

MACHINERY HIRE – CONDITIONS OF HIRE

1. Definitions

In these Conditions of Hire

- (a) The “Owner” is Bunbury Machinery (ABN 71008792256).
- (b) The “Hirer” refers to the person, firm or corporation hiring Plant from the Owner.
- (c) The “Plant” means all equipment including tools, accessories and parts supplied to the Hirer, except where the conditions relating to LOSS AND DAMAGE COVER states otherwise.

2. Terms of Payment

- (a) Hire charged for the time the plant is out of the possession of the OWNER at the Hirer’s request (inclusive of weekends and public holidays), not only the time the Plant is used.
- (b) Account customers are required to settle within 30 days from the month of invoice.
- (c) The Owner reserves the right to revise it’s Schedule of the Rates and related charges without notice.
- (d) Cash Customers – full payment on return of hire equipment.

3. Hire Periods

- (a) The half day rate (where applicable) is based upon the Plant being hired for a maximum hire period of 4 hours. If not returned to the said premises within the 4 hour period, the daily rate (see clause 3 b) will apply.
- (b) The daily rate is based upon the Plant being hired for a maximum hire period of 8 hours. If used In excess of 8 hours per day, additional hiring charge will be applied.
- (c) The weekly rate is based upon the Plant being hired for a maximum of 5 days unless otherwise specified.

4. Late Return

Hiring shall commence from the time the Plant is collected by the Hirer from the Owner’s premises, until returned to the said premises. In the event of the Hirer failing to return Plant to the Owner’s premises until after 8am on the day following the day of hire, the Hirer will be charged an additional day. Should the Owner agree with the Hirer to deliver and collect the Plant, hire charges shall commence from the time the Plant leaves the Owner’s premises until the Owner is notified by the Hirer that the Plant is available for collection. The notification shall be given by the Hirer in time for the plant to be picked up and returned to the Owners’ within the Owner’s normal business hours on the day of cessation of hire. In the event of insufficient notice being given, the Hirer will be held responsible for the Plant until collected the following day and may be charged an extra half day at and within the Owner’s absolute discretion.

5. Breakdown

If the Hirer notifies the Owner immediately of any breakdown, hire will not be charged during the time in which the Plant is not working, 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 in the event of a breakdown, the Hirer shall not repair or attempt to repair the Plant without the prior consent of the Owner. If the Plant breaks down or becomes unsafe, the Hirer must immediately stop using the Plant and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Plant. The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer arising out of any breakdown in the Plant whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or any other reason whatsoever. If any Plant breaks down or is damaged due to the Hirer’s negligence or misuse, the Owner will continue to charge hire charges until the Plant has been repaired or replaced.

6. Hirer’s Obligations

6.1 The Hirer shall:

- (a) Prior to the use of the Plant, determine the condition and suitability of the Plant hired for the purpose required.
- (b) Use the Plant in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
- (c) Ensure that the Plant is operated by a suitably trained or licensed operator (whether supplied by the Hirer at its cost or employed and provided by the Owner) who will work entirely in accordance with the instructions of the Hirer or his authorised representative.
- (d) At its own expense, service, clean, fuel, lubricate and maintain the Plant in good and substantial repair and condition, except for prearranged major servicing which will be carried out by the Owner during normal working hours.
- (e) Accept full responsibility for all and/or damaged tyres.
- (f) Clean the Plant thoroughly upon completion of the hire or be charged, at the absolute discretion of the Owner, a cleaning fee at a rate to be nominated by the Owner for any cleaning required to be performed by the Owner or it’s representatives.
- (g) Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Plant during the hire period however arising, whether from negligence of the Hirer or Owner or otherwise and without limiting the generality of the foregoing whether or not the Plant was being operated by a servant of the Owner or any other person for whose acts the Owner might be or is held to be responsible in connection with the operation of the Plant.
- (h) Not to be entitled to claim any lien over the Plant nor sell, transfer, mortgage, charge or encumber in any way the Plant nor, without the Owner’s prior written consent, part with possession of the Plant nor assign the benefit of the hire agreement.
- (i) Not to be entitled to remove the Plant or allow it to be removed from the state from which it is hired without the Owner’s written permission.
- (j) Not alter, make any addition to, deface or erase any identifying mark, plate or number on or in the Plant or in any other manner interfere with the Plant.
- (k) Understand and accept that an additional charge for LOSS AND DAMAGE COVER (see also Condition 8 below) is automatically included in the Owner’s charges for any Plant (excluding accessories) where the replacement value of the Plant exceeds \$150 except upon the Owner receiving written advice from the Hirer that the LOSS AND DAMAGE COVER is not required and that the Hirer accepts the full replacement or reinstated costs (whichever is applicable) for any loss, theft or damage to the Owner’s Plant based on the then current list price of the Plant. In the event that such written advice is received from the Hirer, the Owner may at its absolute discretion, require proof that the Hirer has current insurance policies which insure the Plant during the hire period for its full replacement or reinstated cost.
- (l) Pay to the Owner all hire and related charges and other costs as stipulated in accordance with the Owner’s payment terms.
- (m) Accept responsibility and fully reimburse the Owner for the cost of freight and other charges to retrieve Plant for any reason.
- (n) Ensure that all safety information supplied with the Plant will be conveyed to any person using the Plant.
- (o) Attach the Plant and maintain any safety signs supplied with the Plant and bring them to the attention of any person using the Plant and ensure that they are clearly legible by the operator of the Plant.
- (p) Ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Plant.

- (q) Ensure that all operators of the Plant wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by the Owner.
- 6.2 The Owner may inspect the Plant from time to time during the hire period and the Hirer shall permit or procure admission for representation of the Owner to the premises upon which the Plant is situated for that purpose.
- 6.3 When the plant being hired is a motor vehicle (e.g. forklift):
 - (a) The Hirer shall promptly pay all fines, penalties and other charges arising out of the use of the motor vehicle and must reimburse the Owner if the Owner has made such payment.
 - (b) The Hirer just return all motor vehicles with a full tank of fuel or pay the Owner the cost of filling the tank.

7. Termination of Hire

- 7.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement:
 - (a) At any time, by giving the Hirer 24 hours notice of its intention to so terminate, such termination to be effective as of the expiry of 24 hours.
 - (b) Without notice, if the Hirer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owner's rights in or to the Plant may be prejudiced, or have a winding up petition presented against it or be wound up, or go into 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.
- 7.2 Upon termination of this hire agreement, the Owner shall be entitled to take possession of the Plant and for this purpose the Hirer irrevocably appoints the Owner as its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Hirer upon which the Plant is then situated and agrees to indemnify the Owner in respect of any claims, damages and expenses arising out of any action taken under this condition.

8. Loss and Damage Cover

- 8.1 The Hirer is responsible for theft, loss or damage to Plant and/or its attached tools and accessories whilst on hire and the costs of replacement or repairs to such will be charged to the Hirer. Where LOSS AND DAMAGE COVER charges have been charged to the Hirer, the Owner agrees upon prompt submission of a written Police Report, to waive its rights to claim loss and damage to the Plant caused by fire, storm, collision, accident, theft or burglary, providing adequate precautions have been taken to safeguard the Plant and the loss and damage was not incurred due to negligence by the Hirer. Such waiving of rights is subject to payment by the Hirer of an excess of:**
 - (a) In the event of loss of the Plant: \$150 per item or 10% of the new replacement cost of repairs to the Plant (whichever is greater).
 - (b) In the event of damage to the Plant: \$150 per item or 10% of the cost of repairs to the Plant (whichever is greater).**EXPRESSLY EXCLUDED FROM THE ABOVE LOSS AND DAMAGE COVER ARE LOSS OR DAMAGE AS DEFINED BELOW:**
 - (a) Damage due to misuse, abuse or overloading of the Plant.
 - (b) Mysterious disappearance or wrongful conversion of the Plant.
 - (c) Loss or damage in contravention of the conditions of this hire agreement.
 - (d) Loss or damage from use in violation of any statutory laws and regulations.
 - (e) Loss or damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories.
 - (f) Damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Plant.
 - (g) Glass breakage.
 - (h) Loss or damage relating to lack of lubrication or other normal servicing of the Plant.
 - (i) Loss or damage to the Plant whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind.
 - (j) Loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of underrated or excessive length of extension leads on electric powered tools and machines.
 - (k) Damage caused by exposure to any corrosive substances e.g. caustic, cyanide, salt water acid etc.
 - (l) Theft of the Plant unless reasonable locked and secured.
 - (m) Loss or damaged during transport, except where transported by the Owner.
 - (n) Loss or damage to the items on which the LOSS AND DAMAGE COVER premium is not charged.
 - (o) Loss or damage caused by the negligence of the Hirer.

9. Exclusion of Conditions and Warranties

Certain conditions and warranties may be implied into the hire agreement by the Trade Practices Act and State legislation and these conditions are to be ready subject to such legislation but no other conditions or warranties shall be implied in these conditions of hire.

10. Exclusion of Liability

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

11. Miscellaneous

- (a) The person signing the document for and on behalf of the Hirer hereby covenants with the Owner that he or she has the authority of the Hirer to make this agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the persons so signing this agreement not in fact having such power and/or authority.
- (b) Termination of the hire period shall not affect any of the conditions that are expressed or implied to operate or have effect after termination.
- (c) Time is to be the essence of all obligations of the Hirer in the conditions.