

Terms and Conditions of Hire and Credit Account Agreement

Definitions

In this agreement the following definitions apply

- (i) J A & SON Co Pty Ltd as Trustee for the J A & SON Trust and all related companies as defined in the company code will be referred to as the "Company".
- (ii) "Hirer" shall mean any person, corporation, firm, local government department or authority, semi government, government, successor's, shareholders, trustee's, administrators or liquidators, to whom or to which Equipment is rented by the "Company".
- (iii) "Equipment" shall include but not be limited to any piece of plant, machine, vehicle, with or without Labour, and or with any accessories and other equipment rented hereto or used in connection with, that is rented at any time to the "Hirer"
- (iv) "Overtime" hours shall mean hours outside the "normal work hours" of 07:00am to 15:30pm, Monday to Friday excluding Public Holidays.
- (v) "Indemnity" whenever it is herein provided that the "Hirer" shall indemnify the "Company", then the indemnity to be provided shall be a full and complete indemnity from and against liability in respect of all demands, action, claims, suits, costs and proceeds.
- (vi) "Labour" means and include the services of any machine operator or dogman, but not limited too provided by the Company to the Hirer at the Hirer's request to operate the Equipment.

1 Hire of equipment

- 1.1 The hiring of the "Equipment" will commence from the commencement date as agreed between the Company and the Hirer and continue for the term as also agreed between the Company and the Hirer.
- 1.2 The "Hirer" is entitled to use the "Equipment" for the hire period. Any extension of the hire period must be agreed to by the "Company".
- 1.3 The "Hirer" agrees to return the "Equipment" to the address of the "Company" on or before the end of the hire period as agreed and that failure to do so can be criminal theft and may be immediately reported to the police.

2 Payment for rental

- 2.1 The "Hirer" agrees to pay the "Company" the hire fee as agreed between the parties for the "Equipment" and or "Labour" for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight, "Overtime" services and other charges relevant to this agreement and the hire.
- 2.2 The required fees must be paid to the "Company" prior to or on the commencement date of the hire period or in accordance with clause 3.1 below. Account customers who do not pay their account on the terms agreed will be deemed to be in default. "Equipment" not returned on time and in accordance with this agreement will be subject to a continuance of the agreed rental until return is complete.
- 2.3 The "Company" may agree to make "Equipment" delivery and collection arrangements to and from the "Hirer's" site and the "Hirer" will pay to the "Company" any charges and expenses incurred in such delivery, installation and/or collection. The "Company" will use its best endeavours to deliver the "Equipment" by the agreed time but will not be liable to the "Hirer" for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 2.4 A cancellation fee may be charged by the "Company" where "Equipment" has been reserved by booking and the "Hirer" cancels the booking without reasonable notice or fails to take delivery of the "Equipment".
- 2.5 The "Company" may charge the "Hirer" a fee for accepting payment by credit card.
- 2.6 The "Company" reserves the right at any time without notice to revise the hire charges.

3 Credit Terms

- 3.1 Payment of all accounts shall be made on or before 30 days from the date of the invoice unless prior written arrangements have been made with the "Company". Failure to pay in made within 30 days of the date of the invoice constitutes an event of default by the "Hirer".
- 3.2 Payment of all "labour" shall be made on or before 14 days from the date of the invoice.

- 3.3 The "Company" may at any time without notice, terminate or suspend the "Hirers" right to rent "Equipment" or acquire services from the "Company" on credit and shall not be liable for any damages, costs, penalties or charges incurred by the "Hirer" as a result of the non-supply of "Equipment" or service by the "Company".
- 3.4 All invoices shall immediately become due and payable in the event of Default by the "Hirer", regardless of whether or not some invoices may not have become due for payment.
- 3.5 Payment shall be made by the "Hirer" to the "Company" without any set off or deduction against any other amount whatsoever.
- 3.6 The "Hirer" hereby gives the "Company" authority to make enquires as to the credit and financial responsibilities of the "Hirer" and/or the Directors and/or Shareholders in order to suitably qualify the "Hirer's" capacity to incur debt and repay any amounts to the "Company". These enquires shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to the "Hirer".
- 3.7 In the event of Default of payment by the "Hirer", the "Hirer" will be liable for all losses, liabilities, costs and expenses, including commission charged by debt recovery agents and solicitors costs on a full indemnity basis or on a solicitor and own client basis whichever is the higher, as incurred by the "Company" seeking to recover the default amount. The "Hirer" hereby charges its interest in any and all assets registered in its name as security for payment of monies it owes to the "Company".
- 3.8 In accordance with S.18e(8)(c) of the Privacy Act 1988, the "Hirer" acknowledges that the "Company" has informed it that certain items of personal information about the "Hirer" contained in/or relating to the "Hirer's" Application for Credit and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the "Hirer" agrees in accordance with s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h) and s.18N(1)(b) of the Privacy Act 1988 that use by the "Company" of the relevant information referred to in those sections may occur for the purpose of assessing the "Hirer's" credit application.

4 Damage waiver fee

- 4.1 The "Company" does not offer any damage waiver or insurance for the "Equipment" hired which means the "Hirer" shall be responsible for the cost of repairs or replacement of the "Equipment" due to damage occurring during the hire period by the "Hirer".
- 4.2 This clause in no way entitles the "Hirer" to, or implies the availability of, compensation from the "Company" for any liability incurred by the "Hirer" in relation to the use of the hired "Equipment".
- 4.3 This means no cover is offered to loss or damage which relates to or arises from:
 - (vii) breach of any statutory laws or regulations in connection with the use of the "Equipment" by the "Hirer";
 - (viii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the "Equipment";
 - (ix) theft, loss or damage by whatever cause to tools and/or accessories supplied with the "Equipment" including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
 - (x) lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the "Hirer" under the agreement;
 - (xi) disregard for instructions given to the "Hirer" by the "Company" in respect of the proper use of the "Equipment" or in contradiction of the Manufacturer's Instructions if supplied with the "Equipment" at the commencement of hire;
 - (xii) unexplained disappearances of the "Equipment";
 - (xiii) theft of the "Equipment" in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where proper security is not used by the "Hirer" to secure the "Equipment" whilst they are left unattended;
 - (xiv) loading or off loading "Equipment" from maritime vessels, transportation of "Equipment" on maritime vessels or the use of "Equipment" on any wharf or bridge or over any body of water.

5 Use, operation and maintenance

- 5.1 The "Hirer" agrees that the use of the "Equipment" carries with it dangers and risks of injury and the "Hirer" agrees to accept all dangers and risks.

- 5.2 The "Equipment" shall not be used by anyone other than the "Hirer" without the express permission of the "Company".
- 5.3 The "Hirer" will ensure that all persons operating or erecting the "Equipment" are instructed in its safe and proper use and where required hold valid proof of training or are fully licensed to use it.
- 5.4 The "Hirer" agrees to operate, maintain, store and transport the "Equipment" in a proper manner and where required strictly in accordance with any instruction provided by the "Company" and with due care and diligence.
- 5.5 The "Hirer" agrees that the "Equipment" will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by the "Company" or posted on the "Equipment" in regard to its operation, maintenance and storage.
- 5.6 The "Hirer" agrees to comply with all occupational health and safety laws and regulations relating to the use of the "Equipment" and associated operations.
- 5.7 The "Hirer" shall ensure the "Equipment" is returned to the "Company" clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the "Company".
- 5.8 The reasonable costs of fuel or other consumables provided by the "Company" and used by the "Hirer" are to be paid to the "Company" at the end of the hire period.

6 Hirer's warranties

- 6.1 The "Hirer" warrants that:
 - (i) the "Equipment" will be used in accordance with the terms and conditions herein and or any other terms and conditions set out in any other Company document provided to the Hirer;
 - (ii) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (iii) the "Hirer" holds or has personnel that hold a valid current driver's licence, operating licence or permit valid for the type of "Equipment" hired;
 - (iv) the "Equipment" will not be used for any illegal purpose;
 - (v) the "Hirer's" vehicle is suitable for towing the "Equipment" if required;
 - (vi) the "Hirer" will not, without prior written consent of the "Company", tamper with, repair or modify the "Equipment" in any way, or permit another to do so;
 - (vii) the "Hirer" agrees that the "Equipment" complies with its description, is in merchantable condition and is fit for the "Hirer's" purpose.
 - (viii) the "Hirer" agrees that the "Equipment" has been received by the "Hirer" clean and in good working order.
 - (ix) the "Hirer" will not in any way part with possession of the "Equipment", nor assign this hire contract, nor remove the "Equipment" from the State without the prior approval of the "Company".

7 Indemnity

- 7.1 To the full extent permitted by law the "Hirer" releases, discharges and indemnifies the "Company" from all claims and demands on the owner arising out of or consequent on the use or misuse of the "Equipment" during the hire period.
- 7.2 Without limiting clause 6.1 of this agreement, the "Hirer" agrees that to the full extent permitted by law, no warranties are given by the "Company" in respect of the "Equipment". Any liability of the "Company" pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the "Equipment" or the cost of resupplying the "Equipment", at the discretion of the "Company".

8 Loss, damage or breakdown of plant and equipment

- 8.1 The "Hirer" will be responsible for any loss or damage to the "Equipment" irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.
- 8.2 The "Hirer" is liable for the payment of the new list price of any "Equipment" not returned to the owner or "Equipment" written off.
- 8.3 The "Hirer" is liable for any lost revenue from "Equipment" that is written off or damaged until the "Equipment" is replaced or the "Equipment" is repaired and fit for use again.
- 8.4 If there is a breakdown or failure of the "Equipment" the "Hirer" shall notify the "Company" immediately for the appropriate action to be taken.

9 Termination

- 9.1 Without prejudice to any other remedies the "Company" may have against the "Hirer" and notwithstanding any specific period of hire

agreed between the parties, this agreement may be terminated by the "Company" as follows;

(i) Upon giving the "Hirer" one days written notice of termination at any time during the period of hire;

(ii) Without notice if the "Hirer" has a winding-up petition presented against it, or be wound up, or go into voluntary liquidation, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.

(iii) Without notice if the "Hirer" commits a breach of any fundamental term of this agreement in Clauses 5.2 to 5.6, 13.2 and 22.1 to 22.5.

10 Insurance

10.1 The "Company" will maintain current insurance policies in respect of the "Equipment" to its full insurable value. This insurance does not cover the "Hirer".

11 Liability

11.1 The "Hirer" will assume all risks and liabilities for, and in respect of, the "Equipment" and for all injuries to or deaths of persons and any damage to property howsoever arising from the "Hirer's" possession, use, maintenance, repair, storage or transport of the "Equipment".

12 Disclaimer

12.1 To the extent permitted by law the "Company" disclaims all liability for and does not give any warranties to the "Hirer" as to the condition of the "Equipment".

13 Title to equipment

13.1 The "Hirer" acknowledges that the "Company" retains title to the "Equipment" and that the "Hirer" has rights to use the "Equipment" as a mere bailee only. The "Hirer" agrees that the "Hirer" has no rights to pledge the "Companies" credit in connection with the "Equipment".

13.2 The "Hirer" agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the "Equipment" and not to conceal or alter the goods or make any addition or alteration to, the "Equipment".

14 Repossession and remedies on default

14.1 The "Company" may retake possession of the "Equipment" if the "Hirer" breaches any provision of this agreement or does not pay their account in the time agreed, notwithstanding anything else herein contained.

14.2 If repossession takes place, the "Company" shall only charge the hire fee up to and including the time of repossession.

14.3 All costs incurred by the "Company" in repossessing due to a breach are to be paid by the "Hirer" at the "Companies" discretion.

14.4 In the case of repossession due to a breach of this agreement the "Hirer" agrees to grant the "Company" permission to enter any premises where the "Equipment" listed in the Schedule is situated to disconnect, decommission and/or remove that "Equipment".

14.5 In addition to the "Companies" right to retake possession the "Company" is entitled in its discretion, following any breach of any provision of this agreement by the "Hirer", to terminate this agreement and/or sue for recovery of any damages or charges or loss suffered by the "Company", and/or to cancel any insurances effective in respect of the "Equipment" hired.

15 Completion of the hire period

15.1 The hire period is completed when the "Equipment" has been returned to the "Company" in the same condition as when it was hired:

(i) on or by the date and time as agreed between the parties, or

(ii) will be deemed completed on the date agreed for pick-up by the "Company".

15.2 Where pick-up is agreed the "Company" will arrange to pick-up the "Equipment" within a reasonable period after a request to do so and will issue the "Hirer" with a pick-up number on request.

15.3 The "Hirer" agrees to maintain the responsibility for the "Equipment" whilst it is awaiting pick-up.

16 Non-merger

16.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

Severance

17.1 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

Governing law

18.1 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

Privacy policy

19.1 The "Company" will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

Disputes

20.1 Both the "Company" and the "Hirer" agree that any disputes arising from the hire and use of the equipment or labour (except in regard to payment of fees or charges) shall be in writing within 14 days of invoice date and negotiated with a view to settlement before litigation is pursued.

PPS law

21.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law").

21.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.

21.3 The "Company" may register its security interest as a PMSI. The "Hirer" must do anything (such as obtaining consents and signing documents) which the "Company" requires for the purposes of:

(a) ensuring that the "Companies" security interest is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling the "Company" to gain first priority (or any other priority agreed to by the "Company" in writing) for its security interest; and

(c) enabling the "Company" to exercise rights in connection with the security interest.

21.4 The "Company" may recover from the "Hirer" the cost of doing anything under this clause, including but not limited to registration fees.

21.5 The rights of the "Company" under this document are in addition to and not in substitution for the "Companies" rights under other law (including PPS Law) and the "Company" may choose whether to exercise rights under this document, and/or under other law, as it sees fit.

21.6 To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the "Company" to give notice to the "Hirer"); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the "Company" to give notice to the "Hirer"); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

21.7 The following provisions of the PPS Law confer rights on the "Company": section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The "Hirer" agrees that in addition to those rights, the "Company" shall, if there is default by the "Hirer", have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the "Hirer" agrees that the "Company" may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.

21.8 The "Hirer" waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

21.9 The "Company" and the "Hirer" agree not to disclose information of the kind that can be

requested under section 275(1) of the PPS Law. The "Hirer" must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing the "Company" the benefit of section 275(6)(a) and the "Company" shall not be liable to pay damages or any other compensation or be subject to injunction if the "Company" breaches this sub-clause.

Security interests and sub-hire

22.1 The "Hirer" must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the "Equipment" other than with the express written consent of the "Company".

22.2 The "Hirer" must not lease, hire, bail or give possession ('sub-hire') of the "Equipment" to anyone else unless the "Company" (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the "Company" and must be expressed to be subject to the rights of the "Company" under this Agreement.

22.3 The "Hirer" may not vary a sub-hire without the prior written consent of the "Company" (in its absolute discretion).

22.4 The "Hirer" must ensure that the "Company" is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the "Equipment".

22.5 The "Hirer" must take all steps including registration under PPS Law as may be required to:

(a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling the "Hirer" to gain (subject always to the rights of the "Company") first priority (or any other priority agreed to by the "Company" in writing) for the security interest; and

(c) enabling the "Company" and "Hirer" to exercise their respective rights in connection with the security interest.

22.6 The "Company" may recover from the "Hirer" the cost of doing anything under this clause, including registration fees.

Acknowledgement

I/We the undersigned declare that all information provided to the "Company" for the purpose of assessing the "Hirer's" suitability for credit and rental of "Equipment" is true and correct in every particular.

I/We the undersigned further acknowledge that I/We have read and understand and agree to the above terms and conditions.

This agreement becomes binding on the parties named in the agreement once the Hirer has signed the agreement and given it to the Company, and the Company thereafter accepts an order from the Hirer for the hire of Equipment on Credit.

COMPANY NAME:

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TRADING NAME:

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PRINT NAME:

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TITLE:

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SIGNATURE:

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DATE:

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