

CONDITIONS OF HIRE

Definitions

1-1 In these Conditions:

- "Contract Details" is the form attached to these conditions titled "Contract Details of Equipment Hire" which together with these conditions forms a contract for hire of equipment between the Owner and the Hirer.
- The "Hirer" is the person entering into this Contract and where that person enters into this Contract on behalf of another entity the expression includes such entity. This expression also extends to those claiming under or authorized by the Hirer.
- The "Owner" is M&A Coombs Pty Ltd trading as Spider lift hire and or Groundp.
- The "Plant" means all equipment including tools, consumables, accessories and parts supplied to the Hirer.
- "Trade Customers" are only those Hirers who the Owner determines (in its discretion) are, at any point in time, entitled to trade credit terms. The Owner can, at anytime, give to, or withdraw from, a Hirer the status of Trade Customer.

2. Hire Period

2-1 Subject to clauses 2-2 and 2-3 hiring charges shall commence from the time that the Hirer has possession of the Plant, and shall continue until the return of the Plant to the Owner's premises, or until the expiry of the hiring period, which ever occurs first but at the discretion of the owner.

2-2 Unless specifically agreed, the minimum chargeable period of hire shall be 4.0 hours.

2-3 If the Plant is not returned to the Owner's premises within the hire period, then additional hiring charges will be payable.

2-4 The daily rate applies to and is chargeable for each 8 hour period of hire. Extra hours of hire will be charged in addition on an hourly basis, pro rata the daily rate (as quoted in the contract Details).

2-5 The weekly rate applies to and is chargeable for hire with duration of 5 days of 8 hours each or 40 hours over a shorter period. Extra days of hire will be charged in addition on a daily basis, pro rata the weekly rate (as quoted in the Contract Details).

2-6 The long term rate (available only to Trade Customers) applies to and is chargeable for hire with a minimum of 28 days. Unless otherwise stated in the Contract Details extra days of hire will be charged in addition on daily basis, prorate the monthly rate.

2-7 Where meters are mounted on the Plant they will be used to determine the hire charge, as indicated on clauses 2-2 to 2-8 unless otherwise specifically stated in the Contract Details. Hour charges shall be calculated for part of an hour. Where the meter is found not to be working either during or at the completion of the hire period then the owner will estimate the hours used and the omission the hirer to prove otherwise.

2-8 Should the Owner agree with the Hirer to deliver and collect the Plant, hire charges shall commence from the time the Plant leaves the Owner's premises until the Owner is notified by the Hirer that the Plant is available for collection. Notification shall constitute suspension of Hire, providing notification is given by the Hirer in time for the Plant to be collected from a convenient, easily identified and accessible area and returned to the Owner's premises by the required time on the day the hire ceases. The required return times are no later than 5.00 pm week days, or by arrangement weekends or Public Holidays, or such earlier time as the hire period may terminate. The period of hire will continue until these conditions are met.

2-9 In the event of Plant breakdown, provided that the Hirer notifies the Owner immediately, hiring charges will not be payable during the time the Plant is not working unless the failure is due to negligence or misuse on the part of the Hirer. In the event of a breakdown the Hirer shall not repair or attempt to repair the Plant but must call the Owner immediately for further instructions.

2-10 Where the Owner of the Owner's servants or contractors have delivered to, or are collecting Plant from the Hirer or at the Hirer's request or direction, the Owner shall not be responsible to the Hirer or any third party for any damage that may be done by the Owner's delivery and collection vehicle or the Owner's servants or agents during the delivery or collection of the Plant.

2-11 The Plant may be collected and returned by the Hirer only during the hours of 7.30 am to 5.0 pm on business days excluding weekends unless other arrangements are made.

3. Hire Rates and Payments

3-1 The Plant is hired at the rate shown on the Contract Details and if not completed, at the standard rates published by the Owner. Cartage, fuel, blade wear, tip ware (pipers, cultivators, etc.) as set out in the current product information and being measured by the Owner and assessed at the Owner's discretion, along with all saleable and consumable items are extra and not included in the hire rate. The Owner reserves the right to revise product information and related charges from time to time and without notice to the Hirer.

3-2 The Hirer acknowledges that the product information is that which is available at the Owner's premises where the hiring took place and, that the Hirer has had every opportunity to check the rates applicable.

3-3 Except where the Owner dispenses with this requirement a deposit and / or bond shall be paid or given at the commencement of the hire period such deposit of bond to be specified in the Contract Details.

3-4 Payment of hire and other charges for Trade Customers shall be made every calendar month within 14 days of the date of the Invoice from the Owner.

3-5 All other hiring's shall be on a cash sale basis and payment shall be made (unless a contrary agreement has been made between the Hirer and the Owner) in advance, no later than the delivery of the Plant to the Hirer.

3-6 In the event of default by the Hirer in the payment of any amount due, the Hirer shall be liable to pay interest on the gross amount outstanding at the rate of \$2.00 % per month (\$24.00 % per annum) from the date on which payment was due until the date on which payment in full is received. The Owner shall have this right to calculate such interest on a daily basis.

3-7 At the Owner's discretion credit may not be extended on overdue accounts.

3-8 (a) In this clause:

- The expression "GST" means any tax in the nature of a tax on the supply of goods and services;
 - The expression "Supply" means any form of supply whatsoever and includes any supply within the meaning of any legislation imposing or relating to the imposition of a GST.
- 3-8 (b) where any Supply under this agreement is or becomes subject to a GST an amount equal to the GST paid or payable in respect of the Supply shall be added to the consideration for that supply under this agreement and must be paid at the same time as the hire charges.

3-8 (c) Each party agrees to do all things, including providing invoices and other documents necessary to assist the other party to claim any credit, set-off or refund of any GST paid or payable under this agreement.

4. Responsibilities of Hirer

4-1 The Hirer Must:

- Determine using the Hirer's sole judgment in all things, the condition and suitability of the Plant for the purpose for which the Hirer requires the Plant;
- Use the Plant in a skillful and proper manner and only for the purpose and within the capacity for which it was designed;
- Ensure that the Plant is operated by a suitably qualified and (where necessary) licensed operator and used within its rated Capacity;
- At its own expense, clean, fuel, lubricate, check water and oil and keep and return the Plant in good and substantial repair and condition, provided that the Hirer shall not undertake any repairs or servicing (except that identified in the foregoing) and if any repair of servicing appears necessary of desirable, the Hirer shall advise the Owner immediately, initially by telephone and forthwith thereafter in writing (preferably by facsimile transmission). Pre-arranged major servicing will be carried out by the Owner during normal working hours;
- Accept full responsibility for all flat and / or damaged tyres or tracks;
- Clean the Plant properly and thoroughly upon completion of the hire, or be charged, and required to pay, a cleaning fee at a reasonable rate as determined by the Owner, from time to time;
- Subject to clause 5, accept full responsibility for the safekeeping of the Plant;
- Accept full responsibility for, and indemnify the Owner against all claims in respect of death or injury to persons, and / or loss or damage to property, arising out of the delivery, use, servicing, storage or possession of the Plant during the hire period however arising, whether from negligence of the Hirer or any other person including, without limitation, where the Plant is being operated for any reason by the Owner, its servants or agents;
- Retain possession of the Plant at all times and shall not, without the Owner's prior written consent, part with the possession of the Plant or in any way assign the benefits of the Contract or the use of the Plant to any third party;
- Not alter or make any additions to the Plant, including, without limitation, alter, make any additions to, deface or erase any identifying mark, plate or number of any clock or meter;
- Pay to the Owner all hire and related charges and other costs as detailed herein;
- Accept responsibility and fully reimburse the Owner for the cost of freight to retrieve Plant which the Owner (in its sole discretion) deems to be abandoned or is not being properly safeguarded;
- Provide all operators of the Plant with appropriate and prudent safety clothing and equipment and all manuals and instructions (written and oral) for the safe operation of the Plant.
- Comply at its own expense, with all industrial and occupational health and safety laws, both state and commonwealth, which may apply to the Plant;
- forthwith on request by the Owner advise the Owner of the whereabouts of the Plant and allow the Owner (It's agents, or contractors) to inspect and test the Plant and for such purposes the Hirer here by gives irrevocable consent and licence to the Owner (It's servants agents

and contractors) to take possession of and remove the same and as agent of the Hirer, enter upon any premises where the Plant or any part of the same maybe; and

p) Pay to the Owner all or any costs and expenses incurred enforcing the Owner's rights and the Hirer's obligations here under including, but not limited to, any cheque fees, any legal fees and disbursements incurred by the Owner for any court proceedings taken against the Hirer by the Owner.

5. Theft and Damage Waiver

5-1 If the Hirer has indicated in the Contract Details that it wishes to take the benefit of the theft and damage waiver and has paid to the Owner the waiver fee of 10% of the hire charges the Owner agrees, subject to 5.2, to limit the amount which the Owner will claim from the Hirer under the terms of this agreement, in the event that any loss, damage or destruction occurs to the Plant caused by fire, storm, earthquake, collision, accident or theft (provided the Hirer has reported the incident to the Police) to the cost of repair or replacement to a maximum value of \$500 or 15% of repair /replacement cost (which ever is the greater).

5-2 This waiver does not apply to loss or damage:

- Caused where reasonable care has not been taken to protect the Plant;
- Caused to the Plant in violation of any law or by misappropriation or wrongful conversion of the Plant by the Hirer;
- Resulting from misuse, abuse, overloading, or exceeding the rated capacity or improper servicing or repairs of the Plant by the Hirer;
- Caused by the exposure of the Plant to corrosive substances, saltwater or toxic materials;
- To accessories such as air conditioning, hoses, batteries, cables and lights and cabin and glass;
- Occurring while the equipment is being transported over water or other wise in transit including loading and unloading; and
- Arising in circumstances where a claim has been made by or against a third party.

6. Owner's Right to Terminate

6-1 The Owner reserves the right to unilaterally conclude the hire period at any time without reason and without giving prior notice to the Hirer, or the operator for the time being of the Plant, or the occupier for the time being of the premises at which the Plant is located. Where the Owner takes back possession of the Plant the hire period shall be deemed to be at an end. The parties respective obligations to the other here under (to the time of the conclusion of the hire period) shall remain, and in particular (but without) limiting the generality of the foregoing) all or any monies due and payable hereunder by the Hirer to the Owner shall be Paid in accordance with the terms and conditions here of.

6-2 The Owner may also terminate the hire period, without notice, if the Hirer commits any breach of this contract, or if the Hirer commits any act of bankruptcy, or being a company an application is made or resolution is passed for its winding up, entering into administration or appointing a receiver of its assets, or if any execution or distress shall be levied upon the Plant, or if any judgment against the Hirer shall remain unsatisfied for 7 days or more, or if the Hirer makes an assignment or compromise for the benefit of its creditors, or it ceases to carry on business.

6-3 Upon the termination of the hire period the Owner (its' agents, servants or contractors) shall be entitled to take possession of the Plant and for this purpose the Hirer hereby gives irrevocable consent and licence to the Owner (its' agents, servants or contractors) to enter upon any land or premises of the Hirer, or any other place (as the agent of the Hirer) where the Plant may be located and the Hirer indemnifies the Owner in respect of any claims, damages or expenses made against or incurred by the Owner arising out of any action taken under this clause.

7. Responsibility for Loss of or Damage to Plant

7-1 Subject to the operation of clause 7-2 and 7-3 hereof the Hirer is responsible for any loss or damage occurring to the Plant (other than damage arising as a consequence of a negligent act or omission by the Owner) from the time the Hirer takes possession of the Plant until it is returned to the possession of the Owner. The cost of any replacement or repairs resulting from loss or damage will be charged to and payable by the Hirer. The Hirer shall notify the Owner immediately if the Plant is lost or damaged and shall forthwith follow any reasonable request by the Owner relating to the Owner's enquiries into the loss and / or damage to the Plant.

7-2 If the Hirer has:

- notified the Owner, in writing, of the full circumstances leading to the loss or damage to the Plant within 24 hours of the loss or damage; and
- in the case of loss or damage caused by fire, storm, collision, accident, theft or burglary, lodged a full written complaint with the Police and / or prepared an independent report as required by the Owner within 24 hours of the loss or damage, and provided the Owner with a copy of such complaint and / report, and can establish, to the Owner's reasonable satisfaction that adequate precautions were taken by the Hirer to ensure that any loss of or damage to the Plant was not incurred due to negligence or carelessness of the Hirer, then the Owner may, in its' sole discretion waive the Hirer's liability for loss or damage.

7-3 Notwithstanding the provisions of clause 7-2 hereof the Hirer will be liable for the full cost of repairs to or the replacement of the Plant where the loss of damage has been caused by:

- Misuse, abuse or overloading including overloading of motors or any other part of the Plant;
- Mysterious disappearance or wrongful conversion including where Plant is not reasonably locked and secured;
- Contravention of the conditions of this contract;
- Violation of any law or regulation;
- Damage to tyres and tubes by punctures or cuts;
- Lack of lubrication or other routine servicing by the Hirer;
- locating, using, loading, unloading, transporting the Plant on or over water, wharves, bridges or vessels of any kind;
- Damage caused by exposure to any corrosive substance;
- Negligence of the Hirer where the Hirer has failed by intent or lack of due care to take all responsible precautions to protect the Plant from loss or damage;
- Consumption of alcohol and /or drugs;
- Loss or damage to tools, grease guns, hoses, electric cords and all other similar accessories; or
- Any combination of the foregoing

8. Exclusion of Warranties

8-1 All warranties, conditions, liabilities or representations in relation to, among other things, the fitness of goods or services (other than any being or giving rise to un-excludable rights under any law of the Commonwealth of Australia or the state of Victoria which might but for this clause be implied in these terms and conditions by law or otherwise are hereby expressly negated and excluded.

8-2 All civil liability of the Owner, its' subcontractors, employees and agents for all loss or damage in any way related to the supply or use (or termination of supply or use) of the Plant, of goods, or information, advice or services, under any of the non-excludable rights referred to in clause 8-1 or otherwise howsoever arising, shall as far as the law permits, be limited under this clause. The liability shall be limited at the option of the Owner:

- in the case of the supply of the Plant or of goods, to the supply of equivalent plant or goods, the payment of the cost there of or the refund of the hire charges, and
- in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

8-3 The Owner and its employees, contractors and agents will not be liable to the Hirer for any loss or damage however the loss or damage arises. This exclusion of liability includes but is not limited to, consequential loss or damage caused or arising from breakdown of the Plant, delays in delivery, faulty installation, unreasonable use, negligence (including a failure to do something that may have prevented a failure) faulty specifications and design, and faulty material, equipment or component parts in the Plant or consumables. The exclusion also includes costs incurred in returning the Plant or consumables to the Owner.

8-4 The Hirer hereby releases and discharges the Owner, its subcontractors, employees and agents from, and agrees to indemnify the Owner and its subcontractors, employees and agents against, any claim, action, demand, loss, costs and expenses for damage to any property or injury or death of any person arising directly or indirectly out of this hire of use of the Plant or services Whether caused by the negligence of the Hirer or any other person, the breakdown, failure, operation, misdelivery, or non delivery of the Plant in any way and agrees to reimburse the Owner for all costs reasonably incurred in defending same.

9. Signatory's Warranty as to Agency from Hirer

9-1 Where the Contract is signed by a person on behalf of the Hirer (but the signatory is not the Hirer named in the Contract) then the following provisions shall take effect:

- The person signing the Contract warrants to the Owner that he or she has the full authority of the Hirer to enter into this Contract, and
- The person signing this Contract on behalf of the Hirer shall remain personally liable hereunder until all obligations of the Hirer have been fully met or any monies due here under by the Hirer to the Owner; and
- The person signing this Contract on behalf of the Hirer acknowledges that the Owner enters into this contract in reliance upon the warrantly given in clause9-1 (a)and the acknowledgement of personal liability set out in clause9-1 (b) here of.

10. General

10-1 No variation of these conditions shall be binding on the Owner unless signed by the Owner.

10-2 Any document or notice given to or served on the Hirer by the Owner may be served by leaving it at or posting it to the address of the Hirer stated in the Contract Details.

10-3 If any of the terms or conditions of this agreement is or becomes void or unenforceable for any reason that part shall be severed from these conditions which shall remain in full force and effect.