

CONDITIONS OF HIRE

1. Definitions

- (a) 'Hire' means a person, firm or, corporation hiring Plant from the Owner, and any officer, employee or agent of the Hirer who signs this or any other document purportedly on the Hirer's behalf may be taken by the Owner as having full authority to sign on the Owner's behalf.
- (b) 'Owner' means CAPS Hire.
- (c) 'Plant' means the equipment described overleaf including all tools, accessories and spare parts supplied therewith which the Owner agrees to hire to the Hirer.

2. Period of Hire

- (a) The minimum period of hire shall be one half day of 4 hours duration.
- (b) Notwithstanding any other condition of this Agreement and without prejudice to any other remedies the Owner may have against the Hirer, the Owner may terminate this Agreement:
 - (i) at any time provided the Owner gives the Hirer 2 days written notice;
 - (ii) where the Hirer is subject to any winding up petition or order, appointment of receiver, official management, assignment, arrangement or compromise for the behalf of creditors, an act of bankruptcy, any action taken or threatened to be taken to place the Hirer in bankruptcy a judgement, which is unsatisfied or partly unsatisfied, a sequestration order, a writ or execution or where the Hirer ceases to carry on business, without notice;
 - (iii) where the Hirer breaches this Agreement without notice;
 - (iv) where the Hirer fails to pay his account within 30 days of the date of the relevant invoice or where the Hirer's payment by cheque is not honoured without notice.Upon termination of this Agreement the Owner shall be entitled to take possession of the Plant without notice for which purpose the Hirer hereby authorises the Owner, its servants and agents to enter upon any land or premises of the Hirer or under his control upon which the Plant is situated at the time of termination, to search such premises and to recover the Plant therefrom.
- (c) The period of hire shall commence:
 - (i) from the time the Plant is collected by the Hirer from the Owner's premises and shall expire at the time of return of the Plant to the Owner's premises; or
 - (ii) where the Owner has agreed to deliver or collect the Plant, from the time the Plant leaves the Owner's premises and shall expire at the time when the Hirer notifies the Owner that the Plant is available for collection provided that the Hirer has given the Owner sufficient notice to enable the collection and return of the Plant to the Owner's premises before 8 am on the day following the last day of hire.

(d) If the Hirer fails to:

- (i) return the Plant to the Owner's premises; or
- (ii) give the Owner sufficient notice to enable the collection and return of the equipment to the Owner's premises, before 8 am on the day following the last day of hire, then the Hirer shall incur an extra charge for each day or part thereof until the Plant is returned.

In this clause 2 'sufficient notice' means notice given to the Owner by the Hirer in writing, by telephone or personally between:

 - (a) 8 am and 4 pm on weekdays;
 - (b) 8 am and 11 am on Saturdays; and
 - (c) 8 am and 9 am on Sundays and Public Holidays.

3. Rate of Hire

- (a) The hire rates stated overleaf are based on the Hirer using the Plant for not more than 8 hours each day not being a Sunday or Public Holiday.
- (b) Where the Hirer uses the Plant for more than 8 hours in any day a charge of 50% of the daily rate of hire shall be incurred for each 8 hour period or part thereof the Plant is used in addition to the daily charge.
- (c) Where the Hirer uses the Plant on a Sunday or Public Holiday the rate indicated overleaf shall be charged.
- (d) The Owner reserves the right at any time and without notice to revise the hire rate charges stated overleaf.
- (e) All Government charges, rates and duties (including stamp duty) on hiring arrangements shall be charged as an extra.
- (f) GST to be inclusive of all tax invoices and shown separately on the tax invoice.
- (g) All damages shall be charged as an extra.

4. Breakdown

Where the Hirer notifies the Owner in writing within 24 hours of a breakdown occurring that renders the Plant unusable hire charges shall not be payable during such time as the Plant is unusable provided that the unusable condition of the Plant is not attributable wholly or partly to the Hirer's negligence misuse or breach of contract.

5. Conditions of Hiring Inspection Privilege and Waiver of Defects

Hirer accepts and hires the Equipment on an as is basis. Hirer acknowledges receipt of all of the equipment in good working condition and repair and declares that Hirer fully understands its proper operation and use. Hirer acknowledges and declares that Hirer has examined the Equipment and all hitches, bolts, safety chains, hauling tongues, together with all devices and materials used to connect the Equipment to Hirer's towing motor vehicle if any and Hirer declares that he has received all of such Equipment in a secure and operative condition. Hirer agrees to return the Equipment to Owner's premises upon the expiration and due date hereof in as good condition as when received by Hirer ordinary wear and tear excepted. Ordinary wear and tear shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift (eight hours per day five days per week) basis. Hirer agrees to pay immediately all charges and costs incurred.

6. Equipment becomes Unsafe or in Disrepair

Hirer will immediately discontinue use of the personal property should it at anytime following the execution of this agreement or any subsequent agreement become unsafe or in a state of disrepair. Furthermore the hirer will immediately notify Owner that the Equipment is unsafe or in disrepair and until such time as Owner has regained possession the Hirer agrees to take all steps reasonably necessary to prevent injuries to any person and all property from the Hire Equipment or product.

7. Compliance with Laws

Hirer acknowledges that Owner has no control over the use of the Equipment by Hirer and Hirer agrees at his sole expense to comply with all municipal, state and federal laws ordinances and regulations including the Occupational Safety and Health Administration Act of 1970 (OSHA) which may affect the Equipment while it is in the possession of and use by the Hirer. Hirer shall not permit any person who is not legally qualified to use the Equipment.

8. Operator

- (a) The Owner may supply at the request of the Hirer an operator to work the Plant who shall be under the direction and control of the Hirer and shall for those purposes be deemed to be the servant or agent of the Hirer who alone shall be responsible for all claims whatsoever arising in connection with the operation of the Plant by the operator or any third party.
- (b) Where the Owner supplies an operator the Hirer shall not allow any other person to operate the Plant without the Owner's prior written consent.
- (c) Unless the Owner supplies an operator to work the Plant the Hirer shall employ someone to operate the Plant and pay that person's wages.

9. Hirer's Obligations

The Hirer shall:

- (a) pay all hire charges and where applicable all delivery and collection charges on a strictly net cash basis unless otherwise stated;
 - (h) use the Plant in a skilful and proper manner and only for the purposes and within the capacity for which the Plant was designed;
 - (c) at his own expense supply all fuel, oil and grease necessary for the operation service and maintenance of the Plant;
 - (d) at his own expense service, clean and maintain the Plant in good and substantial repair and condition reasonable wear and tear excepted;
 - (e) upon completion of the hire period, clean the Plant or be charged a cleaning fee for any cleaning required by the Owner;
 - (f) accept full responsibility and liability for the safe-keeping of the Plant and indemnify the Owner for all loss theft or damage to the Plant however caused and without limited the generality of the foregoing whether or not such loss, theft or damage is attributable to any abandonment of any Plant, negligence failure or omission of the Hirer;
 - (g) ensure that any person using the Plant shall comply with all relevant statutes, regulations and by-laws that apply to the Plant;
 - (h) not in any way part with possession of the whole or part of the Plant. nor sell, assign, mortgage, pledge, sub-lease lend or otherwise deal with the whole or part of the Plant;
 - (i) not remove or cover up any plates or other marks that the Owner may affix or cause to be affixed to the Plant to indicate that the Plant is the property of the Owner;
 - (j) indemnify and hold the Owner harmless against all claims, actions, suits, demands, costs, expenses, including all legal costs and expenses in any way arising out of the use of the Plant by the Hirer during the period of hire whether caused by negligence of the Hirer his servants or agents or by negligence of any other person whatsoever or arising out of the condition of the Plant or the use to which it is put;
 - (k) indemnify and hold the Owner harmless against any union actions claims suits or demands and shall have no claim whatsoever against the Owner resulting from such union actions, claims, suits, demands or any interference, or protest that affects the Plant or property on which the Plant may from time to time be situate.
10. Where the Owner consents to make delivery of the Plant the Owner hereby undertakes that it will use its best endeavours to make delivery by the specified time but in any event the Owner shall not be liable to the Hirer for late delivery, non-delivery or any loss or damage occasioned to the Hirer as a result of such late or non-delivery.
11. To the extent that the Commonwealth State and Territorial laws permit:
- (a) all conditions, terms and warranties which are not expressly contained in this Agreement are hereby excluded;
 - (b) any warranty condition, description or representation whether express or implied as to the description, state, quality, merchantability or fitness of the Plant for the purpose for which it is hired is hereby excluded; and
 - (c) the Owner shall not be responsible or liable to the Hirer whether on grounds of breach of contract contractual duty or negligence for any loss or damage that the Hirer may directly or indirectly sustain or suffer arising from defects in or miscalculation, breakdown or failure of performance of the Plant and the Hirer hereby exonerates and releases the Owner from all claims and demands in respect thereof.
12. Duty of Care
- (a) The hirer being responsible for all equipment at all times. Hirer also responsible to inform their insurance company to cover hire equipment, that is in their possession. With no responsibility to the owner if not carried out.
 - (b) The hirer shall make prompt verbal report followed within 24 hours of the damage loss by a detailed written report of the damage loss:
 - (c) Duty of care by hirer expresses the following:
 - (i) damage or loss of the Plant in contravention of these conditions of hire;
 - (ii) damage to equipment during transit where transported outside the metropolitan area; or outside a radius of 50kms of the owner's premises outside the metropolitan area;
 - (iii) damage resulting from lack of lubrication or other normal servicing of the Plant;
 - (iv) theft or loss of the Plant unless locked in a secured place;
 - (v) damage to tyres;
 - (vi) damage caused by the Hirer's negligence or abuse;
 - (vii) damage caused by any illegal act;
 - (viii) any Plant in transit or use over water.
13. Title
- Title to the Equipment is and shall remain in Owner. If the Equipment is levied upon for any reason whatsoever, Owner may retake the equipment without notice or legal process, and may take all action reasonably necessary to do so.
14. Construction
- The paragraph headings used herein are for convenience only and are not to be used in constructing the meaning or intent of any of the terms or provisions of this Rental Contract.
15. Severance
- In the event of any part of these Conditions of Hire becoming void or unenforceable wether due to the provision of any statute or otherwise then that Part shall be severed from these Conditions of Hire to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaltered by any such severance.
16. Inurement of Certain Obligations
- The expiration or determination of these Conditions of Hire howsoever arising shall not affect such provisions hereof as are expressed or implied to operate or have effect thereafter and shall be without prejudice to any right or action already accorded to either the Hirer or Owner in respect of any breach of these Conditions of Hire by the other party.
17. Payment Terms
- All accounts are due and payable within fourteen (14) days of date of invoice or as arranged and confirmed in writing by the company. Disputes and/or claims do not constitute grounds for non payment of amounts other than those in dispute.
18. The Hirer shall pay all CAPS Hire's cost whatsoever in collecting hire fees and any other payments to be paid by the Hirer pursuant to the contract.