

General Terms & Conditions of Hire

1. DEFINITIONS

- a. "Application for Credit" means the Credit Account Application document, including the Loss, Theft and Damage Waiver Option, completed by the Hirer and submitted to the Company.
- b. The "Company" means Tutt Bryant Hire Pty Ltd (ABN 59 087 847 489) trading as Tutt Bryant Hire and is the owner of the Plant and Equipment.
- c. "Hire Rate" means the amount as set out in the Hire Schedule.
- d. "Dry Hire" means the hire of Plant and Equipment without an operator.
- e. The "Hire" means the hire of Plant and Equipment and where applicable, the labour by the Company to the Hirer as set out in the Hire Agreement.
- f. The "Hire Period" means the period of hire of the Plant and Equipment specified in the Hire Schedule.
- g. The "Hirer" means the person, firm, entity or corporation that engages the services of the Company for the purpose of hiring Plant and Equipment.
- h. Hire Schedule means the document provided by the Company to you which provides the following details:
 - Equipment Hired
 - Hire Start Date and Expected Off Hire Date
 - Customer and Delivery Details
 - Hire Charges and
 - Other Applicable Charges
- i. "Hourly Hire Rate" means the amount as set out in the schedule of fees. This applies to Wet Hire only.
- j.. "Loss, Theft and Damage Waiver Excess" means the amount determined in accordance with paragraph 3 of the Loss, Theft and Damage Waiver Option.
- k. "Loss, Theft and Damage Waiver Fee" means the fee calculated in accordance with the Loss, Theft and Damage Waiver Option.
- l. "Loss, Theft and Damage Waiver Option" means the document annexed to the Credit Account Application.
- m. The "Plant and Equipment" means all plant and equipment including tools, accessories, parts and machinery of any type supplied to the Hirer. The Plant and Equipment shall be deemed to be owned by the Company whether owned by the Company or not.
- n. "PPSA" means the Personal Properties Security

Act 2009 (Cth) (as amended).

o. "Wet Hire" means the hire of Plant and Equipment with an operator employed by the Company.

2. HIRE AGREEMENT

2.1 The "Hire Agreement" consists of:

- a. Each Hire Schedule provided to the Hirer by the Company whether signed or not;
 - b. Any specific terms and conditions of Hire agreed to by both parties in writing;
 - c. Special terms specific to the type of Plant and Equipment hired to the Hirer and attached to the Hire Schedule;
 - d. These General Terms and Conditions of Hire; and
 - e. An Application for Credit completed by the Hirer and submitted to the Company;
- 2.2 The provision or acceptance of a Hire Schedule shall not form a separate agreement between the parties but shall constitute part of the Hire Agreement.
- 2.3 Any terms contained in any document supplied by the Hirer, including any terms in Hirer's purchase order, will not form part of the Hire Agreement.
- 2.4 If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents comprising the Hire Agreement, then the documents take precedence in the above order.

3. CONSTRUCTION

In these General Terms and Conditions of Hire, unless context otherwise requires or states;

3.1 Words importing:

- i. the singular include the plural and vice versa,
- ii. any gender includes the other gender;

3.2 An obligation of two (2) or more parties binds them jointly and severally;

3.3 If a word or phrase is defined, cognate words and phrases have corresponding definitions;

3.4 A reference to;

- i. a person includes a corporation, statutory body, the Crown and any other entity so defined;
- ii. a person includes the legal representatives, employees, successors and assignees of that person;
- iii. a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

4. TITLE

4.1 The Hirer acknowledges that in all circumstances the Company retains title to the Plant and Equipment (even if the Hirer enters liquidation,

administration, receivership or becomes bankrupt during the Hire Period and in no circumstances will it be deemed to be a fixture). The rights of the Hirer to use the Plant and Equipment are as bailee only.

4.2 The Hirer is not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant and Equipment in any way which is inconsistent with the rights of the Company as owner of the Plant and Equipment at all times.

5. PERSONAL PROPERTY SECURITIES ACT

5.1 The Hirer acknowledges and agrees that to the extent the Hire Agreement (governed by these General Terms and Conditions of Hire) creates a lease, as defined in the PPSA, the Company has a security interest in the Plant and Equipment for the purposes of the PPSA and to the extent applicable the PPSA applies.

5.2 The Hirer acknowledges that the Company may take all reasonable steps, including but not limited to registering any actual or impending security interest which the Company has over the Plant and Equipment on the Personal Properties Security Register established under section 147 of the PPSA in order to perfect the security interest and comply with the requirements of the PPSA.

5.3 The Hirer agrees without charge to provide all information and do all things reasonable to assist the Company in complying with the matters outlined in this Clause 5 of these General Terms and Conditions of Hire.

5.4 The Hirer undertakes to assist the Company to:

- (i) acquire and maintain one or more perfected security interests under the PPSA in respect of the Plant and Equipment and its proceeds;
- (ii) register a financing statement or financing change statement; and
- (iii) ensure that The Company's security position, and rights and obligations, are not adversely affected by the PPSA.

5.5 The Hirer will not:

- (i) register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without the Company's prior written consent; and
- (ii) create or purport to create any security interest in the Plant and Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Plant

and Equipment in favour of a third party without the Company's prior written consent.

5.6 The Hirer:

(i) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Hire Agreement;

(ii) agree that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(iii) agree that the following provisions of the PPSA will not apply and The Hirer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

5.7 Unless otherwise agreed and to the extent permitted by the PPSA, the Hirer and the Company agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

5.8 For the purposes of section 20(2) of the PPSA, the collateral is Plant and Equipment including any described in any Hire schedules and quotations provided by the Company to the Hirer from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.

5.9 The Hirer agrees to notify the Company in writing of any changes to the Hirer's details set out in the Application for Credit, within 5 days from the date of such change.

6. TERMS OF PAYMENT

6.1 Hire is charged for the time the Plant and Equipment is not in possession of the Company at the Hirer's request (inclusive of weekends and public holidays), not only the time in which the Plant and Equipment is used. This clause is varied only when the Plant and Equipment is supplied on a Wet Hire basis (with operator) and will be charged at an hourly or contracted rate for the periods of operation.

6.2 Payment in full for all hiring charges and any

other amounts payable in accordance with these Terms and Conditions is required 30 days from the date of invoice. No claims for credit will be recognised after 14 days from the date of the invoice.

6.3 The Company reserves the right to revise its schedule of fees and related charges without notice, unless the supply of the Plant and Equipment is varied by an agreed Hire Schedule.

6.4 The Company may charge interest on all amounts not paid by the Hirer by the due date at the rate of 2% above the nominated overdraft rate per month or part thereof, compounding monthly. In addition, without limiting the above, the Hirer will be liable to indemnify the Company for all expenses incurred by the Company in recovering any amounts which the Hirer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agent and legal costs).

7. HIRE PERIOD 7.1 The Hire Period commences on the earlier of the following:

- a. When the Hirer takes possession of the Plant and Equipment; or
- b. The time the Plant and Equipment is delivered to the address in the Hire Schedule.

7.2 In the event that the Hirer requires the Plant and Equipment to be delivered, where no authorised person is available to sign for the received Plant and Equipment, the person requesting the Plant and Equipment by phone agrees to these General Terms and Conditions of Hire.

7.3 The Hire Period is for an indefinite term and ends when the Plant and Equipment is back in the Company's control or possession.

7.4 The Hire Period includes weekends and public holidays.

7.5 A minimum Hire Period may apply in respect of certain items of Plant and Equipment ("Minimum Hire Period"). The Hirer will be advised at the time of hiring if a Minimum Hire Period applies. If the Plant and Equipment is returned by the Hirer to the Company before the expiration of the Minimum Hire Period, the Hirer is required to pay all Hire Charges in respect of the Minimum Hire Period.

7.6 Where Hourly Hire Rates are agreed, the Hourly Hire Rate will apply to Plant and Equipment under Wet Hire only, and will incur loadings for weekend, public holiday and night work.

- a. The Daily Hire Rate is based upon the Plant

and Equipment being hired for a maximum of 8 hours in any one day.

8. LATE RETURN

8.1 In the event that the Hirer fails to return the Plant and Equipment by the close of business on the day that the Hire was due to conclude, further hire charges will apply for each additional day that the Hirer fails to return the Plant and Equipment.

8.2 Should the Company agree with the Hirer to deliver and collect the Plant and Equipment, hire charges commence from the time the Plant and Equipment leaves the Company's premises until the Company is notified by the Hirer that the Plant and Equipment is available for collection, at which time the Company will provide an "OFF HIRE" number as verification that such notification has been received.

8.3 The notification must be given by the Hirer in time for the Plant and Equipment to be picked up and returned to the Company's premises within normal business hours on the day of cessation of hire.

8.4 In the event of insufficient notice being provided to the Company, the Hirer will be responsible for the safekeeping of the Plant and Equipment until collected the following day, the Hirer may be charged an extra half day hire at the Company's discretion.

9. BREAKDOWN

9.1 If the Hirer notifies the Company immediately of any breakdown, hire will not be charged during the time in which the Plant and Equipment is not in working order, unless such condition is due to negligence or misuse on the part of or attributable to the Hirer. Such notification does not absolve the Hirer from its requirement to safeguard the Plant and Equipment and in the event of a breakdown the Hirer must not repair or attempt to repair the Plant and Equipment without the prior consent of the Company.

9.2 If the Plant and Equipment breaks down or becomes unsafe, the Hirer must immediately stop using the Plant and Equipment and must take all reasonable steps to prevent injury to any persons or damage to property as a result of the condition of the Plant and Equipment.

9.3 The Company will not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer arising out of any breakdown

in the Plant and Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of the Company or any other reason whatsoever.

9.4 If any Plant and Equipment breaks down or is damaged due to the Hirer's negligence or misuse the Company will continue to charge the applicable hire rates until the Plant or Equipment has been repaired or replaced.

10. HIRER'S OBLIGATIONS

10.1 The Hirer must:

- a. Prior to the use of the Plant and Equipment determine the condition and suitability of the Plant and Equipment hired for the purpose required.
- b. Use the Plant and Equipment in a skilful and workman like manner and only for the purposes and within the capacity for which it was designed, acknowledging that the Company can give no warranty as to the said capacity.
- c. Ensure that the Plant and Equipment is operated by a suitably certified, trained or licensed operator (whether supplied by the Hirer at its cost or employed and provided by the Company) who will work entirely in accordance with the instructions of the Hirer or their authorised representative.
- d. At its own expense service, clean, fuel, lubricate and maintain the Plant and Equipment in good and substantial repair and condition, except for prearranged major servicing which will be carried out by the Company during normal business hours, by prior arrangement and agreement, except in the case of Wet Hire.
- e. Accept full responsibility for all flat and/or damaged tyres, except in the case of Wet Hire.
- f. Clean the Plant and Equipment thoroughly upon completion of the hire or be charged at the absolute discretion of the Company, a cleaning fee at a rate to be nominated by the Company for the cleaning required to be performed by the Company or its representative.
- g. Ensure the safekeeping of the Plant and Equipment, and except as specified hereafter, indemnify the Company for all loss, theft of or damage to the Plant and Equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer.
- h. Not claim any lien over the Plant and Equipment nor sell, transfer, charge or encumber in any way the Plant and Equipment, without the

Company's prior written consent, part with possession of the Plant and Equipment nor assign the benefit of the Hire Agreement.

- i. Not remove the Plant and Equipment or allow it to be removed from the state from which it has been hired without the Company's written consent.
 - j. Not alter, make any addition to, deface, or erase any identifying mark, plate or number on or in the Plant and Equipment, or in any other manner interfere with the Plant and Equipment.
 - k. Pay the Company all hire related charges and other costs as stipulated in accordance with the Company's terms of payment.
 - l. Accept responsibility and fully reimburse the Company for the cost of freight and other charges to retrieve the Plant and Equipment for any reason.
 - m. Ensure that all safety information supplied with the Plant and Equipment will be conveyed to any person using the Plant and Equipment.
 - n. Attach to the Plant and Equipment and maintain any safety signs supplied with the Plant and Equipment and bring them to the attention of any person using the Plant and Equipment, and ensure that they are clearly legible by the operator of the Plant and Equipment.
 - o. Ensure that all safety and operating instructions and notices are observed and are not defaced or removed from the Plant and Equipment.
 - p. Ensure that all operators of the Plant and Equipment wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by the Company.
 - q. Promptly pay all fines, penalties and other charges arising out of the use of the Plant and Equipment and reimburse the Company if the Company has made such payment.
 - r. Return all Plant and Equipment, where applicable, with a full tank of fuel or pay the Company the applicable rate to fill the tank.
- 10.2 The Company may inspect the Plant and Equipment from time to time during the Hire Period and the Hirer will permit or procure admission for the Company's representatives to the premises upon which the Plant and Equipment is situated for that purpose.
- 10.3 This Hire Agreement is personal to the Hirer and the Hirer must not allow or authorise any other person or entity to use, re-hire or have possession of the Plant and Equipment at any time, unless expressly agreed by the Company

in writing.

11. TERMINATION OF HIRE

10.1 Without prejudice to any other remedies available to the Company and notwithstanding any Hire Period specified, the Company may terminate the Hire Agreement;

a. At any time by giving the Hirer 24 Hours notice of its intention to terminate, such termination is to be effective as of the expiry of 24 hours; and
b. Without notice, if the Hirer commits any breach of the Hire Agreement, or do or permit to be done any act or thing whereby the Company's rights in or to the Plant and Equipment may be prejudiced, or have a winding up petition presented against it or be wound up, or enter voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.

11.2 Upon termination of the Hire Agreement, the Company is entitled to take possession of the Plant and Equipment and for this purpose the Hirer irrevocably appoints the Company as its agent and authorises the Company to enter on any land or premises upon which the Plant and Equipment is situated and agrees to indemnify the Company in respect of any claims, damages and expenses arising out of any action taken under this condition.

12. ENVIRONMENTAL LEVY

12.1 The Hirer agrees to pay the amount specified in the Hire Agreement in consideration of the fees and charges incurred by the Company from time to time in relation to the disposal of contaminants generated from the cleaning down of the Plant and Equipment and the upkeep of the treatment and catchment facilities. The Hirer also understands and agrees that this levy not only contributes to the above, but also contributes to, but is not limited to, the disposal of waste oils, greases, tyres, batteries and other environmental contaminants in connection with the hire and maintenance of the Plant and Equipment.

13. LOSS, THEFT & DAMAGE WAIVER OPTION

13.1 The Hirer is responsible for any loss, theft or damage to the Plant and Equipment whilst on hire and the costs of replacement or repairs to

such will be charged to the Hirer.

13.2 The Loss, Theft and Damage Waiver Option is not an insurance but where the Loss, Theft and Damage Waiver Fee has been charged to the Hirer, the Company, subject to exceptions listed herein, agrees upon certain requirements as listed below, to limit the Hirer's liability in certain circumstances, for loss, theft and damage to the Plant and Equipment to an amount called a "Loss, Theft and Damage Waiver Excess" and the Company will waive its right to claim against the Hirer for the loss, theft or damage to the Plant and Equipment.

13.3 Where the Loss, Theft and Damage Waiver Option has not been exercised, Hirer is required to provide to the Company a certificate of currency for an appropriate insurance policy to cover for the loss, theft or damage to the Plant and Equipment for an amount not less than the full new replacement value for the duration of the hire.

13.4 Where the Hirer has paid the Loss, Theft and Damage Waiver Fee, the Company will waive its right to claim against the Hirer for loss, theft or damage to the Plant and Equipment if the following conditions are met:

- (i) The Hirer has promptly reported the incident to the police and provided the Company with a written police report;
- (ii) The Hirer has co-operated with the Company in providing details of the incident, and evidence as required.
- (iii) The loss, theft and damage does not fall into one of the circumstances set out in clause 13.6.
- (iv) The Hirer has paid the Loss, Theft and Damage Waiver Fee.

13.5 The Loss, Theft and Damage Waiver Excess per item of Plant and Equipment is the amount equal to \$1,000.00 or 15% of the cost of the repairs and/or replacement of the Plant and Equipment (whichever is the greater).

13.6 Even where the Hirer has paid the Loss, Theft and Damage Waiver Fee, the Company **will not waive** its rights to claim against the Hirer for loss, theft and damage to the Plant and Equipment and the Loss, Theft and Damage Waiver Excess **will not apply** if the loss, theft or damage is the result of or has been caused by one of the following:

- (i) Damage due to misuse, abuse or overloading of the Plant and Equipment;
- (ii) The Hirer has not taken adequate precautions to safeguard the Plant and Equipment;

(iii) The loss, theft or damage was due to the Hirer's omission, negligence, wilful misconduct or recklessness;

(iii) Wrongful conversion of the Plant and Equipment;

(iv) Damage in contravention of the terms and conditions of the Hire Agreement;

(v) Damage from use in violation of any statutory laws and regulations;

(vi) Damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories;

(vii) Damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Plant and Equipment;

(viii) Glass breakage;

(ix) Damage relating to lubrication or other normal servicing of the Plant and Equipment;

(x) Damage to the Plant and Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;

(xi) Damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;

(xii) Damage caused by the exposure to any corrosive substances e.g. caustic, salt water, acid, paints, solvents, etc.

(xiii) Damage during transport, including but not limited to mobilisation, demobilisation from site to site, whether on public road or private road, howsoever caused, except where transported by the Company;

(xiv) Damage to items on which the Loss, Theft and Damage Waiver Option is not charged;

(xv) Damage to any aluminium scaffold, planks or ladders;

(xvi) Damage caused by vandalism;

(xvii) Damage to motor vehicles and trucks on hire.

(xviii) While the Equipment is being driven or towed on any road.

13.7 In respect of motor vehicles and trucks the following excesses apply for any damage or accidents caused by the Hirer:

i. Motor vehicles up to 4 tonne \$2,500.00 per incident;

ii. Trucks and vehicles over 4 tonne \$4,000.00 per incident.

13.8 Loss, Theft and Damage Waiver Option is compulsory for temporary accounts.

13.9 Loss, Theft and Damage Waiver Option is optional for 30 day accounts.

13.10 Loss, Theft or Damage Waiver Option will NOT apply where the Company determines that any of the applicable circumstances in clauses 13.6 (i)-(xviii) have respectively occurred, unless the Hirer is able to establish otherwise to the reasonable satisfaction of the Company.

14. EXCLUSION OF CONDITIONS AND WARRANTIES

14.1 Certain conditions and warranties may be implied into the Hire Agreement by the Competition and Consumer Act 2010 (as amended) and state legislation and these conditions are to be read subject to legislation, but no other conditions or warranties will be accepted as conditions of hire.

15. EXCLUSION OF LIABILITY

15.1 The Company and the Hirer agree that in the event of the Hirer suffering any damage or claim howsoever arising as a result of hiring the Plant and Equipment, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant and Equipment, the liability of the Company is limited to the repair or replacement of the Plant and Equipment and is not to include economic or consequential damages of any nature whatsoever.

16. MISCELLANEOUS

16.1 The person signing the Hire Agreement for and on behalf of the Hirer hereby covenants with the Company that he has the authority of the Hirer to make the Hire Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the Hire Agreement and hereby indemnifies the Company against all losses and costs incurred by the Company arising out of the person so signing the Hire Agreement not in fact having such power and/or authority.

16.2 Termination of the Hire Period will not affect any of the conditions that are expressed or implied to operate or have effect after termination.

16.3 Time is to be of the essence of all obligations of the Hirer in these conditions.

17. PROVISIONS SEVERABLE

17.1 It is hereby agreed as a term of the Hire Agreement that if any provision or part of any provision of the Hire Agreement is unenforceable,

such unenforceability will not affect any other part of such provision or any other provision hereof.

18. LAW AND JURISDICTION

18.1 These Terms and Conditions are to be governed and construed by the laws of the State or Territory in which the Hire is performed.

18.2 Any proceedings in respect of any matter or thing with respect to the Hirer must be instituted or carried in the State or Territory in which the Hire is performed.

19. PRIVACY

19.1 The Company will comply with the Privacy Act 1988 and Australian Privacy Principles in its dealing with the Hirer.

19.2 The Company may need to collect personal information about the Hirer, including but not limited to identification and contact details, credit or business history. The Hirer consents to the Company using the Hirer's personal and credit information in order to:

- (i) carry out functions associated with the hire of Plant and Equipment to the Hirer;
- (ii) assess the credit capacity of the Hirer;
- (iii) exercise the Company's rights under clause 5 of the Hire Agreement;
- (iv) market and provide goods and services to the Hirer;
- (v) enable the Company to improve on the quality of its goods and services;
- (vi) enter into agreements with the Hirer and third parties;
- (vii) carry out other administrative functions in the course of its daily business; and
- (viii) maintain a client relationship with the Hirer.

18.3 The Hirer consents to the Company disclosing the Hirer's personal and credit information:

- (i) to other credit providers or credit reporting bodies for the purpose of obtaining information on the Hirer's commercial credit history, standing, or activities; and
- (ii) to the Company's affiliated bodies, contractors and service providers from time to time, where necessary, in the course of its daily business function.

19.4 The Hirer has the right to access the personal and credit information about the Hirer which the Company holds.

19.5 The Company's privacy policy is available upon request or can be obtained from the

Company's website at:

<http://www.tuttbryant.com.au/tbh/privacy-policy-tbh.html>

20. WAIVER OF CONDITION

20.1 If the Hirer collects or receives the Plant and Equipment and that Plant and Equipment is broken, damaged or defective, the Hirer must notify the Company within 24 hours after the Hirer collects or receives the Plant and Equipment.

20.2 If the Hirer does not notify the Company within this time period, the Company is entitled to assume the Plant and Equipment was in good condition prior to being collected or received by the Hirer.