to or deaths of persons and any damage to property.
- 9.2 To the full extent permitted by law, the Owner excludes any implied or imposed guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this document (Provision). To the extent to which the Owner is not able to exclude a Provision (Non-Excludable Provision), and the Owner is able to limit the Hirer's remedy for a breach of the Non-Excludable Provision, then the Owner's liability for breach of the Non-Excludable Provision is limited to (at the Owner's election):
 - (i) the Owner must provide Equipment to the Hirer that is free from fault and in good working order;
 - (ii) in the case of services, the supplying of the services again (or the payment of the cost of doing so).



- 9.3 Subject to the Owner's obligations under the Non-Excludable Provisions, the Owner is not liable to the Hirer or any third party for any indirect loss or consequential loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if the Owner has been advised of the possibility of such loss.

10. Termination

- 10.1 Without prejudice to any other remedies the Owner may have against the Hirer and notwithstanding the Hire Period, this Master Agreement and any hire may be terminated by the Owner as follows:
- (i) Immediately and without giving prior notice, if the Owner reasonably considers there is an imminent risk of loss, material damage or disappearance of the Equipment.
 - (ii) Unless the Owner agrees otherwise at the Hirer's request, upon giving the Hirer 1 days' notice of termination at any time during the period of hire.
 - (iii) Immediately and without prior notice, if the Hirer has a winding-up petition presented against it, or is wound up, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if it is placed under administration or process of restructuring, or if it ceases to carry on business.
- 10.2 The Owner may also terminate this Master Agreement at any time if the Hirer breaches the Master Agreement and the breach cannot be, or is not, rectified within 24 hours after the Owner sends written notice to the Hirer specifying the breach and requesting rectification.
- 10.3 The Owner may seek compensation from the Hirer for a breach of this Master Agreement including for loss of revenue whilst the Equipment is not able to be hired to others (for example due to its damage or loss) and/or loss of rental that would have been earned had termination not occurred. This does not limit the Owner's other rights at law.
- 10.4 If the Master Agreement is terminated under this clause 10, the Hirer must immediately:
- (i) pay all outstanding Hire Fees to the Owner (the date of termination is taken to be a full days of hire of the Equipment);
 - (ii) pay any other fee incurred by the Owner (in addition to Hire Fees and including any damages, costs or loss caused or contributed by the breach of the Hirer); and
 - (iii) must return the Equipment to the Owner.

11. Title to Equipment

- 11.1 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 agrees that the Hirer has no rights to pledge the Owner's credit in connection with the Equipment.
- 11.2 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, the Equipment.

12. Repossession and remedies on default

- 12.1 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 agrees that the Hirer has no rights to pledge the Owner's credit in connection with the Equipment.
- (ii) this Master Agreement is terminated or becomes liable to be terminated by the Owner; or
- (iii) the Hirer does not pay amounts owing to the Owner when due.
- 12.2 In the case of repossession due to a breach of this Master Agreement the Hirer grants the Owner permission to enter any premises where the Equipment listed in the Schedule is situated to disconnect, decommission and/or remove that Equipment.
- 12.3 In addition to the Owner's right to retake possession the Owner may, following any termination of this Master Agreement, 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.

13. Completion of the hire

- 13.1 Return of the Equipment must be by the expiry of the Hire Period as specified in the Schedule. The Owner may agree a date for pick-up.
- 13.2 Where pick-up is agreed, the Owner will arrange to pick-up the Equipment within a reasonable period after a request to do so and will issue the Hirer with a pick-up number on request. The Hirer agrees to maintain the responsibility for the Equipment whilst it is awaiting pick-up.

14. Collection of data

- 14.1 The Owner may place on-board devices (such as GPS devices) on the Equipment which collect data on the usage of the Equipment. This can include a connection to the internet which sends and receives data from the Equipment, such as geolocation data and performance related data.
- 14.2 By hiring any Equipment from the Owner, whether or not the Equipment contains an on-board device, the Hirer consents to the use of an on-board device on the Equipment and to the collection, use and retention of data recorded from the on-board device. The Owner is the sole Owner of that data.

15. General

- 15.1 The covenants, agreements and obligations contained in this Master Agreement will not merge or terminate upon the termination of this Master Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 15.2 If any provision of this Master Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this Master Agreement must be construed as if that provision or part of a provision had been severed from this Master Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.
- 15.3 This Master Agreement is governed by the laws of the State or Territory where the Master Agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.
- 15.4 The Owner will comply with the applicable privacy legislation in all dealings with Hirers. Information on our privacy policy is available on request.
- 15.5 Where there is any inconsistency between this Master Agreement and a Schedule, the terms of the Schedule will prevail to the extent of the inconsistency.
- 15.6 Both the Owner and the Hirer agree that any disputes arising from the hire and use of the Equipment (except in regard to payment of fees or charges) will be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association (Tel 02 9998 2255) before litigation is pursued.

16. PPS Law

- 16.1 This Clause 16 applies to the extent that this Master Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law). References to PPS Law in this Master Agreement include references to amended, replacement and successor provisions. The Owner may register its security interest. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of ensuring that the Owner's security interest is enforceable, perfected, first priority and otherwise effective under the PPS Law.
- 16.2 For the Hire Period, the Hirer grants a general security interest in respect of all of its present assets and future assets acquired during the Hire Period to the Owner as security for the payment of the Hire Fee, any other fee incurred by the Hirer in accordance with this Master Agreement and the return of all the Equipment. The assets of the Hirer include, but are not limited to, any:
- (i) equipment;
 - (ii) inventory;
 - (iii) machinery;
 - (iv) trademarks;
 - (v) patents; and
 - (vi) intellectual property, that is owned by the Hirer.
- 16.3 The Owner may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 16.4 The rights of the Owner under this document are in addition to and not in substitution for the Owner's rights under other law (including PPS Law) and the Owner may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 16.5 To the extent that Chapter 4 of the PPS Law applies to the security interest under this Master Agreement, and the PPS Law requires the Owner to give a notice or allow time or provide any account to the Hirer, the Hirer and Owner agree that to the extent allowable under the PPS Law that requirement does not apply and, for the purposes of section 115 of the PPS Law it is "contracted out" of this Master Agreement in respect of all goods to which that section can be applied. Provisions of the PPS Law confer rights on the Owner. The Hirer agrees that in addition to those rights, the Owner will, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 16.6 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. The Owner and the Hirer agree not

to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing the Owner the benefit of section 275(6)(a) and the Owner will not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

17. Security interests and sub-hire

- 17.1 The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of the Owner.
- 17.2 The Hirer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this Master Agreement. The Hirer may not vary a sub-hire without the prior written consent of the Owner (in its absolute discretion).
- 17.3 The Hirer must ensure that the Owner is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 17.4 The Hirer must take all steps including registration under PPS Law as may be required to:
- (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner in writing) for the security interest; and
 - (iii) enabling the Owner and Hirer to exercise their respective rights in connection with the security interest.
- 17.5 The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.

WARNINGS AND LEGAL NOTICES TO HIRER

The Hirer agrees to check that the Equipment has been received in good order and condition and ensure that the Hirer and the Hirer's relevant personnel are available to receive instructions (which the Owner or its nominee will give) on the operation of Equipment in the Schedule and understand the safety procedures that are to be followed including the restrictions on other persons using the Equipment.

The above terms and conditions must be read by the Hirer before signing

Fair Trading Act NSW - Information for consumers

To the extent permitted by law, our terms and conditions:

- Provide that you are liable for any damage to Equipment we hire to you. However, any theft, loss or fire damage to the Equipment will result in you being required to pay the Insurance Excess Waiver. Please read clause 5 carefully so you understand the limitations of the Insurance Excess Waiver.
- Indemnify us for claims including from injury and death arising in relation to the hired Equipment unless caused by us or by something beyond your reasonable control.
- Allow us to terminate the hire on a days notice even during a fixed hire period. You may ask us to waive this right and we may agree to do so.
- Exclude all warranties and guarantees about the hire and the Equipment unless we expressly give them, to the extent it is permitted under law for us to exclude liability that way.
- Limit our liability for consumer guarantees to supplying the relevant goods or services again or the cost of doing do where it is permitted under law for us to limit liability that way.
- Exclude our liability for indirect or consequential loss to the extent it is permitted under law for us to limit liability that way.

Our terms also permit us to provide, to a third party, data about you in a form that may enable the third party to identify you. This includes reporting unreturned Equipment to police and disclosures permitted by privacy law in accordance with our privacy policies.