

## Go Hire Site Rentals - TERMS & CONDITIONS OF HIRE

**between:** Tk Operations Pty Ltd T/as GO HIRE Site Rentals  
**of:** Kembla Grange NSW 2526 (referred to as owner or Go Hire Site Rentals)  
**and:** The Hirer

### **Definitions**

**Equipment** means any item of plant and equipment listed in the Schedule to this agreement including accessories.

### **Hire Agreement**

The Owner shall let, and the Hirer shall take on hire equipment. The Owner and the Hirer are entering into this 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 (the "Schedule") in the form of Attachment 1 & 2 or any other form required by the Owner from time to time.

The Schedule may list the equipment taken for hire, applicable charges, hire commencement and termination date and such other information and provisions as the Owner 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 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. Any extension of the hire period must be agreed to by the owner.
- 1.3 The hirer agrees to return the equipment to the address of the owner 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 Transportation, installation, collection & ongoing hire responsibilities**

- 2.1 Transport prices may vary and are subject to availability of cost-effective transport services and any time constraints imposed on delivery and/or collection.
- 2.2 Delayed delivery – after confirmation of delivery date the buildings & equipment may be delayed by the client for up to 2 weeks without hire charges applying. Any time over a 2-week delay will be charged to client at rates quoted.
- 2.3 Traffic control – unless otherwise stated, traffic control is to be implemented & provided by the client at the client's expense.
- 2.4 Services – the client is responsible for connection & disconnection of all services including, but not limited to water, sewer, power, phone etc.

- 2.5 Levelling of buildings – unless otherwise stated, the client is responsible for levelling & removing any materials in conjunction with levelling, footings, piers etc
- 2.6 Access stairs & landings – unless otherwise stated, the client is responsible for supply, installation & removal of any access stairs &/or landings.
- 2.7 Craning on site – unless otherwise specified the client is responsible for all crane, dogmen & traffic control services & fees.
- 2.8 Cleaning – a cleaning fee applies if a building &/or associated equipment are returned in a dirty condition or if there is graffiti on any part of the building.
- 2.9 Site inductions – unless otherwise stated, are not included in quoted price. Go Hire staff & any subcontractors staff labour charge out rates will apply & be charged to the clients account for any inductions.
- 2.10 Pegging of Equipment – Unless otherwise stated, the hirer is responsible for any loss costs or damages to underground services. It is the hirers responsibility to notify Go Hire Site Rentals of location of any underground services prior to any installation.
- 2.11 Site Approval – The hirer shall be responsible for giving any local or other authorities any necessary notice of their intention to erect equipment or to have equipment erected and shall pay all fees in connection therewith. The hirer shall solely be responsible to ensure that the site is cleared and ready for the erection of the equipment and that the foundation upon which the equipment is to be erected are sufficiently firm and otherwise suitable to safely carry the equipment and the load to be put on it without subsidence.
- 2.12 No allowance has been made for any portable buildings or equipment to meet section J of the Australian Building Code unless otherwise stated and agreed to in writing by Go Hire Site Rentals.
- 2.13 The retesting and tagging of any electrical equipment will be sole responsibility of the hirer. Go Hire Site rentals will provide an initial test and tag at the start of the hire.
- 2.14 Replacement of wear the tear parts such as cisterns mechanisms, light globes, fuses, circuit breakers during the hire period will be the responsibility of the hirer with all works being completed in a trade like manner, damages from improper works will be charged accordingly.
- 2.15 The hirer shall ensure that suitable access to and egress from the site is adequate to suit the mode of delivery or pickup. The hirer is responsible for any costs incurred for any damages, labour & tow trucks.

### **3 Deposit and Cancellation Policy**

- 3.1 Unless otherwise stated a cancellation fee will be charged and the amount is dependent on notice given.
- 3.2 A non-refundable deposit of 10% of hire with a \$50 minimum is payable to secure booking/reservation of equipment.
  - (i) Cancellations within 8-30 days prior to hire will incur 25% fee of total booking cost.
  - (ii) Cancellations within 7 days prior to the hire will incur 50% of total booking cost.
- 3.3 Cancellations of booking/events due to weather shall still be subject to the cancellation policy above. Go Hire Site Rentals is in no way responsible for intemperate weather that may cause the client to cancel their booking.

### **4 Payment for rental**

- 4.1 The hirer agrees to pay the owner 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.
- 4.2 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 rental until return is complete.

- 4.3 The owner may agree to make equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to the owner any charges and expenses incurred in such delivery, installation and/or collection. The owner will use its best endeavours to deliver the equipment by the agreed time but will not be liable to the hirer for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 4.4 A cancellation fee may be charged by the owner where equipment has been reserved by booking and the hirer cancels the booking without reasonable notice or fails to take delivery of the equipment.
- 4.5 The owner may charge the hirer a fee for accepting payment by credit card.
- 4.6 Hire period & hire charges – Equipment off hired prior to the agreed term will incur extra hire charges / early termination fees.
- 4.7 The owner reserves the right at any time without notice to revise the hire charges.

## **5 Damage waiver fee**

- 5.1 Upon payment by the hirer of the damage waiver fee the owner shall be responsible for the cost of repairs or replacement of the equipment due to damage occurring during the hire period subject to an excess payable by the hirer of \$5,000.00 per claim.
- 5.2 This clause in no way entitles the hirer to, or implies the availability of, compensation from the owner for any liability incurred by the hirer in relation to the use of the hired equipment.
- 5.3 This clause will not continue to operate after the expiration of the hire agreement unless an extension by the owner is granted in writing and an additional agreed fee is paid.
- 5.4 This clause will not apply to loss or damage which relates to or arises from:
- (i) breach of any statutory laws or regulations in connection with the use of the equipment by the hirer;
  - (ii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
  - (iii) theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to; hoses, 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 hirer under the 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;
  - (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 hirer to secure the equipment whilst they are left unattended;
  - (viii) loading or offloading 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.
- 5.5 To enable the Hirer an exemption from paying the Damage Waiver Fee, the Hirer must produce a Suitable Insurance Policy noting Hired in Equipment is covered with a Minimum of \$200,000 cover per Claim or to the Value of the Equipment Hired at any one site, if the Hire Equipment is of a greater value.

## **6 Use, operation and maintenance**

- 6.1 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.
- 6.2 The equipment shall not be used by anyone other than the hirer without the express permission of the owner.

- 6.3 The hirer will 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.
- 6.4 The hirer 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.
- 6.5 The hirer 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 regarding its operation, maintenance, and storage.
- 6.6 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the equipment and associated operations.
- 6.7 The hirer shall ensure the equipment is returned to the owner clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the owner.
- 6.8 The reasonable costs of fuel or other consumables provided by the owner and used by the hirer are to be paid to the owner at the completion date.
- 6.9 Any damage to the equipment caused by fusion or malfunction of electrical equipment is the hirer's liability and the hirer must take adequate precautions. The hirer will be charged for any repairs required to the damaged equipment.

## **7 Hirer's warranties**

- 7.1 The hirer warrants that:
  - (i) the equipment will be used in accordance with the conditions outlined in the Schedule;
  - (ii) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
  - (iii) the hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
  - (iv) the equipment will not be used for any illegal purpose;
  - (v) the hirer's vehicle is suitable for towing the equipment if required;
  - (vi) the hirer 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;
  - (vii) the hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.
  - (viii) the hirer agrees that the equipment has been received by the hirer clean and in good working order.
  - (ix) the hirer 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.

## **8 Indemnity**

- 8.1 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.
- 8.2 Without limiting clause 8.1 of this agreement, the hirer 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.

## **9 Loss, damage or breakdown of plant and equipment**

- 9.1 Subject only to the obligations of the owner following payment of the damage waiver fee by the hirer in accordance with Clause 3 the hirer 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.

- 9.2 The hirer is liable for the payment of the new list price of any equipment not returned to the owner.
- 9.3 If there is a breakdown or failure of the equipment the hirer shall notify the owner immediately for the appropriate action to be taken.
- 9.4 The hirer is responsible for the security of the equipment from time of delivery by the owner or collection by the hirer until such time as it is returned by the hirer or collected by the owner.

## **10 Termination**

- 10.1 Without prejudice to any other remedies the owner may have against the hirer and notwithstanding the period of hire specified in the contract, the hire agreement may be terminated by the owner as follows;
- (i) Upon giving the hirer two days written notice of termination at any time during the period of hire
  - (ii) Without notice if the hirer has a winding-up petition presented against it, or be wound up, or go into 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 its business is placed under official management or if it ceases to carry on business.
  - (iii) Without notice if the hirer commits a breach of any part of this hire contract in accordance with Clause 15.5.

## **11 Insurance**

- 11.1 The owner will maintain current insurance policies in respect of the equipment to its full insurable value. This insurance does not cover the hirer unless they elect to pay the damage waiver fee described in Clause 5.

## **12 Liability**

- 12.1 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, storage or transport of the equipment.

## **13 Disclaimer**

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

## **14 Title to equipment**

- 14.1 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.
- 14.2 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.

## **15 Repossession and remedies on default**

- 15.1 The owner may retake possession of the equipment if the hirer breaches any provision of this agreement or does not pay their account in the time agreed, notwithstanding anything else herein contained.
- 15.2 If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.
- 15.3 All costs incurred by the owner in repossessing due to a breach are to be paid by the hirer.

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

15.5 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 hirer, 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.

## **16 Completion of the hire period**

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

- (i) on or by the date and time outlined in the Schedule, or
- (ii) will be deemed completed on the date agreed for pick-up by the owner.

16.2 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.

16.3 The hirer agrees to maintain the responsibility for the equipment whilst it is awaiting pick-up.

16.4 Upon completion of the hire the equipment must be returned properly cleaned by the hirer. It is agreed that the whole or any part of the cost incurred by the Company arising out of the failure by the hirer to clean the equipment will incur a charge to the hirer.

16.5 The hirer agrees to repack and restack the equipment as delivered prior to collection. The hirer will incur labour costs if equipment is not replaced or restacked as delivered.

## **17 Non-merger**

17.1 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.

## **18 Severance**

18.1 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.

## **19 Governing law**

19.1 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.

## **20 Privacy policy**

20.1 The owner will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

## **21 Disputes**

21.1 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) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9998 2255) before litigation is pursued.

## **22 PPS law**

22.1 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").



- 22.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 22.3 The Owner may register its security interest as a PMSI. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:
- (a) ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and
  - (c) enabling the Owner to exercise rights in connection with the security interest.
- 22.4 The Owner may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 22.5 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.
- 22.6 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 Owner to give notice to the Hirer); 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 Owner to give notice to the Hirer); 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).
- 22.7 The following provisions of the PPS Law confer rights on the Owner: 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). The Hirer agrees that in addition to those rights, the Owner shall, 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.
- 22.8 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.
- 22.9 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 shall not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

### **23 Security interests and sub-hire**

- 23.1 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.
- 23.2 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 Agreement.
- 23.3 The Hirer may not vary a sub-hire without the prior written consent of the Owner (in its absolute discretion).

- 23.4 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.
- 23.5 The Hirer 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 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
  - (c) enabling the Owner and Hirer to exercise their respective rights in connection with the security interest.
- 23.6 The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.

**The act of taking delivery of Go Hire equipment constitutes and acceptance of these terms and conditions. A hirers terms and conditions cannot supersede Go Hire Site Rentals terms and conditions unless expressly agreed to by the owner in writing.**

**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**