

COASTAL HIRE

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Hire Agreement

Definitions

Hirer is Coastal Hire & Sales Pty Ltd

Hiree refers to the Consumer as defined in the Australian Consumer Law which is contained in the schedule 2 of the Competition and Consumer Act 2010.

Equipment means any item of plant and equipment, vehicles and or tools.

EWP's means Elevating Work Platforms

Mobile Plant means Excavators, Rollers, Tipper trucks, Skid Steer Loaders and other Loaders.

Hire agreement

The hirer shall let and the hiree shall take on hire equipment. The hirer and the hiree are entering into this agreement to provide for the hiring of all equipment requested by the hiree from time to time. The hirer may decline to hire any equipment in its sole discretion.

If the hiree wishes to hire any equipment, the hirer will require the hiree to sign a hire schedule, order, delivery docket or similar document (the "Schedule") in the form of Attachment 1 or any other form required by the hirer from time to time.

The Schedule provided by Coastal Hire & Sales Pty Ltd to the Consumer, whether signed or not, may list the particular equipment taken for hire, applicable charges, hire commencement and termination date and such other information and provisions as the hirer requires.

This agreement provides for the terms of each such hire. Each Schedule shall not constitute a separate hire agreement but shall be read together with and form part of this agreement incorporating all of the provisions of this agreement. The agreement shall include the terms and conditions attached.

Terms and Conditions

1 Hire of equipment.

- 1.1 The hirer agrees to provide the equipment in good condition. Any items missing or defects in equipment must be notified in writing within seven days to the hirer.

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- 1.2 The hiring of the equipment will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.
- 1.3 The hiree is entitled to use the equipment for the hire period. Any extension of the hire period must be agreed to by the hirer.
- 1.4 The hiree agrees to return the equipment to the address identified by the hirer on or before the end of the hire period as outlined in the schedule and that failure to do so can be criminal theft and may be immediately reported to the police.

2 Payment for rental

- 2.1 The hiree agrees to pay the hirer the hire fee and the damage waiver fee specified in the schedule for the equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.
- 2.2 The required fees must be paid within the trading terms of receipt of an account from Coastal Hire & Sales Pty Ltd.
- 2.3 The hirer may agree to make the equipment delivery and collection arrangements to and from the hiree's site and the hiree will pay to the hirer any charges and expenses incurred in such delivery, installation and/or collection. The hirer will use its best endeavours to deliver the equipment by the agreed time but will not be liable to the hiree for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 2.4 A cancellation fee may be charged by the hirer where the equipment has been reserved by booking and the hiree cancels the booking without reasonable notice or fails to take delivery of the equipment.
- 2.5 The hirer may charge the hiree a fee for accepting payment by credit card.
- 2.6 The hirer may charge additional fees if the equipment is used for more than eight hours per day.
- 2.7 The hirer reserves the right at any time without notice to revise the hire charges.

3 Damage waiver

- 3.1 Damage Waiver is not insurance, but is an agreement by Coastal Hire & Sales Pty Ltd that the Customer's liability for damage to the equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess. The amount of the Damage Waiver Excess is:

- (i) EWP's and mobile plant excess is \$2000
- (ii) All other equipment is \$750

Damage Waiver applies to all hires, subject to the conditions below.

- 3.2 **DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances.**

- (i) Breach of any statutory laws or regulations in connection with the use of the equipment by the hiree;
- (ii) Misuse, abuse, willful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;

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- (iii) Theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to; hoses, batteries, drills, bits, grease guns, electric leads, tyres and tubes;
- (iv) Lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the hiree under the agreement;
- (v) Disregard for instructions given to the hiree by the hirer in respect of the proper use of the equipment or in contradiction of the manufacturer's instructions if supplied with the equipment the commencement of hire;
- (vi) Unexplained disappearances of the equipment;
- (vii) Theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where proper security is not used by the hiree to secure the equipment whilst they are left unattended;
- (viii) Loading or off-loading the equipment from maritime vessels, transportation of the equipment on maritime vessels or the use of the equipment on any wharf or bridge or over any body of water.

- 3.3 This clause in no way entitles the hiree to, or implies the availability of, compensation from the hirer for any liability incurred by the hiree in relation to the use of the hired equipment.
- 3.4 This clause will not continue to operate after the expiration of the hire agreement unless an extension by the hirer is granted in writing and an additional agreed fee is paid.
- 3.5 In the circumstances where a hiree is able to provide evidence that they carry a sufficient insurance policy that covers Hired In Goods then the damage waiver fee will not be charged. Proof of this insurance policy must be provided throughout the term of the hire contract. If proof is not provided then the damage waiver fee will be charged.
- 3.6 The hiree must provide a written report to the hirer and in case of theft to the police within 24 hours of any incident likely to result in a claim against the insurance.

4 Use, operation and maintenance

- 4.1 The hiree agrees that the use of the equipment carries with it dangers and risks of injury and the hiree agrees to accept all dangers and risks.
- 4.2 The equipment shall not be used by anyone other than the hiree without the express permission of the hirer.
- 4.3 The hiree will ensure that all persons operating the equipment are "competent" to operate the equipment or hold the "appropriate High Risk Work License" to fit in with the current WHS legislation.
- 4.4 The hiree agrees to operate, maintain, store and transport the equipment in a proper manner and where required strictly in accordance with any instructions

- provided by the hirer and with due care and diligence.
- 4.5 The hiree 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 hirer or posted equipment in regard to its operation, maintenance and storage
- 4.6 The hiree agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.
- 4.7 The hiree shall ensure the equipment is returned to the hirer clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the hirer.
- 4.8 The reasonable costs of fuel or other consumables provided by the hirer and used by the hirer are to be paid to the hirer at the completion date.

5 Hiree's warranties

- 5.1 The hiree warrants that:
- (i) They must insure at all times for public liability for bodily injury or damage to property arising in connection with the equipment for no less than \$20 Million.
 - (ii) Their insurance policy must;
 - a. Be in a form of substance and with an insurer acceptable to the hirer
 - b. Contain a provision where the insurer waives any right of subrogation which the insurer may have with respect to the hirer:
 - c. Note the interest of Coastal Hire & Sales Pty Ltd as the hirer of the equipment
 - (iii) The hiree must not:
 - a. Do anything or fail to do anything which would allow the insurer to refuse or reduce an insurance claim; or
 - b. Vary the insurances affected for the equipment without the hirers prior consent or;
 - c. Enforce, conduct, settle or compromise any claim without the hirers prior consent.
 - (iv) The hirer accepts no liability whatsoever for any injury, illness or accident to any person or thing arising out of the use of the above equipment or supplied accessories and the hiree indemnifies the hirer against all claims of any nature whatsoever and howsoever arising from the hire, use, storage or person thereof. Except where any injury, illness or accident arises as a result of any fault with any equipment and where that fault was not caused by the hiree during the course of the hire period.
 - (v) The EWP and other equipment will be used in accordance with the conditions outlined in the Schedule;
 - (vi) The particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (vii) The hiree holds a valid current driver's licence, operating licence or certificate of competency valid for the type of equipment hired and is not affected by alcohol or drugs that may impair their ability to operate the equipment safely;
 - (viii) The equipment will not be used for any illegal purpose;
 - (ix) The hiree's vehicle is suitable for towing the equipment if required;

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- (x) The hiree will not, without prior written consent of the hirer, tamper with, repair or modify the equipment in any way, or permit another to do so;
- (xi) The hiree agrees that the equipment complies with its description, is in merchantable condition and is fit for the hiree's purpose.
- (xii) The hiree agrees that the equipment have been received by the hiree clean and in good working order from the hirer.
- (xiii) The hiree is responsible for the cost of repairs to any equipment should damage be sustained during the hire period.
- (xiv) The hiree 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 hirer.

6 Indemnity

- 6.1 To the full extent permitted by law the hiree releases, discharges and indemnifies the hirer from all claims and demands on the hirer arising out of or consequent on the use or misuse of the equipment during the hire period.
- 6.2 Without limiting clause 6.1 of this agreement, the hiree agrees that to the full extent permitted by law, no warranties are given by the hirer in respect of the equipment. Any liability of the hirer pursuant to any warranties 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 hirer. The hirer warrants that, as at the date of this agreement, the equipment is in good working order and is fit for the purpose that the hiree has advised it intends to use it for.

7 Loss, damage or breakdown of equipment

- 7.1 Subject only to the obligations of the hirer following payment of the damage waiver fee by the hiree in accordance with Clause 3 the hiree 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.
- 7.2 The hiree is liable for the payment of the new list price of any equipment not returned to the hirer.
- 7.3 If there is a breakdown or failure of the equipment the hiree shall notify the hirer immediately for the appropriate action to be taken.

8 Termination

- 8.1 Without prejudice to any other remedies the hirer may have against the hiree and notwithstanding the period of hire specified in the contract, the hire agreement may be terminated by either party as follows;
 - (i) Without notice if the other party breaches a fundamental term of this agreement.

9 Insurance

- 9.1 The hirer will maintain current insurance policies in respect of the equipment to its full

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insurable value. This insurance does not cover the hiree unless they elect to pay the damage waiver fee described in Clause 3.

10 Liability

10.1 The hiree 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. The hirer will however, assume proportionate liability where it has contributed to the damage or loss suffered.

11 Title to the EWP and other equipment

11.1 The hiree acknowledges that the hirer retains title to the equipment and that the hiree has rights to use the equipment as a mere Bailee only. The hiree agrees that the hiree has no rights to pledge the hirer's credit in connection with the equipment.

11.2 The hiree 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 may retake possession of the equipment if the hiree 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 hirer shall only charge the hire fee up to and including the time of repossession.

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

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

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

13 Completion of the hire period

13.1 The hire period is completed when the equipment has been returned to the hirer in the same condition as when it was hired:

(i) On or by the date and time outlined in the Schedule, or

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- (ii) Will be deemed completed on the date agreed for pick-up by the hirer.
- 13.2 Where pick-up is agreed, the hirer will arrange to pick-up the equipment within a reasonable period (no longer than seven consecutive days) of a request.
- 13.3 The hiree agrees to maintain the responsibility for the equipment while it is awaiting pick-up.

14 Non-merger

- 14.1 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.

15 Severance

- 15.1 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.

16 Governing law

- 16.1 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

17 Privacy policy

- 17.1 The hirer will comply with the National Privacy Principles in all dealings with hiree. Information on our privacy policy is available on request.

18 Disputes

- 18.1 Both the hirer and the hiree agree that any disputes arising from the hire and use of the equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 99982255) before litigation is pursued.

19 PPS law

- 19.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law).
- 19.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 19.3 The hirer may register its security interest as a PMSI. The hirer must do anything (such as obtaining consents and signing documents) which the hirer requires for the

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purposes of:

- (a) Ensuring that the hirer's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) Enabling the hirer to gain first priority (or any other priority agreed to by the hirer in writing) for its security interest; and
 - (c) Enabling the hirer to exercise rights in connection with the security interest.
- 19.4 The hirer may recover from the hiree the cost of doing anything under this clause, including but not limited to registration fees.
- 19.5 The rights of the hirer under this document are in addition to and not in substitution for the hirer's rights under other law (including PPS Law) and the hirer may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 19.6 To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the hirer to give notice to the hiree); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the hirer to give notice to the hiree); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re- instatement of security agreement).
- 19.7 The following provisions of the PPS Law confer rights on the hirer: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral).
- 19.8 The hiree agrees that in addition to those rights, the hirer shall, if there is a default by the hiree, 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 hiree agrees that the hirer may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, or licence.
- 19.9 The hiree acknowledges that in all circumstances the hirer retains title to the equipment (even if the hirer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstances will the equipment be deemed to be a fixture. The hiree has no interest in the equipment of any kind whatsoever other than an interest as a Bailee;
- (i) Except with the prior written consent of the hirer, the hiree will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the equipment in any way whatsoever.
- 19.10 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.
- 19.11 The hirer and the hiree agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The hiree 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 hirer the benefit of section 275(6)(a) and the hirer shall not be liable to pay damages or any other compensation or be subject to injunction if the hirer breaches this sub-clause.

20 Security interests and sub-hire

- 20.1 The hiree 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 hirer.
- 20.2 The hiree must not lease, hire, bail or give possession ('sub-hire') of the equipment to anyone else unless the hirer (in its absolute discretion) first consents in writing.
- 20.3 Any such sub-hire must be in writing in a form acceptable to the hirer and must be expressed to be subject to the rights of the hirer under this agreement.
- 20.4 The hiree may not vary sub-hire without the prior written consent of the hirer (in its absolute discretion).
- 20.5 The hiree must ensure that the hirer 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.
- 20.6 The hiree must take all steps including registration under PPS Law as may be required to:
 - (a) Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) Enabling the hiree to gain (subject always to the rights of the hirer) first priority (or any other priority agreed to by the hirer in writing) for the security interest; and (c) Enabling the hirer and hiree to exercise their respective rights in connection with the security interest.
- 20.7 The hirer may recover from the hiree the cost of doing anything under this clause, including registration fees.

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Executed as an Agreement

Hirer

For and on behalf of; Coastal Hire & Sales Pty Ltd.

Authorised Person:(printed name)

Signature: Date:

Hiree

I have read and accept the above terms and conditions of hire. In particular I am aware that the hiree is responsible for the safekeeping of the equipment against damage or theft and that the hirer's insurance will not cover the hiree, subject to any damage waiver agreement.

For and on behalf of: (company)

ABN Number:

Authorised person:..... (printed name)

Signature:..... Date:

WARNING

FAILURE TO RETURN THE SCHEDULED EQUIPMENT ON OR BEFORE THE FINAL DATE OF THE HIRE PERIOD NOMINATED IN THE SCHEDULE CAN BE CRIMINAL THEFT AND MAY BE IMMEDIATELY REPORTED TO THE POLICE