

Hire Contract Terms and Conditions in respect of Hire Equipment from Dynamic Hire Pty Ltd ABN 18 618 430 818

These are the terms and conditions which apply to the Hire Contract between Dynamic Hire Pty Ltd of 62 Stanley Street, Peakhurst NSW 2210 ABN 18 618 430 818 hereinafter called Dynamic Hire and the Hirer referred to in the Schedule in respect of the hire of plant and equipment to the Hirer as set out in this schedule.

1. The Hirer warrants that he is authorised to sign on behalf of the Hirer and agrees to be personally liable in the event of the Hirer disputes his authority.
2. The Hirer and Dynamic Hire agree to hire the equipment to the Hirer on terms and conditions as set out in this document. The Hirer agrees to accept the terms and conditions as set out in this document. The Contract and Hire Agreement is a complete Contract and does not form separate parts.
3. Should the Hirer provide to Dynamic Hire its email address as set out in this Contract then it agrees the terms and conditions as set out herein are as emailed. The Hirer authorises Dynamic Hire to enter the premises of the Hirer at any stage should it become necessary to re-take possession of the equipment from the Hirer.
4. The terms and conditions as set out in this agreement may be varied from time to time by Dynamic Hire giving notice of the amendment to the Hirer by either electronic means such as email, publishing of the amended terms and conditions on the Hirer's website or as disclosed by Dynamic Hire on its terms and conditions as displayed at the Hiring Premises. The terms and conditions of the Hirer as set out in the Schedule attached which is initialled by the Hirer.
5. The Hirer specifically acknowledges that the hire term is for a period as set out in the Schedule and cannot be extended beyond 364 days from the Hire commencement date.
6. **Hire Period**
 - 6.1 The Hire will commence from the date and time hereof or such other date as specified in the Schedule and will continue for the hire period as specified in the Schedule.
 - 6.2 The Hirer warrants that he will use the equipment subject to the terms and conditions of this document and terms and conditions on the Dynamic Hire website and warrants that he/she will return the equipment to Dynamic Hire at the expiry of the hire period which cannot be extended without the consent of Dynamic Hire.
 - 6.3 The Hirer shall be responsible for the hiring fee and for any additional fee payable as a result of the Hirer failure to return the equipment by the expiry of the hire period.
 - 6.4 In the event the equipment has been off-hired and an off-hire number issued, the customer is responsible to keep the equipment secure up to 5 days.
 - 6.5 The Hirer must:-
 - (i) Deliver the equipment back to Dynamic Hire when it is due back.
 - (ii) Return the equipment to Dynamic Hire in a clean and good state of repair.
 - (iii) Satisfy itself at the commencement that the equipment is suitable for its purpose.
 - (iv) To operate the equipment safely strictly in accordance with Law only for its intended use and in accordance with the manufacturers instructions with the supply which are by Dynamic Hire, posted on the equipment or on Dynamic Hire's website.
 - (v) The Hirer indemnified Dynamic Hire for all injury, personal or otherwise including damage to the equipment caused by or contributed by the Hirer to persons any or property in relation to the equipment and the Hirer warrants that it has adequate insurance to cover all liabilities caused as a result of the use of the equipment. The Hirer must also conduct a hazard and risk assessment before using equipment and comply with all Occupational Health and Safety Laws relating to the equipment and its operation.

6.6 Should an accident occur the Hirer shall immediately report the accident to Dynamic Hire within at least 48 hours of the accident or damage occurring. The Hirer warrants that it shall not allow the equipment to be on-leased or on-delivered to any third party and the Hirer is responsible for the said equipment from the time it is collected from Dynamic Hire until the time it is returned to Dynamic Hire. The Hirer acknowledges that the failure to return the equipment by the due date can be considered criminal theft.

7. **Payment by the Hirer to Dynamic Hire**

7.1 On or before commencement the Hirer agrees to pay the hire charge as set out in the Schedule either by charging it to a credit card or to the hirer's account. This authority includes any cost incurred in cleaning the equipment, in repairing or replacing the equipment which has been damaged by the Hirer, government charges and GST and other taxes, tolls, fines, penalties, levies or charges payable in respect of the use by the Hirer of this equipment. All costs incurred by Dynamic Hire in delivering and recovering possession of the equipment additional fees or charges for late return of the equipment including any cost of fuels, consumable provided by Dynamic Hire to the Hirer and not returned by the Hirer all reasonably incurred legal expenses incurred by Dynamic Hire in enforcing the Contracts as a result of the Hirers default.

The Customer as a Hirer authorises Dynamic Hire to charge its account or its credit card with such charge.

8. **Damage waiver fee**

The damage waiver fee is not an insurance but an agreement between Dynamic Hire and the Hirer. Your liability for damage can be limited, where you take out the Damage Waiver excess. Your liability to pay us, subject to Clause 8.2 is limited to an amount as set out in our terms and conditions as displayed at our premises and as set out on our website. Damage waiver excess payable in the event of damage is 20% of the current replacement costs of the equipment or the total cost of the damage including additional labour, delivery fees incurred, whichever is the lesser.

8.1 This clause ceases to operate at the end of the hire period unless an extension by Dynamic Hire is granted in writing and an additional agreed fee is paid.

8.2 This clause will not apply to loss or damage which arises from:

- (i) breach of this agreement where the breach increases the risk of loss or damage;
- (ii) breach of any statute or other law or regulations in connection with the use of the equipment by the hirer;
- (iii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
- (iv) theft by any means, 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;
- (v) lack of lubrication or non-adherence to other normal maintenance requirements that are required by or could reasonably be expected of the hirer under this agreement;
- (vi) disregard for instructions given to the hirer by Dynamic Hire 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;
- (vii) theft or otherwise disappearance of the equipment;
- (viii) 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;
- (ix) where the damage is caused to the equipment be driven or towed on any road that is unsealed or not a public road or where the damage occurred as a result of a collision or contact with any structure or object.

9. **Indemnity and liability**

- 9.1 To the full extent permitted by law the Hirer releases, discharges and indemnifies Dynamic Hire from all claims extent arising out of the use or misuse of the equipment under the hire except to the extent arising from the negligence or wilful default of Dynamic Hire. The Hirer will assume to the exclusion of Dynamic Hire all risks and liabilities for, and in respect of, the equipment and for all injuries to or deaths or persons and any damage to property howsoever arising from the Hirer's possession, use, maintenance repair, storage or transportation of the equipment.
- 9.2 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply. Dynamic Hire makes no representation and gives no warranties other than those set out herein and will not be liable to the Hirer or third party for any damage, cost or other liabilities howsoever (including for consequential loss) in relation to the hire of the equipment by the Hirer or anyone claiming through the Hirer.

10. **Breach of hire by Hirer**

- 10.1 If the Hirer breaches any of the clauses whatsoever in this Contract and does not remedy the breach immediately or within 24 hours from the date of notice of the breach or become bankrupt, insolvent or ceases business than Dynamic Hire shall be entitled to:
- (i) Terminate this Contract and/or sue for recovery of all moneys owing by the Hirer and/or repossess the equipment (and is authorised to enter any premises where the equipment is located to do so) and any damage and/or theft or waiver referred to in this agreement is immediately invalidated.

11. **Dispute Resolution**

- 11.1 You are required to check immediately all Hire charges as set out in the enclosed paperwork. Any dispute in relation to those hirer charges must be notified to Dynamic Hire in writing within 14 days of the commencement of the Hire. Where no communication is received from the Hirer disputing the Hire charges within the 14 days, you are deemed to have accepted the Hire charges as set out herein.
- 11.2 If a dispute arises in respect to this Hire Agreement, you acknowledge that you will attempt to negotiate this dispute with the assistance of the Hire and Retail Industry Association of Australia before commencing any litigation. Both parties acknowledge that such dispute resolution shall be implemented by way of mediation prior to the commencement of any Court proceedings.

12. **PPS registration**

- 12.1 The Hirer acknowledges that the owner retains title to the equipment and that the Hirer has rights to use the equipment as Bailee only. The Hirer agrees that the Hirer has no rights to pledge Dynamic Hire's credit in connection with the equipment and that the Hirer agrees not to attempt to dispose of the goods, pledge the goods or purport to Mortgage the goods hired pursuant to this agreement nor to part with personal possession of the goods without the written consent of Dynamic Hire.
- 12.2 The parties acknowledge to extend Chapter 4 of the Personal Property Security Act 2009 PPS Law applies to the security and interest under this agreement and that Dynamic Hire agrees that to the extent available under the PPS Law, that requirement does not apply and for the purpose of section 115 of the PPS Law, it is contracted out for the purpose of this agreement and in respect of all goods which are hired pursuant to this agreement and to which that section applies. Provisions of the PPS Law confer rights on Dynamic Hire. The Hirer agrees that in addition to those rights Dynamic Hire will if there is any default by the Hirer, have the right to cease, purchase, take possession of or apparent possession, retain, deal with or dispose of any goods not only under those sections but also in addition to independent rights under the documents and the Hirer agrees that Dynamic Hire may do so in any manner its sees fit including in respect of dealing and disposing of private or public sale, lease or licence.

- 12.3 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. Dynamic Hire and the Hirer agree not to disclose information of that 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 Dynamic Hire to benefit of section 275(6)(a) and Dynamic Hire will not be liable to pay damages or any other compensation or be subject to injunction if Dynamic Hire breaches this sub-clause.