

TERMS AND CONDITIONS



1.0. DEFINITIONS

Account Facility means any billing arrangement between LinCon Hire & Sales and the Customer, which subject to approval of the Application by LinCon Hire & Sales, will be administered in accordance with these Conditions.

Application means any application for an Account Facility of which these Conditions form part.

Authorised Person means such person or persons as may be notified to LinCon Hire & Sales by the Customer as being entitled to accept delivery of and operate the Equipment.

Business Day means any day upon which LinCon Hire & Sales is open for trade.

Claim means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against such person, corporation or legal entity however arising and whether ascertained or unascertained.

Charges means the amount payable to LinCon Hire & Sales by the Customer for the use of the Equipment and the provision of Services determined in accordance with these Conditions.

Commencement Date means in respect of a hire the date specified in the relevant Hire Schedule.

Conditions means the agreement comprised by these terms and conditions of hire.

Customer means where the context permits, the Customer's servants, agents, employees, contractors and Authorised Persons.

Daily Rate means LinCon Hire & Sales daily charge for Dry Hire of the Equipment as specified in a Hire Schedule or as otherwise agreed with or notified to the Customer by LinCon Hire & Sales, or in the absence of specific document or notification, the applicable rates generally published by LinCon Hire & Sales.

Dry Hire means a hire in respect of which LinCon Hire & Sales does not provide an operator for the Equipment.

Equipment means the goods hired to the Customer under this document which may include equipment including but not limited to;

- a. travel towers and other access equipment; traffic management & road barrier vehicles; and parts and accessories therefor;

- b. air and air compression equipment; compaction equipment; concrete & masonry equipment; earthmoving equipment; fleet & cleaning equipment; generators and power distribution equipment; ground and shoring equipment; ladders & scaffolding; propping; lighting; materials handling equipment; & fluid management equipment; safety equipment; site accommodation including portable buildings and portable toilets; tools & similar goods; traffic management equipment including road barriers; trucks; vehicles & trailers; welding equipment; any other goods hired under or in respect of any security interest; and any related goods including parts and accessories for the foregoing; and

- c. vehicles and their associated parts, accessories and equipment, including but not limited to, motor vehicles and trailers and including access vehicles; air and air compression vehicles; compaction vehicles; earthmoving vehicles; generators and power distribution vehicles; lighting vehicles; materials handling vehicles; offshore vehicles; traffic management & road barrier vehicles.

Hire End Date means in respect of a hire the date specified in the relevant Hire Schedule.

Hire Period means a period commencing on the Commencement Date and expiring on the Hire End Date.

Hire Schedule means a schedule, delivery docket or other document which LinCon Hire & Sales may require Customer to sign to hire particular Equipment and which includes particulars of the Equipment, the Hire Period for a hire and such other information as LinCon Hire & Sales may decide to require. An indicative form of schedule is attached to these terms and conditions.

Hourly Rate means LinCon Hire & Sales hourly charge for Wet Hire of the Equipment and/or provision of the Services as specified in a Hire Schedule or as otherwise agreed with or notified to the Customer by LinCon Hire & Sales, or in the absence of specific document or notification, the applicable rates generally published by LinCon Hire & Sales.

Services means an services supplied by LinCon Hire & Sales to the Customer in relation to the Wet Hire including the provision of an operator to operate the Equipment at a location nominated by the Customer.

Sundry Charges means the costs of all cartage, road tolls, accommodation, fuel, cleaning, oil, grease, harnesses and such other costs as LinCon Hire & Sales may incur relating to the Customer's use of the Equipment determined in accordance with LinCon Hire & Sales schedule of standard sundry charges as varied from time to time or as more specifically agreed with the Customer.

Wet Hire means a hire in respect of which LinCon Hire & Sales provides the services of an operator for the Equipment.

1.1. In the interpretation of these Conditions, unless the context otherwise requires:

- a. a reference to a party includes that party's executors, administrator, substitutes, successors and permitted assigns;
- b. each covenant by two or more persons as a party is made jointly by all and severally by each;
- c. singular includes plural and vice-versa;
- d. these Conditions will be construed in accordance with the laws of New South Wales; and
- e. time is of the essence of all the Customer's obligations to LinCon Hire & Sales, particularly payment of amounts owing.

2.0. HIRE AND SERVICES

2.1. LinCon Hire & Sales agrees to hire Equipment to the Customer.

2.2. If the hire is a Wet Hire, LinCon Hire & Sales agrees to provide an operator for the Equipment.

2.3. The Customer must, if LinCon Hire & Sales asks, complete and sign a Hire Schedule and such other documents as LinCon Hire & Sales may require.

2.4. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between LinCon Hire & Sales and the Customer, together with any facility applications, guarantee or other contractual documents.

2.5. LinCon Hire & Sales may in its absolute discretion terminate this agreement and/or decline to hire Equipment to the Customer at any time.

3.0. DELIVERY OF SERVICES

3.1. The Customer is solely responsible for providing LinCon Hire & Sales with safe person/vehicle access to the nominated location.

3.2. It is the Customer's responsibility to ensure the location and everything done there by the Customer or on its behalf complies with relevant work health and safety laws, and/or any other relevant safety standards or legislation.

3.3. In the case of a Wet Hire the operator shall perform any relevant work in accordance with the Customer's reasonable directions. However the Customer agrees that LinCon Hire & Sales and its operator may decline to follow any direction of the Customer which LinCon Hire & Sales or its operator considers dangerous to any persons or any property or otherwise inappropriate or which might involve a breach by any person of any law including a work health or safety law.

3.4. The Customer shall make all arrangements to receive the Equipment and Services.

3.5. LinCon Hire & Sales shall not be liable for any loss or damage caused in accessing the nominated location beyond the control of LinCon Hire & Sales (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas).

3.6. Delivery of the Equipment or Services to a third party nominated by the Customer is deemed to be delivery to the Customer.

3.7. The failure of LinCon Hire & Sales to deliver the Equipment or Services shall not entitle either party to treat this contract as repudiated.

4.0. CUSTOMER'S ACKNOWLEDGMENT

The Customer acknowledges and agrees that:

- a. any Account Facility is a trader's facility and the Customer is a trader requiring the Account Facility predominantly for the purposes of carrying on or in connection with the carrying on or establishing of a trade, business or profession;
- b. the Customer has read and agrees to be bound by these Conditions;
- c. all Charges and other amounts are payable by the Customer at the rates applicable under this document but any document to reduce damage waiver charges must be in writing and signed by an authorised officer of LinCon Hire & Sales;
- d. if LinCon Hire & Sales approves an Account Facility, LinCon Hire & Sales may terminate the Account Facility at any time without any prior notice;
- e. The full amount of all Charges and other amounts payable by the Customer with an Account Facility to LinCon Hire & Sales will become due and owing 30 calendar days after the date on which the amounts were first invoiced. The Account Facility is not a credit facility;
- f. any Account Facility is personal to the Customer and cannot be assigned or transferred to any other party without the prior written consent of LinCon Hire & Sales;
- g. if the Customer is a company (other than a listed public company) the Customer must notify LinCon Hire & Sales of any action having the effect of altering its control whether by transfer of shares, replacement of its directors or otherwise; and
- h. the Customer will be responsible for all costs (including legal costs) calculated on a solicitor and own client basis incurred by LinCon Hire & Sales relating to any default by the Customer.

5.0. CREDIT REPORTING

By signing the applicant's declaration in the Application, the Customer consents to LinCon Hire & Sales:

- a. disclosing to a credit reporting agency certain personal information about the Customer including identity particulars, the Account Facility limit, payments which may become more than sixty days overdue, any serious infringement of the Account Facility or the Conditions which LinCon Hire & Sales believes has been committed by the Customer and advice that payments are no longer overdue;
- b. obtaining from a credit reporting agency a report containing personal credit information about the Customer and a report containing information about the Customer's commercial activities or commercial creditworthiness to enable LinCon Hire & Sales to assess the Application; and
- c. giving to any guarantor under the Account Facility information including a copy of the Application and any demands for payment of overdue amounts and statements of the Account Facility.

6.0. LIABILITY OF PAYMENT

6.1. Customer's Liability

The Customer agrees to pay:

- a. Charges, Sundry Charges and all other charges, costs and expenses payable to LinCon Hire & Sales in the manner directed by LinCon Hire & Sales;
- b. interest on all outstanding amounts from the due date for payment calculated at a rate which is the higher of 1.5% per month or the interest rate applying to debts under judgments or orders of the Supreme Court of New South Wales plus a margin of 5% per annum;
- c. damage waiver costs in relation to the Equipment where applicable;
- d. any costs of repairing or replacing the Equipment required as a result of the Customer's acts, omissions, neglect or default;
- e. any GST or similar tax imposed on any supply by LinCon Hire & Sales to the Customer under this document and any other state or federal taxes, duties or charges imposed in respect of this document including stamp duty; and
- f. all costs (including legal costs calculated on a solicitor and own client basis) incurred by LinCon Hire & Sales relating to any default by the Customer.

6.2. Charges are normally calculated by multiplying the number of days or hours in the Hire Period by the Daily Rate or the Hourly Rate.

6.3. LinCon Hire & Sales shall be entitled to charge the Customer a minimum hire charge as determined by LinCon Hire & Sales from time to time for periods during which the Equipment is being delivered to or collected from the Customer or during which LinCon Hire & Sales is unable to deliver the Equipment through no fault of its own. LinCon Hire & Sales shall be entitled to charge at the applicable Hourly or Daily Rate in respect of any period during which the Equipment is unavailable for hire by LinCon Hire & Sales due to damage caused by the Customer. The imposition of these charges does not mean that LinCon Hire & Sales agrees to extend the Hire Period.

6.4. Any claims for credit by the Customer must be made within seven (7) days of receiving LinCon Hire & Sales invoice.

6.5. LinCon Hire & Sales reserve the right to revise its schedule of Charges and related amounts without notice. LinCon Hire & Sales may also revise its Charges and related amounts in circumstances where LinCon Hire & Sales incurs them as a result of non-disclosure by the Customer, unforeseen site problems or incorrect physical dimensions, weights or distances relied on by LinCon Hire & Sales.

6.6. LinCon Hire & Sales may in its sole discretion, decide to accept return of the Equipment before the end of the Hire Period. Such an acceptance does not alter the Hire Period and the Customer will remain liable for all Charges payable to LinCon Hire & Sales in respect of hire and Services despite early return of the Equipment. However, LinCon Hire & Sales will endeavour to re-hire the Equipment in which case the Customer will only be liable for Charges (in respect of hire) until the date of such re-hire or until expiration of the Hire Period, whichever is earlier.

7.0. USE OF EQUIPMENT

7.1. Customer's Obligations

7.2. The Customer must:

- a. ensure that the Customer or an Authorised Person is available to accept the Equipment and Services upon delivery;
- b. ensure the Equipment is used or in the case of a Wet Hire only direct that the Equipment be used:
 - i. for the purpose for which it was designed by the manufacturer;
 - ii. by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment (such as licences required for boom type lifts over 11m in height); and
 - iii. in accordance with all applicable laws and regulations in a skilful, safe and tradesmanlike manner not extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear;
- c. notify LinCon Hire & Sales immediately if the Equipment breaks down, malfunctions or is damaged;

- d. not undertake any repair to the Equipment without the consent of LinCon Hire & Sales;
- e. maintain and return the Equipment to LinCon Hire & Sales in good repair and condition and ensure that a check of battery water levels, fuelling, greasing, oiling and proper servicing of the Equipment is carried out on a daily basis;
- f. not transfer, assign, encumber, loan or sell the Equipment and must not (except for the purpose of returning the Equipment) remove the Equipment or allow it to be removed from the site address notified to LinCon Hire & Sales for use of the Equipment without the written consent of LinCon Hire & Sales;
- g. not alter, make any additions to, deface or force any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and
- h. accept full responsibility for the safe-keeping of the Equipment, and indemnify LinCon Hire & Sales for all loss, theft or damage to the Equipment resulting from any negligence, failure or omission of the Customer.

7.3. Condition of Equipment

The Customer agrees that:

- a. it accepts delivery of the Equipment in “as is” condition unless it indicates otherwise at the time of delivery;
- b. it is liable for all flat and/or damaged tyres and the replacement cost of missing harnesses, generators etc.;
- c. it understands the safe and proper use of the Equipment and warrants that in the case of a Dry Hire its personnel have received adequate training in its operation and use.;
- d. LinCon Hire & Sales may inspect, repair or remove (in the event of any default of the Customer) the Equipment at any time and access to the Equipment must be granted for that purpose;
- e. if LinCon Hire & Sales is collecting the Equipment at the expiration or earlier determination of the Hire Period, the Equipment must be left in an appropriate, easily identified and accessible area; and
- f. LinCon Hire & Sales will not be deemed to have accepted return of the Equipment in good repair and condition until such time as the Equipment has been fully inspected by LinCon Hire & Sales at its depot following its return.

7.4. Carriage of Equipment

LinCon Hire & Sales is not a common carrier and does not accept the obligation or liability of common carriers. LinCon Hire & Sales may refuse the handling, lifting and or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.

8.0. LINCON HIRE & SALES OWNS THE EQUIPMENT

8.1. Subject to clause 11.4, the Customer acknowledges that LinCon Hire & Sales owns the Equipment at all times and in all circumstances LinCon Hire & Sales retains title to the Equipment.

8.2. In no circumstances will the Equipment be deemed to be a fixture.

9.0. PPS LAW

9.1. This clause applies to the extent that LinCon Hire & Sales’s interest in respect of a hire provided for in this document is a ‘security interest’ for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law”). References to PPS Law in this document include references to amended replacement and successor provisions or legislation;

9.2. LinCon Hire & Sales may register any actual impending or likely security interest. The Customer may not make any Claim against LinCon Hire & Sales in respect of any registration even if it is determined that LinCon Hire & Sales should not have registered a security interest. The Customer must do anything (such as obtaining consents and signing documents) which LinCon Hire & Sales requires for the purposes of:

- a. ensuring that LinCon Hire & Sales security interest is enforceable, perfected and otherwise effective under the PPS Law;
- b. enabling LinCon Hire & Sales to gain first priority (or any other priority agreed to by LinCon Hire & Sales in writing) for its security interest; and
- c. enabling LinCon Hire & Sales to exercise rights in connection with the security interest.

9.3. The rights of LinCon Hire & Sales under this document are in addition to and not in substitution for LinCon Hire & Sales rights under other law (including the PPS Law) and LinCon Hire & Sales may choose whether to exercise rights under this document, and/ or under such other law, as it sees fit. To avoid any doubt about it LinCon Hire & Sales security interest will attach to proceeds.

9.4. To the extent that Chapter 4 of PPSA applies to any security interest under this document, 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 document in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires LinCon Hire & Sales to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires LinCon Hire & Sales to give a notice to the Customer); 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 document).

9.5. To the extent they apply, the following provisions of the PPS Law; section 12.3 (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) confer rights on LinCon Hire & Sales. Customer agrees that in addition to those rights, LinCon Hire & Sales shall if there is default by Customer, 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 Customer agrees that LinCon Hire & Sales may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

9.6. The Customer 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. This waiver also extends to any verification statement in respect of security interests arising or provided for under security documents prior to the date of this document.

9.7. LinCon Hire & Sales and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that Section 275(6)(a) of the PPS Law continues to apply. The document in this sub-clause is made solely for the purpose of allowing to LinCon Hire & Sales the benefit of section 275(6)(a) and LinCon Hire & Sales shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

9.8. The Customer must not dispose or purport to dispose of, or create or 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 LinCon Hire & Sales. The Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless LinCon Hire & Sales (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to LinCon Hire & Sales and must be expressed to be subject to the rights of LinCon Hire & Sales under this document. Customer may not vary a sub-hire without the prior written consent of LinCon Hire & Sales (which may be withheld in its absolute discretion).

9.9. The Customer must ensure that LinCon Hire & Sales 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.

9.10. The Customer 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 Customer to gain (subject always to the rights of LinCon Hire & Sales) first priority (or any other priority agreed to by LinCon Hire & Sales in writing) for the security interest; and
- c. enabling LinCon Hire & Sales and the Customer to exercise their respective rights in connection with the security interest.

9.11. To assure performance of its obligations under this document, the Customer hereby gives LinCon Hire & Sales an irrevocable power of attorney to do anything LinCon Hire & Sales considers the Customer should do under this document. LinCon Hire & Sales may recover from Customer the cost of doing anything under this clause 9, including registration fees.

10.0. DAMAGE WAIVER AND INDEMNITIES

10.1. Damage Waiver

Unless the Customer provides to the satisfaction of LinCon Hire & Sales, evidence of insurance cover of at least \$300,000 for the Equipment while in the Customer's possession, LinCon Hire & Sales will provide damage waiver in respect of the Equipment hired as a Dry Hire while in the Customer's possession at the Customer's cost. Unless notified to the contrary, the cost of damage waiver is 12.5% of the Charges.

10.2. Limitation on Damage Waiver

The Customer acknowledges that any damage waiver taken out by LinCon Hire & Sales in respect of the Equipment will not extend to cover any loss or damage resulting from the Customer's failure to comply with the obligations contained in these Conditions.

10.3. Liability for Repair

The Customer is liable for all excess and other costs associated with any insurance claim in relation to the Equipment and must meet any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss suffered by LinCon Hire & Sales as a result of not being able to hire the Equipment.

10.4. Release

The Customer agrees that:

- a. the Equipment shall be at the sole risk of the Customer and LinCon Hire & Sales will not be liable for any Claim the Customer may incur or that may arise from any cause whatever including any fault or other defect in the Equipment;
- b. LinCon Hire & Sales will not be responsible for and is free from all liability in respect of all such Claims; and
- c. LinCon Hire & Sales shall not be liable for any special, indirect or consequential loss or damage in respect of anything done or omitted to be done by LinCon Hire & Sales or on its behalf under or in respect of these Conditions.

10.5. Indemnity

The Customer shall accept full responsibility for, and indemnify LinCon Hire & Sales against all Claims in respect of any injury to persons (including but not limited to any operator of the Equipment), or damage to property, arising out of the use of the Equipment however arising, whether from negligence of the Customer or otherwise. The indemnity in this clause does not however apply to any Claim to the extent arising from the negligence or default of LinCon Hire & Sales or its employees or contractors.

10.6. Retrieval of Equipment

The Customer shall indemnify LinCon Hire & Sales for any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise.

11.0. DEFAULT AND TERMINATION

11.1. Default

The Customer will be in default of this agreement between LinCon Hire & Sales and the Customer if:

- a. it fails to comply with any term of any agreement between LinCon Hire & Sales and the Customer;
- b. becomes bankrupt or makes any arrangement with creditors for liquidation of debts; or
- c. it is wound up, placed under administration or any administrator, receiver, or receiver and manager is appointed to the Customer.

11.2. Remedies upon Default

If the Customer is in default then, without prejudice to any other rights or remedies:

- a. LinCon Hire & Sales may terminate any agreement between LinCon Hire & Sales and the Customer and take possession of the Equipment by entering onto any land or premises owned by or under the control of the Customer upon which the Equipment is situated. The Customer expressly consents to LinCon Hire & Sales entering onto any land or premises owned by or under the control of the Customer for the purposes of recovering the Equipment; and
- b. the Customer will pay to LinCon Hire & Sales all losses, damages, costs and other expenses whatever suffered by LinCon Hire & Sales as a result of that default including any costs of recovering possession of the Equipment.

11.3. Inability to Supply

If LinCon Hire & Sales is unable to hire the Equipment to the Customer, LinCon Hire & Sales may in its discretion supply or hire alternative suitable equipment to the Customer. If the alternative equipment is not suitable, LinCon Hire & Sales will not be liable for any Claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Customer.

11.4. Third party interests

The Customer acknowledges that LinCon Hire & Sales may hire or lease the Equipment from a third party (the “Owner”) and in that event, title to the Equipment remains with the Owner. The Customer agrees, upon reasonable notice, to allow LinCon Hire & Sales to arrange for the Owner access to the location where the Equipment is located from time to time to inspect the Equipment. The Customer acknowledges and agrees that if LinCon Hire & Sales agreement with the Owner terminates during the term of this agreement, unless otherwise agreed by the Owner this agreement will automatically terminate and the Owner may immediately recover possession of the Equipment from the Customer. The Owner will not be liable to the Customers in any circumstance for any claim that the Customer may have against LinCon Hire & Sales.

12.0. AMENDMENT

These Conditions may be changed by LinCon Hire & Sales from time to time by LinCon Hire & Sales giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when LinCon Hire & Sales sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer.

NOTHING'S OUT OF REACH ————— EVERYTHING IS ————— POSSIBLE.

LinCon is proudly 100% Australian owned.

We pride ourselves on providing our clients with an extensive fleet of modern and reliable equipment backed by unrivalled levels of service, consistently exceeding expectations.

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