



## TERMS OF HIRE

**NOTE TO CUSTOMER – These Terms of Hire, together with every Hire Schedule provided to You by Us setting out details of the Equipment You hire from Us, together form the agreement between You and Us for the hiring of the Equipment ("the Hire Agreement").**

### 1. DEFINITIONS

**Commencement** - The time when You take possession of the Equipment.

**Equipment** - Any equipment, tools, Motor Vehicles (including accessories) parts or other items which You hire from Us.

**Hire Charge** – The amounts payable by You to Us in order to hire the Equipment. The Hire Charge applies from Commencement and continues for the Hire Period, or the date on which You obtain from us a number verifying Your request for Us to collect the Equipment ("Off Hire Number"), whichever is the earlier. We reserve the right to charge further Hire Charges if the Equipment is not available for collection, even if an Off Hire Number has been issued.

**Hire Period** - The period from Commencement until the Equipment is returned to Our possession, subject to any minimum hire period, or other special condition contained in the Hire Schedule. You are responsible for the safety and security of the Equipment for the whole of the Hire Period.

**Hire Schedule**- A document We will provide to You setting out information about the hire of Equipment by Us to You, including the Hire Charge and other conditions relating to the Equipment hired. Hire Schedules may be provided to You electronically.

**Kilometre Charge** - The amount payable for the kilometres that a Motor Vehicle has, in Our reasonable opinion, travelled during the Hire Period.

**Motor Vehicle** - A truck or utility but not any other equipment such as a scissor lift, trailer or bobcat.

**We/Us/Our**- HIREEXPRESS PTY LTD ABN 71 613 086 276.

**You/Your** – the individual, partnership, company, trust, association or other legal entity hiring Equipment from Us, as well as its employees, agents and contractors.

### 2. CHANGING THESE TERMS OF HIRE

2.1 We may change these Terms of Hire provided that we notify You of the change, either by publishing the changed Terms of Hire on Our website or by emailing them to You, or by displaying them at our business premises. All Hire Schedules issued following notice of a change of these Terms of Hire will be subject to that change.

### 3. OUR PROMISE TO YOU

We will;

3.1 allow You to take and use the Equipment during the Hire Period, until the date You are required to return the Equipment as stated in the Hire Schedule; and

3.2 provide the Equipment to You clean and in good working order; and

3.3 collect the Equipment from You within 5 days of issuing you with an Off Hire Number.

### 4. WHAT YOU AGREE TO PAY TO US

4.1 You agree to pay the Hire Charge to Us before Commencement, unless We have agreed in writing to accept payment from You on credit terms.

4.2 You must also pay to Us on demand;

(a) the new list price of any Equipment which is lost or stolen during the Hire Period, or which for whatever reason is not returned to Us by You, unless otherwise provided in this Hire Agreement,

(b) all cleaning costs in relation to the Equipment,

(c) the full cost of repairing any damage to the Equipment, unless otherwise provided in this Hire Agreement,

(d) stamp duties, Goods and Services Tax, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of the Hire Agreement or in respect of Your use of the Equipment,

(e) all costs incurred by Us in delivering and recovering possession of the Equipment,

(f) interest on all amounts owing by You which are not paid on time, at the pre-judgment interest rate set by the Local Court of NSW from time to time,

(g) the Kilometre Charge, and any additional Hire Charges which we disclose to You in the Hire Schedule,

(h) the cost of fuels and consumables provided by Us and not returned by You,

(i) any expenses and legal costs (including commission payable to a commercial agent) incurred by Us in enforcing the Hire Agreement,

(j) all costs of repairing or replacing tyres, including road service, and

(k) if any damage and/or theft waiver applies under these Hire Terms, the amount for which You are liable to Us.

4.3 Without limiting Our ability to recover all amounts owing to Us, You authorize Us to charge any amounts owing by You to any credit card of which You have provided details to Us.

4.4 Hire rates allow for 8 hours of machine operation per day. Extra shifts will be charged for unless otherwise expressly agreed.

### 5. YOUR PROMISES TO US

**You agree that You must;**

5.1 deliver the Equipment back to Us before the time indicated for return in the Hire Schedule,

5.2 return the Equipment to Us clean and in good repair,

5.3 satisfy Yourself at Commencement that the Equipment is suitable for Your purposes,

5.4 operate the Equipment safely, strictly in accordance with the law, only for the purpose for which it is intended, and in accordance with any manufacturer's instructions whether supplied by

Us or posted on the Equipment,

5.5 indemnify Us for all injury and/or damage to the extent caused or contributed to by You to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment,

5.6 ensure that any person collecting or taking delivery of Equipment on Your behalf is authorised by You to do so, and You promise not to allege that any such person is not so authorised,

5.7 ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency

and/or are fully licensed,  
5.8 conduct a thorough hazard and risk assessment before using the Equipment, and comply with all Workplace Health and Safety laws relating to the Equipment and its operation,  
5.9 safely secure all items loaded in or on the Equipment or in or on Your vehicle, and indemnify Us in respect of any injury and/or damage to the extent caused or contributed to by items falling from the Equipment or from any vehicle or trailer operated by You or on Your behalf,  
5.10 operate the Equipment with an adequate motor vehicle and/or power source,  
5.11 report and provide full details to Us of any accident or damage to the Equipment within 2 business days of the accident or damage occurring; and  
5.12 at all times acknowledge Our ownership of the Equipment to the exclusion of any other rights.

**You also agree that You must NOT;**

5.13 tamper with, damage or repair the Equipment,  
5.14 lose or part with possession of the Equipment,  
5.15 rely upon any representation relating to the Equipment or its operation other than those contained in this Hire Agreement,  
5.16 allow any person to drive a Motor Vehicle if the person is affected by drugs and/or alcohol.  
5.17 exceed the recommended or legal load and capacity limits of the Equipment,  
5.18 use or carry any illegal, prohibited or dangerous substance in or on the Equipment,  
5.19 exceed the recommended or legal speed limit for the Equipment.

## **6. DAMAGE WAIVER**

6.1 Damage Waiver is not insurance, but is an agreement by Us that Your liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess. The basic Damage Waiver Excess which You will be liable to pay to Us in the event of damage to the Equipment will be 20% of the current replacement price of the Equipment as listed by Our suppliers, and as shall be reasonably determined by Us. In the case of Motor Vehicles the Damage Waiver Excess will be \$5,000.00 for vehicles under 4,500kg gross vehicle mass, and for larger vehicles the excess will be \$10,000.00.

6.2 Damage Waiver is an optional additional charge by us to You, and will incur a fee of 5% of the Hire Charge (excluding fuel, transport and other ancillary charges). That Damage Waiver fee will be charged to You unless You give us written notice that You opt out of Damage Waiver. If You decide to opt out of Damage Waiver, You are entirely responsible for all damage caused to the Equipment and You should have Your own insurance to cover that liability.

**BASIC DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT YOUR**

**LIABILITY** in the following circumstances;

- (a) where the Equipment is lost or stolen;
- (b) where You have breached any clause of this Hire Agreement;
- (c) where the damage is willfully caused by You or Your employees, agents, customers or contractors;
- (d) where the damage is any overhead damage to a van, however caused;
- (e) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;
- (f) where the damage is caused in any way by overloading;
- (g) where the operator of the Equipment is not suitably licensed; or
- (h) where the operator of the Equipment is affected by drugs or alcohol.

6.3 You may pay an additional Vehicle Theft And Loss Waiver Fee in relation to the hire of a Motor Vehicle, provided that You have a non-provisional or unrestricted drivers licence. Vehicle Theft And Loss Waiver is optional. Vehicle Theft And Loss Waiver will increase your Damage Waiver cover for Motor Vehicles to include theft and will reduce your Damage Waiver Excess from \$5,000.00 to \$500.00 for vehicles under 4,500kg gross vehicle mass, and for larger vehicles the excess will be reduced from \$10,000.00 to \$1,000.00. Hire fees will also continue to be charged until the time of Our receipt of notification of theft and of a Police Report.

**VEHICLE THEFT AND LOSS WAIVER DOES NOT APPLY AND WILL NOT LIMIT YOUR LIABILITY** in any of the circumstances set out in clauses 6.2 (damage) or 6.4 (theft) of this Hire Agreement.

6.4 You may pay an additional Equipment Theft Waiver Fee in relation to the hire of some medium and large Equipment with a replacement value over \$20,000.00, as shall be determined by Us. Equipment Theft Waiver is optional on equipment in this category. The excess for Equipment Theft Waiver will be \$2,500.00 in the case of medium assets valued by Us from \$20,000 to \$50,000, and will be \$5,000 in the case of large assets valued by Us at over \$50,000. Hire fees will also continue to be charged until the time of Our receipt of notification of theft and of a Police Report.

**EQUIPMENT THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT YOUR LIABILITY FOR THEFT** in the following circumstances;

- (a) where You have failed to secure the Equipment in safely locked premises;
- (b) where You have failed to submit to Us a Police Report on the theft within 7 days of the theft allegedly occurring;
- (c) where You have breached any clause of this Hire Agreement; or
- (d) where the theft is caused by the negligence or willful act of You or Your employees, agents, customers or contractors

6.5 Where We determine that one or more of the circumstances in clauses 6.2 or 6.4 applies, the relevant Damage or Theft Waiver under clauses 6.2, 6.3 or 6.4 will NOT apply unless You are able to establish otherwise to Our reasonable satisfaction.

## **7. EXCLUSION OF WARRANTIES AND LIABILITIES**

7.1 To the maximum extent permitted by law, and subject to clause 7.2, all warranties, conditions, representations and guarantees (whether express or implied) in respect of this Hire Agreement or the Equipment are excluded. If a condition, representation or guarantee is imposed by law and is not able to be excluded, as far as the law permits Our liability for a breach of that condition, representation or guarantee will be limited to the repair or replacement of the Equipment (at Our election).

7.2 Nothing in this Hire Agreement affects any rights or remedies or the benefits of any guarantees which You may have under the Australian Consumer Law or any other law if, and to the extent that, those rights or remedies may not lawfully be excluded or modified.

7.3 Our liability for consequential, special or indirect loss, loss of profits, loss of expected savings, loss of business or opportunity or business interruption arising under or in connection with this Hire Agreement, whether in contract, tort (including negligence) at law or in equity, and whether or not foreseeable, is excluded, to the maximum extent permitted by law.

## **8. REMOTE HIRE**

8.1 If we indicate to You that the site in which You wish to operate the Equipment is a Remote Area, You agree to pay such other additional charges for delivery, servicing, repairs and attendance at the site as We may reasonably stipulate in the Hire Schedule. You also agree to comply with such other requirements as We shall reasonably stipulate in relation to the daily maintenance and operation of the Equipment.

## 9. PPS LAW

9.1 You acknowledge that a security interest may be created under this Hire Agreement pursuant to the Personal Properties Securities Act 2009(Cth) and any amendments to it, replacements or successors to it, or regulations made under it from time to time ("PPS Law").

9.2 You agree that if We do not have in place at Commencement a registration on the Personal Properties Securities Register ("PPSR") perfecting a first priority security interest of the Equipment hired to You, that the Hire Period (including any extension of the Hire Period) must not exceed 12 months.

9.3 You agree that We may effect and maintain registrations on the PPSR in respect of any security interests (including purchase money security interests) created or contemplated by this Hire Agreement in the Equipment and any proceeds from dealing in the Equipment. You agree to do all things requested of You to ensure that We have a perfected first priority security interest in the Equipment.

9.4 You waive Your right under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest in respect of the Equipment.

9.5 You must not without Our prior written consent: (a) register a financing change statement in respect of a security interest created or contemplated by the Agreement; or (b) register, or allow to be registered, in any third party's favour a financing statement or financing change statement in respect of the Equipment; or do anything which would adversely affect Our ownership of the Equipment.

9.6 You and We agree to contract out of the enforcement provisions referred to in section 115(1) of the PPSA (to the extent permitted by section 115 and if they would otherwise have applied to the enforcement of a security interest arising under or in connection with the Agreement).

9.7 You and We agree, to the extent permitted by section 115(7) of the PPSA, to contract out of Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)).

9.8 Our rights under this Hire Agreement are in addition to Our rights under any law (including the PPS Law) and We may choose which of our legal rights we decide to exercise, as we see fit.

## 10. BREACH OF HIRE AGREEMENT BY YOU

10.1 If You breach any provision of this Hire Agreement and You do not remedy the breach within 7 days of receiving notice of the breach, or if You become bankrupt or insolvent or You cease to trade, then We shall be entitled to;

(a) terminate this Hire Agreement, and/or

(b) sue for recovery of all monies owing by You to Us, and/or

(c) repossess the Equipment (and We are authorised by You to enter any premises where the Equipment is located to do so); and

10.2 Any Damage and/or Theft Waiver referred to in Section 6 is immediately invalidated.

10.3 You indemnify Us in respect of any damages, costs or losses to the extent that they result from a breach by You of any provision of this Hire Agreement.

## 11. ASSIGNMENT

11.1 We may assign Our rights and obligations under this Hire Agreement to any third party without Your consent, provided that we take reasonable steps to ensure that our obligations to You under this Hire Agreement are complied with by that third party. You must not assign Your rights and obligations under this Hire Agreement without Our written consent.

## 12. DISPUTE RESOLUTION

12.1 You must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Us in writing within 30 days of Commencement. In the event that no communication is received from You within that 30 day period, the Hire Charges are deemed to be accepted by You.

12.2 If a dispute arises relating to this Hire Agreement, the hiring or the use of the Equipment (except in regard to payments due to Us), You agree to negotiate to settle the dispute with Us, with the assistance of the Hire and Rental Association of Australia before litigation.

## 13. PRIVACY

We will comply with the Australian Privacy Principles in all Our dealings with You.

A copy of Our Privacy Statement is available upon request or by visiting our website.

## 14. APPLICABLE LAWS

This Hire Agreement is a payment claim under the Building and Construction Industry Security of Payment Act 1999 NSW, the Building and Construction Industry Security of Payment Act 2002 VIC, the Building and Construction Industry Payments Act 2004 QLD, the Building and Construction Industry Security of Payment Act 2009 SA, the Construction Contracts Act 2004 WA, the Building and Construction Industry (Security of Payment) Act 2009 ACT, the Building and Construction Industry Security of Payment Act 2009 TAS, and/or the Construction Contracts (Security of Payments) Act 2009 NT.

Except where We in Our discretion take action against You under any of the Building and Construction Industry legislation referred to in this clause, You and We agree that this Contract is governed by the law of the state of New South Wales, and You submit to the jurisdiction of the courts of that State.

## AGREEMENT TO TERMS AND PRIVACY CONSENT – CUSTOMER AND GUARANTORS

I/We (the Customer and the Guarantors signing this document) warrant to Hireexpress Pty Ltd ACN 613 086 276 and its related bodies corporate (**Company**) that the information in this document is correct. I/we warrant that we have read the Company's Terms of Hire (**Terms**) set out in this document. We agree to the Terms and they are incorporated into this Credit Application, I/we acknowledge that credit may be withdrawn at any time if We default or if it is reasonable for the Company to do so. I/we agree that the Company may give and obtain information to and from third parties including credit providers and credit reporting agencies about the Customer and its guarantors, directors or proprietors for the following purposes:

a. To obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;

b. To allow a credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors; and

c. To obtain commercial credit information about the Customer, its guarantors, directors or proprietors

I/we also agree that the Terms apply to any sale or service by any related body corporate of the Company.

## SIGNATURE BY CUSTOMER'S AUTHORISED DIRECTOR / PERSON / PROPRIETOR/GUARANTORS

Name: \_\_\_\_\_ Position: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# GUARANTEE AND INDEMNITY

Each director must sign this guarantee and indemnity. Please insert full names and residential address of the Guarantors. Guarantors should seek legal advice on this document. If there are more than three directors, please attach additional details to this form.

I, \_\_\_\_\_ Of \_\_\_\_\_  
I, \_\_\_\_\_ Of \_\_\_\_\_  
I, \_\_\_\_\_ Of \_\_\_\_\_

(hereinafter called "Guarantors") separately as well as any two or more of them collectively, in consideration of Hireexpress Pty Ltd (Hire Express) agreeing to sell or hire or continuing to sell or hire goods to the Customer, hereby agree with Hire Express as follows:

1. The Guarantors hereby jointly and severally guarantee the due payment to Hire Express of all money and performance of all obligations now and/or in the future owing by the Customer to Hire Express. As a separate covenant the Guarantors jointly and severally indemnify Hire Express for all loss in respect of non-payment by the Customer of any money payable to Hire Express and non-performance of any obligation owed to Hire Express by the Customer.
2. This guarantee and indemnity shall be a continuing guarantee and indemnity for all debts and obligations whatsoever and whenever incurred by the Customer to Hire Express. If Hire Express is obliged (or reasonably considers itself obliged) to repay any money received from the Customer (for example as a preference or voidable transaction in the insolvency of the Customer) then that action shall not adversely affect the obligations of the Guarantors and this guarantee and indemnity shall have continued effect accordingly.
3. The liability of the Guarantors under this guarantee and indemnity is absolute and unconditional and shall not be discharged or affected by anything that may have that effect but for this clause including but not limited to time or indulgence given to the Customer, insolvency of the Customer, variation or release of the Customer's obligations, taking or failure to take, perfect or enforce security from the Customer or anyone else, failure of any person who may have been intended to sign this document to do so or do so validly, and any omission to give notice to the Guarantors or anyone else of anything.
4. The Guarantors must not exercise any right of subrogation or make any other claim they may have against the Customer until Hire Express has received the full amount owing by the Customer.
5. To secure the Guarantors' obligations and actual, potential and future liability to Hire Express pursuant to this document ("Secured Obligations"), the Guarantors (and each of them) hereby charge in favour of Hire Express all of their estate or interest in any freehold or leasehold land wheresoever situate which the Guarantors now have or may hereafter acquire. The Guarantors (and each of them) hereby acknowledge that Hire Express shall have a caveatable interest in such land and agree to provide to Hire Express a signed real property mortgage in registrable form acceptable to Hire Express securing the Secured Obligations.
6. Notices to be served on the Guarantors concerning any matter relating to this Guarantee shall be sufficiently served if posted to the Guarantors by registered mail at their aforesaid personal addresses.
7. This document shall be governed by the law of New South Wales. Words importing the plural number or the singular number in this Guarantee include the singular number and the plural number respectively.

Date \_\_\_/\_\_\_/\_\_\_

## Signed by the Guarantor(s):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witnesses Signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name of Witness

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Signature

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