

CONDITIONS OF HIRE

1. CONTRACT OF HIRE

The Contract of Hire consists of these conditions and the particulars set out on the face of this document.

2. DEFINITIONS

In these conditions:

'OWNER' means Beta Hire Ballina Pty Limited.

'HIRER' means the Hirer specified on the face of his contract.

'EQUIPMENT' means any item specified on the face of this contract.

3. USE OF EQUIPMENT

3.1 The Hirer shall at all time use the equipment and that the Equipment is used:

- a) In a proper and skillful manner for the purpose intended by the manufacturer of the Equipment.
- b) In a manner that does not breach any occupational health and safety legislation or other government or local government requirement and in particular the Hirer shall ensure that:
 - 1) the Equipment is used by suitably trained and qualified persons and for this purpose a suitably qualified person shall only include persons who are adults and/or hold any licence or certificate of competency where the law or the Owner requires a person to hold that licence or certificate in order to use the Equipment.
 - 2) all safety information supplied with the Equipment will be conveyed to any person using the Equipment, and
 - 3) The Hirer shall attach or maintain any safety signs supplied with the Equipment and bring them to the attention of the User.
- 3.2 The Hirer shall be liable for any loss of or any damage to the Equipment howsoever arising except loss or damage arising from fair wear and tear or loss or damage to which clause 4 applies and shall on demand pay the Owner the cost of repairing or replacing any Equipment.
- 3.3 The Hirer acknowledges that the Hirer did not rely on any representation or advice of the Owner or on the skill or judgement of the Owner in respect of the Equipment, its selection, use, performance or the purpose for which it is hired.
- 3.4 The Hirer shall service, clean and maintain the Equipment at the Hirer's expense but if the Equipment breaks down then the Hirer shall:
 - a) not repair or attempt to repair the Equipment or permit any other person to do so without the Owner's consent, and
 - b) immediately notify the Owner and return the Equipment.
- 3.5 The Owner shall not be liable to the the Hirer or to any person using the Equipment while on hire for any loss, damage or injury (including any consequential damages or loss of profits) howsoever arising from the hiring, the use or operation of the Equipment.
- 3.6 Clause 3.5 and any provision of this Contract limiting the liability of the owner will be read subject to any provisions of the Trade Practices Act 1974 that cannot be excluded by agreement and where this contract applies to goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption then the liability of the Owner for any breach or condition or warranty implied by the Trade Practices Act 1974 (other than a condition implied by section 692) is limited at the election of the Owner to the replacement of the Equipment or the supply of equivalent Equipment or the repair of the Equipment and the period of hire shall be suspended from the return of defective Equipment until it or equivalent Equipment is re-supplied.
- 3.7 The Hirer shall not permit the Equipment to be used outside New South Wales.

4. DAMAGE WAIVER FEE

- 4.1 If the Hirer has agreed to pay the damage waiver fee upon entering the contract and pays the fee then notwithstanding clause 3.2 the Owner waives any right to claim from the Hirer for any loss or damage caused by fire, storm, earthquake, collision or accident for any sum in excess of:
 - a) in respect of any vehicle - \$850; or
 - b) in respect of any other Equipment -10% of the list price at then the date the hire commenced.
 - c) in respect of any Portaloos - \$500.
- 4.2 The waiver of damage shall not apply to any loss or damage:
 - a) in the case of all Equipment:
 - i) arising from overloading exceeding rated capacity, misuse, abuse or improper servicing or the use or operation of the Equipment in breach of any government regulations, this contract or the manufacturer's specifications.
 - ii) to tools or accessories (including batteries, hoses, points, drills, bits, grease guns, electric leads, tyres or tubes) in any circumstances.
 - iii) arising from the Equipment being lost or stolen or otherwise disappearing; or
 - iv) whilst the Equipment is located, used, loaded or transported on, over or adjoining water including, but without limiting the generality of the foregoing located, used loaded, unloaded transported over or on wharves, bridges, barges or vessels of any kind.
 - b) in the case of a motor vehicle:
 - i) any damage to the van body or any motor vehicle above level of the truck cabin or any damage to any truck-mounted loading device.
 - ii) the motor vehicle is driven by any person other than the nominated driver except in the case of illegal use.
 - iii) the motor vehicle is used in racing, pace-making or any reliability trial speed or hill-climbing test or being tested in preparation for any of the foregoing.
 - iv) the motor vehicle is used to convey any load in excess of that of which it was constructed or in excess of that allowed by law.
 - v) the motor vehicle is being driven by or is in charge of any person under the age of 25 years or under the influence of intoxicating liquor or any drug or having more than the legally prescribed level of alcohol blood content.
 - vi) the motor vehicle is driven or used other than on a formed road or when it is in a damaged or unsafe condition.
 - vii) the motor vehicle is driven or used for the conveyance of passengers of hire or reward.

5. DRIVER OF MOTOR VEHICLE

Where the Equipment is a motor vehicle, the Hirer shall not permit any person other than a person nominated on the face of this document to drive the vehicle and warrants that the nominated driver:

- a) is over the age of 25.
- b) holds a current motor vehicle driver's licence valid in New South Wales for the class required by law to drive the hired vehicle.
- c) has not been convicted of any offences relating to driving a motor vehicle under the influence of liquor or drugs or with more than the legally prescribed level of alcohol blood content; and
- d) has not been refused any motor vehicle insurance.

6. PERIOD OF HIRE AND RETURN OF EQUIPMENT

- 6.1 The period of hire shall commence from the time the Equipment is delivered to the Hirer and shall cease at the earlier of:
 - a) the time at which the Equipment is returned to the Owner.
 - b) where the Owner has agreed in writing to accept return of the Equipment other than at the Owner's premises, at the earlier of the time the Owner collects the Equipment or on the expiry of the five days after the date agreed for collection; or
 - c) the date on which the Owner repossesses the Equipment under this contract.
- 6.2 Not with standing any particular period of hire nor any waiver by the Owner of any default under this contract, the Owner may terminate this contract and repossess the Equipment in any of the following events:
 - a) if the Hirer fails to pay any of the hiring charge within two days of the due date.
 - b) the Hirer does, or permits to be done, any act or thing whereby then the Owner's rights in respect of the Equipment may be prejudiced.
 - c) the Owner commits any breach of this contract; or
 - d) the Owner becomes insolvent or bankrupt or makes an arrangement or composition with its creditors or, in the case of a Company, an order is made or a resolution is passed for the winding up of the Company.
- 6.3 For the purposes of repossessing the Equipment pursuant to this clause, the Owner may enter upon or into any premises where the Equipment may be and the Hirer shall indemnify and keep indemnified the Owner in respect of any claims, damages or expenses arising out of any such action.
- 6.4 Repossession of the Equipment by or on behalf of the Owner shall be without prejudice to any rights of the Owner to receive from the Hirer any monies due under this contract or any damages for any breach of this contract.

7. PAYMENT OF HIRING CHARGES

- 7.1 The Hirer shall pay to the Owner on the due date:
 - a) in the case of a motor vehicle - the licencing charges at the time and mileage rate shown on the front of this document and for the purpose of calculating the distance travelled the odometer or hubometer reading of the motor vehicle shall be taken to be final and binding by the parties unless if during the period of hire the odometer or hubometer appears to the Owner to be damaged, not including unreliable or in any way interfered with so as to affect the correct registration of distance driven or shall cease to function irrespective of whether or not there is any apparent evidence that the mechanism has been deliberately interfered with or deranged and in that event the Hirer shall pay the Owner the amount shown on the front of this contract for each day of the hiring or part thereof together with the charges applicable for 150 kilometres per day by way of a genuine and reasonable estimate of liquidated damages and not as a penalty and as consideration in substitution for the payment that the Hirer should have made in relation to the distance charged.
 - b) subject to clause 4 the amount of any loss or damage to the Equipment.
 - c) the amount of any fines and penalties paid or payable by the Owner in respect of any traffic, parking or other offence committed by the Hirer or any person permitted by him to drive or use the Equipment.
 - d) the amount of any tolls, levies, charges or other like charges paid or payable by the Owner to any government authority in respect of the use of the Equipment.
 - e) the price of petrol, diesel and other fuel required at the completion of hire to refill the fuel tank.
 - f) the cost of freight and other charges, whether incurred by the Owner or the Hirer, in respect of delivery or return of the Equipment and such charges shall be in addition to the time charges shown on the front of this contract
 - g) the cost incurred by the Owner in repossessing the Equipment.
 - h) the hiring charge and any other amount payable under this contract.
- 7.2 The hiring charges shall become due at the end of the period of hire or periodically in arrears after expiry of each payment period specified on the face of this contract.
- 7.3 The Owner reserves the right to vary the hiring charges at any time after the expiration of the initial period as set out on the face of this contract and that variation shall be effective immediately upon and after the notification in writing to the Hirer at the Hirer's address set out in this contract or at any place at which the Equipment is being used.
- 7.4 The Hirer shall reimburse the Owner on demand all stamp duty or other statutory charges payable in connection with the Contract, the cost of all consumable items supplied by the Owner used up in the use of the Equipment and if the Hirer fails to make any payment required under this Contract on the due date for such payment then the Owner may impose an account service charge of not greater than 1.5% per month calculated on the daily balance of all overdue monies.

8. DEPOSIT

- 8.1 The Owner shall hold the deposit specified in this Contract as security for the due performance by the Hirer of its obligations under this Contract and may apply the whole or any part of the deposit at any time against any monies due but unpaid or any expenses, loss or damage incurred by the Owner as a result of a failure by the Hirer to duly perform its obligations under this Contract.
- 8.2 The application by the Owner of the whole or any part of the deposit under this clause shall be without prejudice to any other rights the Owner has to receive from the Hirer any monies due or any damage or breach of this Contract.

9. NO ASSIGNMENT

This Contract or any benefit under it may not be assigned without the written consent of the Owner.

10. WARRANTY AUTHORITY

Any person who signs this Contract on behalf of the Hirer warrants that he or she has full authority to enter this Contract and that all information provided to the Owner is true and correct.