

HIRE TERMS AND CONDITIONS

1. Interpretation and Definitions

- 1.1 Rules of interpretation apply to this Hire Agreement as specified in this provision, unless the context otherwise requires:
 - 1.1.1 headings and subheadings are for convenience only and do not affect interpretation;
 - 1.1.2 words denoting the singular number include the plural, and the converse also applies;
 - 1.1.3 words denoting any gender include all genders;
 - 1.1.4 a defined word or expression has corresponding effect in relation to its other grammatical forms;
 - 1.1.5 any reference to a party to any agreement or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
 - 1.1.6 any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
 - 1.1.7 any reference to a provision comprises a clause, recital, schedule, annexure, exhibit, appendix or attachment, and is a reference to a provision of this Deed, including each clause, subclause, paragraph and subparagraph of that provision;
 - 1.1.8 the words "include", "including", "for example", and similar expressions are used without limitation;
 - 1.1.9 the expression "at any time" includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period; and
 - 1.1.10 any liability, representation or warranty undertaken by, or right conferred on, two or more persons binds or benefits all of those persons jointly and each of them severally.
- 1.2 Meanings apply to capitalised terms used in this agreement as specified in this clause unless the context otherwise requires:
 - 1.2.1 "Customer" refers to the person, corporation or other entity hiring the Hired Equipment from the Owner. The reference to "Customer" includes any employees, agents and contractors;
 - 1.2.2 "Hire Agreement" refers to the agreement comprising the Hire Contract and these Terms and Conditions.
 - 1.2.3 "Hire Contract" refers to the document titled "Hire Contract" that specifies the Hired Equipment, the hire charges and other relevant information regarding the hire arrangement.
 - 1.2.4 "Hired Equipment" refers to any of the Owner's equipment available that is being hired by the Customer under this Agreement; and
 - 1.2.5 "Owner" refers to A.K & E.C Donaldson trading as Ag & Hire.

2. Period of Hire

The period of hire is as set out on the Hire Contract or if no period specified, commences when the Customer takes possession of the Hired Equipment and will end when the Hired Equipment leaves the possession of the Customer at the direction of the Owner.

3. Delivery and Return of Hired Equipment

- 3.1 Unless otherwise mutually agreed between the parties, the Customer will collect the Hired Equipment from such location determined by the Owner (at the Customer's fair and reasonable cost) on the date and at the time agreed upon between the parties.
- 3.2 All claims against the Owner regarding the quality, nature, fitness, suitability and conformance with description or defects of the Hired Equipment must be made at the time of delivery. To the extent permitted by law, the Owner does not accept liability for any such claim not made in accordance with these terms.
- 3.3 The Hired Equipment must be returned to the Owner (or to such location directed by the Owner) at the end of the period of hire at the Customer's fair and reasonable cost in the same condition and good working order as when it was received by the Customer at the commencement of the period of hire.

4. Advice and Information

Any advice, recommendation, information, assistance or service given by the Owner in relation the Hired Equipment or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and the Owner does not accept any liability or responsibility for any loss suffered from the Customer's reliance on such advice, recommendation, information assistance or service.

5. Retention of Title

The Customer agrees that the Owner owns the Hired Equipment and at all times legal title of the Hired Equipment will remain with the Owner. The Customer only holds the goods as a bailee for the Owner.

6. Risk

- 6.1 Risk as regards to any loss of or damage to or by the Hired Equipment will pass to the Customer upon them taking possession of the Hired Equipment and remain with the Customer for the duration of the period of hire.
- 6.2 The Customer indemnifies the Owner against all liability, claims, damage, loss, costs and expenses in respect of the Hired Equipment should it break down due to the negligence of the Customer or become lost, stolen or damaged beyond fair wear and tear.
- 6.3 Risk in the Hired Equipment will revert back to the Owner once the Hired Equipment leaves the possession of the Customer at the direction of the Owner.
- 6.4 Any property of the Customer's under the Owner's custody or control will be entirely at the Customer's risk as regards loss or damage cause to or by the property.

- 6.5 If the Customer is using the Hired Equipment for contracting purposes, the Customer must maintain and keep current for the period of hire a Public Liability Insurance Policy in respect of its use of the Hired Equipment for an amount not less than the full value of the Hired Equipment and will provide evidence of such insurance to the Owner upon request being made.

7. Payment

- 7.1 Unless otherwise mutually agreed between the parties in the Hire Contract, payment will be due within 14 days of an invoice being issued by the Owner to the Customer.
- 7.2 If the Customer does not pay the invoice in full in accordance with clause 7.1, the Owner may retake possession of the Hired Equipment and any other property owned by the Owner that is in possession of the Customer. For the purpose of recovering possession, and without limiting the generality of the foregoing the Customer hereby irrevocably authorises and licences the Owner and its servants and agents to enter upon any premises where any property of the Owner may be stored and to take possession of such property.
- 7.3 All applicable taxes, duties or levies (including GST) on the hire of the Hired Equipment will be to the Customer's account.
- 7.4 The Owner may, without prejudice to any of its rights, either suspend or terminate any further Hire Agreements or require payment in advance where the Customer:
- 7.4.1 defaults on any payment due under the Hire Agreement;
 - 7.4.2 being a natural person, commits an act of bankruptcy;
 - 7.4.3 being a corporation, is subject to:
 - 7.4.3.1 a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - 7.4.3.2 a receiver, manager and/or an administrator under Part 5.3A of the *corporations Act 2001* being appointed to all or any part of the Customer's property and undertaking;
 - 7.4.3.3 the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - 7.4.3.4 any assignment for the benefit of creditors.
- 7.5 The Customer must pay to the Owner, in addition to any other costs payable under the Hire Agreement any costs and expenses incurred by the Owner in recovering or attempting to recover any unpaid amounts under the Hire Agreement (including but not limited to collection agency fees and legal fees).

8. Obligations

- 8.1 The Customer must:
- 8.1.1 ensure that the Hired Equipment is operated only by persons who have been suitably instructed in the safe and proper use of the Hired Equipment. Where necessary, such persons operating the Hired Equipment must be fully licensed or hold a Certificate of Competency;
 - 8.1.2 comply with all Work Health and Safety laws relating to the Hired Equipment and its operation;
 - 8.1.3 store the Hired Equipment safely and securely and must do all things necessary to protect the Hired Equipment from theft, loss or damage;
 - 8.1.4 ensure the safe loading, securing and transportation in accordance with all laws and manufacturer's guidelines of the Hired Equipment whenever moving or transporting such equipment (including without limitation any requirements of the relevant State Police);
 - 8.1.5 in the event that the Hired Equipment is damaged or has broken down:
 - 8.1.5.1 must immediately stop using the Hired Equipment, take all steps reasonably necessary to prevent any further damage and notify the Owner of the issue. The Customer must not repair or attempt to repair the Hired Equipment without the Owner's consent, should the Customer do so, the Hire Agreement may be deemed void and the Owner will not be liable to reimburse the Customer for any repairs or attempted repairs made to the Hired Equipment; and
 - 8.1.5.2 the Owner will do all things reasonably necessary to organise a replacement for the damaged or broken down Hired Equipment however will not be liable for any claims, damage, loss, costs and/or expenses should the Owner not be able to supply a replacement under this clause.

9. PPSA

- 9.1 The Customer agrees and consents to the Owner registering a security interest for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("PPSA") over the Hired Equipment, any proceeds arising from dealings with the Hired Equipment and all personal property, both present and future held by the Customer which is charged in the Owner's favour.
- 9.2 The Customer agrees and acknowledges:
- 9.2.1 to sign any documents and do any acts which the Owner may require to ensure that the Owner may acquire and maintain an enforceable and perfected security interest under the PPSA in respect of the Hired Equipment;
 - 9.2.2 that the security interest granted in the Owner's favour has attached to the Hired Equipment upon the Customer obtaining the possession of the Hired Equipment;
 - 9.2.3 to not grant any further security interests in the Hired Equipment without the written consent of the Owner;
 - 9.2.4 to not lease, hire, bail or give possession of the Hired Equipment to any other party unless the Owner first consents in writing;

- 9.2.5 to not disclose information of the kind that may be requested under section 275(1) of the PPSA; and
- 9.2.6 to notify the owner in writing of any change to the Customer's contact details within five (5) days from the date of such change.
- 9.3 The Customer waives its rights to receive a copy of any verification statement and/or any other notice required under the PPSA.
- 9.4 To the extent that Chapter 4 of the PPSA applies to any security interest under this hire agreement, the following provisions of the PPSA do not apply: sections 95, 96, 117, 118, 121(4), 125, 126, 128, 129 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143.
- 9.5 The Owner's rights under this clause are in addition to the Owner's rights under other law and the Owner may choose whether to exercise the rights provided for under this clause and/or under such other law, as they see fit.

10. Governing Law

- 10.1 This Hire Agreement is governed by the laws specified in the Hire Contract or otherwise by the laws in the State that the Hired Equipment is located.
- 10.2 The Owner and Customer irrevocably submit to the non-exclusive jurisdiction of the courts of such place.

11. Further Assurance

The Owner and Customer will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Hire Agreement.

12. Waiver or Variation

- 12.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 12.2 The exercise of a power or right does not preclude:
 - 12.2.1 its future exercise; or
 - 12.2.2 the exercise of any other power or right.
- 12.3 The variation or waiver of a provision of this Hire Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

13. Severability

If any provision of this Hire Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Hire Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Hire Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Hire Agreement.

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