

## Dry Hire Agreement Terms & Conditions

**Definitions:** In this agreement the following expressions shall have the following meaning:

**Owner:** means Pearce Plant Pty Ltd (ACN 143104116) as Trustee for Pearce Family Trust (ABN 88204618483), its successors & / or assigns.

**Hirer:** means a person/s, partnership, trustee of a trust, company, entity or assigns (including agents, employees or contractors) hiring Equipment from the Owner.

**Equipment:** means all items hired from the Owner and includes but not limited to all plant, machinery, vehicles, tools, accessories, attachments, parts, manuals, instructions, replacement and substitute items. The Equipment shall be considered owned by the Owner whether owned by the Owner or not for the purposes of this Agreement.

**Dry Hire Charges:** is the amount payable by the Hirer to the Owner in respect of the time period based on those rates set out in this agreement.

**Other Charges:** includes all amounts which are or may become payable by the Hirer to the Owner under these terms and conditions, including but without limitation, the Dry Hire Charges.

### 1. Hire Period of Equipment

1.1 The Hire of the Equipment will commence when the Owner delivers the Equipment to the delivery address stated in the agreement and shall continue until the Equipment is back in the Owner's possession and control ready for the purpose of hire again.

1.2 The hire period includes weekends and public holidays.

1.3 Daily hire is considered not more than 8 machine hours per day.

1.4 Weekly hire is considered not more than 40 machine hours per week.

1.5 Any extension of the hire period must be agreed to by the Owner in writing.

### 2. Payment and Other Charges

2.1 Payment for hire, delivery, collection or other charges are due and payable before the commencement of hire unless otherwise specified. In addition to Hire Charges, the Hirer agrees to pay:

- a) The Owner's delivery and collection charges;
- b) Any administrative charge of 2% per month for any amounts outstanding at the end of the hire period or due date. Such charge shall compound monthly;
- c) A cancellation fee that may be charged, where the Hirer cancels booking without reasonable notice (12 hours) or fails to take delivery of the Equipment. Such charge will be 1 Days Hire;
- d) Any GST, other duties, taxes, fines, penalties, tolls and other government charges arising from the Hirer using the Equipment or this agreement;
- e) Any additional charges where the Hirer extends the Hire Period without getting the Owner's permission or paying extra dry hire charges, in advance;
- f) Minimum of 2 day Hire Period
- g) All costs incurred but not limited to in clause 3(a), 3(e), 3(f), 3(g), 3(k), 3(l), 4.1, 6.1 (a) and (b), 7.4, 7.7 and 7.8.

2.2 This Hire Agreement is a claim for payment under the Building and Construction Industry Payments Act 2004 (QLD).

### 3. Hirer's Obligations and Responsibilities

The Hirer shall:

- a) Pay all hire and other charges which are payable to the Owner in accordance with this agreement;
- b) Upon delivery of the Equipment immediately examine the Equipment and satisfy itself as to its condition and suitability as well as fitness for the purpose for which it is required. The Hirer in accepting the Equipment is deemed to have examined the equipment and satisfied itself for the purpose of hire. The Hirer acknowledges that it does not in any way rely upon the skills or judgement of or any representations made by or on behalf of the Owner in respect of the Equipment, its purpose, uses or performance;
- c) Use the Equipment in a skilful and proper manner and only for the purpose and within the capacity which it was designed;
- d) Ensure that the Equipment is operated by a competent, suitably qualified, trained, experienced and (if necessary) certified operator;
- e) At its own expense clean, fuel, lubricate and provide daily maintenance for the Equipment and keep it in good and substantial repair and condition, failing this the Hirer shall be liable to reimburse the Owner for all costs incurred with respect to such items;
- f) Accept sole responsibility for all flat tyres and any damage to tracks/tyres ;Accept sole responsibility for all hydraulic hose damage.
- g) Clean the Equipment properly and thoroughly when it finishes using it and before its return to or collected by the Owner. If the Owner in its absolute discretion determines that this obligation has not been satisfied the Owner may undertake such cleaning and charge the Hirer a cleaning fee;
- h) Accept sole responsibility for the safe keeping and storage of the Equipment;
- i) Not allow any other person to operate the Equipment not nominated in the agreement;
- j) Provide all operators of the Equipment with appropriate and prudent safety clothing and other equipment;
- k) Not alter, make additions to, deface or erase any identifying mark, plate, trademark, writing or number on or in the Equipment or in any other manner interfere with or modify the Equipment; The Hirer shall be liable to reimburse the Owner all costs incurred when rectifying such items;
- l) Accept responsibility for and fully reimburse the Owner for the cost of freight to retrieve Equipment abandoned for any reason or repossession of the Equipment upon breach / default of this agreement;
- m) Agree that the Equipment is at the risk of the Hirer during the Hire Period. The Hirer will indemnify the Owner from all actions including breaches / default of this agreement, claims or demands of any kind whatsoever relating to the Equipment;
- n) Not move the Equipment from the delivery address without the written consent of the owner;
- o) Comply at its own expense with all Local Council, State and Federal laws, ordinances and regulations (including any Occupational Health and Safety Laws) which may affect the Equipment during the hire period;
- p) When finished with the Equipment ensure all the Equipment and attachments are all together and in an accessible area ready for collection.

### 4. Breach / Default

4.1 The Hirer shall indemnify the Owner for any expense or loss incurred by the Owner as a result of a breach / default by the Hirer.

4.2 Where the Hirer is in breach / default of this agreement the

Owner can enter upon the land where the Equipment is located and take possession of it.

- 4.3 The Hirer will be deemed to have granted an irrevocable authority to the Owner in exercising this right. The Hirer waives and releases the Owner from any liability or for any damage or losses incurred by the Owner or Owner representatives obtaining the Equipment.

**5. Liability, Warranties and Disclaimer**

- 5.1 The Hirer hereby releases and exonerates the Owner, its subcontractors, employees and agents from, and agrees to indemnify the Owner, its subcontractors, employees and agents in respect of, a breach or default of this agreement, any third party claims, actions, suits, demands, costs and expenses for the damage or injury or death to a person or property arising directly or indirectly out of hire or use of the Equipment by the Hirer whether caused by the negligence of the Hirer or any other person, the breakdown, failure, operation, incorrect delivery or no delivery of the Equipment in any way and agrees to reimburse the Owner for all costs reasonable incurred in defending the same.
- 5.2 The Owner will not be liable to the Hirer for any damages, omissions, warranties, costs or other claims whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Hirer.
- 5.3 The Hirer acknowledges that the Owner can give no warranty as to the capacity, use and / or condition of the Equipment.

**6. Insurance**

- 6.1 The Hirer, at its own expense, shall obtain and maintain all appropriate and prudent insurance policies:
- a) That covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the full new replacement value of the Equipment; and
  - a) For third party public liability risks in respect of the hire or use of the Equipment by the Hirer in an amount not less than \$10 million.
- 6.2 The Hirer shall provide the Owner with a copy of such insurance policies upon request.

**7. Loss of and Damage to Equipment**

- 7.1 If the Equipment is lost, breaks down or is damaged, or involved in an accident the Hirer must notify the Owner immediately. Notification does not absolve the Hirer from its obligations to safeguard the equipment.
- 7.2 The Hirer will immediately stop using the Equipment and notify the Owner if the safety of the Equipment is in any way questionable or if the Equipment breaks down or becomes unsafe, and will take all necessary steps to prevent injuries to all persons and property arising in connection with the Equipment.
- 7.3 The Owner will repair the Equipment as and when considered necessary by the Owner at its sole discretion. The Owner will take reasonable steps to carry out repairs promptly or provide substitute or replacement Equipment if available. The Owner is not liable for any failure or neglect to carry out such repairs or provide replacement or substitute Equipment.  
The Hirer will NOT repair any major damage to the equipment
- 7.4 If the Owner is required by any relevant authority or elects at its sole discretion to salvage the Equipment, then all salvage costs will be payable by the Hirer.
- 7.5 If the damaged condition or loss of the Equipment is caused by

the negligence, misuse or breach of these terms and conditions by the Hirer, The Owner at its sole discretion may or may not provide substitute or replacement Equipment.

- 7.5 The Hirer will at the option of the Owner reimburse the Owner for or pay for the costs directly of all the repairs or if damage is irreparable or the Equipment is lost the new replacement cost.
- 7.6 The Hirer will remain responsible for the Hire Charges until the Equipment is repaired or until the new replacement cost is paid by the Hirer.

**8. Retention of Title and Ownership**

- 8.1 Ownership of the Equipment shall at all times remain in the name of the Owner and no person or entity shall be directly or indirectly to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Owner of the Equipment or the Owner's rights under these terms and conditions. The Owner retains title to the Equipment for the purposes of this agreement.
- 8.2 Neither payment or compensation nor any other circumstance or event shall amount to, constitute or result in any transfer of property or interest in the Equipment from the Owner.
- 8.3 The Owner may inspect the Equipment and the operation of the equipment at any time without notice. The Hirer grants an irrevocable authority to the Owner to enter the property where the Equipment is situated. If the Owner at its sole discretion believes the Equipment is not being used correctly or in accordance with the operation manual the Owner or Owners representative may terminate this agreement and collect the Equipment immediately.
- 8.4 The Hirer is not entitled to sell, sub-let, assign, mortgage, hire, transfer, loan or creates any form of security interest over the Equipment.

**9. Miscellaneous**

- 9.1 No variation of this agreement shall bind either party unless confirmed by the Owner in writing.
- 9.2 The person signing this agreement for and on behalf of the Hirer agrees with the Owner that she or he has the authority of the Hirer to sign on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this agreement. The person signing this agreement indemnifies the Owner against all losses and costs incurred by the Owner arising out of or in connection with the person signing or failing to have the power of authority.
- 9.3 The Hirer hereby agrees as security for payment to Owner charge all their equitable interest in freehold or leasehold property / assets both current and later acquired.
- 9.4 This Agreement is governed by the laws of the State of Queensland. The Hirer consents to and deems the jurisdiction of the appropriate Court nominated by Owner.
- 9.5 Each clause and sub clause of this agreement is separate and independent. If any clause or sub clause is found to be invalid or ineffective, the other clauses or sub clauses will not be adversely affected.
- 9.6 Subject to Clause 9.1 both parties acknowledge that this Agreement contains the entire Agreement concluded between the parties notwithstanding any prior or subsequent negotiations or discussion or representations between the parties. Any such conditions, warranties or representations are hereby expressly exclude



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