

PLANT DRY HIRE AGREEMENT

Standard Terms and Conditions

1. Definition and Interpretation

In this contract, unless the contrary intention appears,

"Contract Details"

means the details specified in the attached Annexure;

"Business Day"

means a day when banks are open for business in Australia other than a Saturday, Sunday or public holiday;

"Commencement Date of Hire"

means the date stated in the Contract Details for the commencement of hire of the equipment and or the date mutually agreed between the owner and the hirer;

"Completion Date of Hire"

means the date stated in the Contract Details for completion of the hire of the equipment and or the date mutually agreed between the owner and the hirer;

"Contract Amount"

means the lump sum amount specified in the Contract Details or, if a schedule of rates applies, the amount calculated in accordance with the rates set out in Contract Details, adjusted in accordance with this Contract;

"Week"

means calendar week;

"Dry Hire"

means the hire of the equipment without operator or fuel;

"Wet Hire"

means the hire of the equipment with operator;

"Equipment"

means the equipment described in the Contract Details and every part and component of it;

"Good Condition"

means that the equipment as mentioned in the contract details, is in good condition and good appearance throughout.

That the equipment has been properly maintained and serviced in accordance with the original equipment manufacturers recommendations and requirements.

That all safety and personnel protection equipment is in place and is fully operational.

"Inclement Weather"

means adverse weather conditions preventing the safe operation of the equipment.

"Down Time"

means time where the equipments is not operable due to major breakdown deemed Ground Below responsibility.

"Hirer"

means the persons named in the Contract Details;

"Hire Period"

means the period of time commencing on the Commencement Date of Hire & expiring on the Completion Date of Hire;

"Month"

means the calendar month;

"OEM"

means the Original equipment Manufacturer;

"Owner"

Ground Below Group Pty Ltd

"Person"

includes a firm, unincorporated association, corporation and a government or statutory body or an authority;

"Site"

means the place referred to in the Contract Details and any other place provided by the Hirer for the purposes of the Contract;

"Default" means:

- i) Where the Hirer makes default in payment of any moneys payable pursuant to this Agreement on the due date for such payment and such default continues for seven (7) days;
- ii) The Hirer fails to observe or perform any of its obligations pursuant to this Agreement;
- iii) Any execution is levied or distress is made against any of the Hirer's property;
- iv) The Hirer commits an act of bankruptcy or insolvency or is subject to any action taken or threatened to be taken to place the Hirer in bankruptcy, is subject to any winding up petition or order, the appointment of a receiver or administrator, is under official management or makes any assignment, arrangement or composition for the benefit of it's creditors.

"Demobilisation"

Means transport to the owner's premises at the end of the Hire Period from the Hire Location or such other location at which the equipment may be situated at the end of Hire Period;

"Hire charges"

means the Hire Charges specified in the Contract Details;

"Off Hire"

means the hirer has properly advised the owner that the machine is "Off Hire" and is in "Off Hire Condition " and the owner acknowledges and agrees, only then is the machine is deemed "Off Hire".

"Off Hire Condition"

means that the machine is a condition where the hirer has met all of his obligations for service repairs and maintenance in accordance with the hire agreement

"Hire location"

means the Hire Location specified in the Contract Details;

"Mobilisation"

means transport of the equipment to the Hire Location from the Owner's premises or from such other premises as the equipment may be stored prior to the commencement of the Hire Period;

"Ordinary wear and tear"

means the normal deterioration of the equipment caused by ordinary and reasonable use taking into accounts the Hire Location and ground conditions specified in the schedule;

"Owner's premises"

50-54 Bennett Avenue, Melrose Park, SA, 5039

References to schedules or clauses are references to schedules or clauses in this contract;

Words importing the singular include the plural and vice versa and words importing any gender include the Other genders, and

Headings are inserted for convenience only and do not affect the interpretation of this Contract;

2. Charges

The Hirer will advise the Owner in writing of the equipment's engine hour reading on each Friday during the Hire Period & provide daily plant inspection reports weekly.

The Hirer must pay the Hire Charges and, if applicable, the cost of mobilisation and de-mobilisation, within 30 days of the date of the Owner's invoice.

The Owner will invoice the Hirer in accordance with the billing frequency specified in the schedule.

Except in the case of breakdown requiring major repairs which are the responsibility of the Owner pursuant to clause (5) and where the Hirer notifies the Owner within 24 hours of such breakdown, the Hirer must pay the Owner at least the minimum chargeable hours per week specified in the schedule.

All spare parts and back charges will incur a 15% handling charge and be invoiced separately to the machine hire invoice.

3. Downtime

Ground Below must be properly notified immediately of any down time.

Claims for downtime due to breakdown or major repairs which the responsibility of Ground Below shall be made in writing via Email.

Claims for downtime where proper notification is not provided will not be recognised.

Where down time is authorised the breakdown hours shall be deducted from the minimum hours and shall be calculated as follows.

In cases where the machine has worked more than the minimum hours and the machine has had break down hours, the hours shall not be deducted from the hours worked

6. Off-Hire

The machine is considered off hire when the hirer has properly advised the owner that the machine is no longer being used and has been delivered/off hired back to Ground Below depot.

Once Off Hire notification is given to the owner, it is Ground Below's responsibility to return the equipment to the owner's yard and or any other location by the owner.

The hire period ends when the machine is delivered to the owner's premises.

Hire fees are due and payable until the machine is received at the owners premises.

7. Tyres

As part of the Ground Below procedure to inspect and test equipment prior to mobilisation, we undertake an industry recognised measurement of the condition and wear of each individual tyre fitted to equipment.

The results of the test are documented and provided to the hirer at the beginning of the hire period.

At the end of the hire period, the test is again conducted by a third party and a percentage of wear is established.

The hirer is then charged the percentage of wear multiplied by the cost of supplying a new tyre.

This formula applies to each tyre fitted to the vehicle.

Charge out rates for tyres will vary depending on the size and type of vehicle.

Tyres replaced by hirers must be of the same quality, size, make and equivalent condition as the original tyres fitted to the vehicle.

8. Permitted Use

The Hirer represents to the Owner that the Hirer will only use the equipment:

- a) At the Hire Location specified
- b) The Hirer may use the equipment in an alternative location with the written consent of the Owner, and
- c) In the ground conditions specified in the schedule.
- d) Only person permitted to operate the machine is VOC'd and qualified operators.

9. Operation

- a) The operation of the equipment can only commence once the Hirer has completed the following paperwork and forwarded this information to the Owner
 - i) Signed Plant Hire Agreement
 - ii) Purchase Order has been supplied
 - iii) Dry Hire a Certificate of Currency to cover the equipment
- b) The Hirer must ensure that the equipment is operated, at the Hirer's expense, by a suitably qualified and experienced operator who must operate the equipment:
 - i) in accordance with the manufacturer's recommendations and requirements as set out in the operator's manual
 - ii) in a safe and prudent manner; and
 - iii) in compliance with all relevant statutes, regulations and by laws.
- c) Rectification of damage caused by misuse or use by unauthorised persons shall be the hirer's responsibility and repairs shall be to the Hirer's account.

10. Maintenance and Repairs

a) Major Repairs

The Owner must at its own expense rectify any major power train failures in the equipment including failures in the engine, torque converter, transmission, differential and final drives unless such failure is wholly or partly attributable to:

- i) the Hirer's failure to service the equipment or conduct oil sampling in accordance with this agreement;
- ii) the Hirer's use of the equipment in adverse conditions;
- iii) the Hirer's failure to operate the equipment in accordance with the manufacturer's requirements or recommendations;
- iv) the Hirer's misuse of the equipment; or
- v) where the context permits, any default by the Hirer pursuant to this agreement.

The Hirer may, with the Owner's prior written consent, rectify or arrange the rectification of such failures but only on the terms and conditions contained in such written consent and following receipt of the Owner's written purchase order to the repairer.

b) Minor Repairs and Servicing

The Hirer must at its own expense:

- i) maintain the equipment in good and substantial repair and condition, reasonable wear and tear excepted;
- ii) comply with the manufacturer's recommended track tension and tyre pressures;
- iii) service the equipment in accordance with the manufacturer's specifications;
- iv) conduct manufacturer's oil sampling analysis at every oil change on all compartments and forthwith provide the Owner with copies of such analysis;
- v) replace, where applicable, all cutting edges, bucket teeth, ripper teeth or boots and all other ground engaging tools, when such tools have reached their maximum degree of wear according to the manufacturer's specifications;
- vi) replace any staked or burst tyre with a new equivalent brand tyre.
- vii) undertake all minor running repairs including, without limitation, electrical repairs, tyre repairs, repair or replacement of all hydraulic hoses and rectification of oil leaks.
- viii) Down time for minor repairs is not claimable.

11. Further Charges

- a) Upon the return of the equipment, the Hirer shall pay to the Owner a charge in respect of wear to ground engaging tools where those tools are more worn than at the commencement at this Agreement, unless refurbished prior to arrival at owners depot.

12. Unsafe Equipment

The Hirer will immediately cease using the equipment should it at any time during the Hire Period or any extension thereof become unsafe or in a state of disrepair. The Hirer must immediately notify the Owner that the equipment is unsafe or in a state of disrepair.

13. Indemnity

The Hirer must indemnify the Owner and keep the Owner indemnified against all claims, actions, suits, demands, costs, expenses including all legal costs on a solicitor and client basis in any way arising out of the use or state of the equipment by the Hirer its servants or agents or any other person whatsoever during the Hire Period or any extension thereof.

14. Inspection

The Owner may at any reasonable time upon giving reasonable notice inspect the equipment during the Hire Period or any extension thereof and the Hirer hereby authorises the Owner and its servants and agents to enter any premises under the control of the Hirer for the purposes of such inspection.

15. Property in the Equipment

- a) The equipment is and shall remain during the Hire Period and any extension thereof, the property of the Owner.
- b) The Hirer must not in any way part with possession of the equipment or any part of it and must not sell, assign, mortgage, pledge, sublease or lend the equipment.

16. Losses

The Hirer shall not be entitled to claim any loss or damages (including without limitation any consequential loss or damages) for defective equipment, late collection or delivery or non-delivery.

17. Warranties

To the extent allowable by the law of the Commonwealth or the State of Queensland:

- a) all warranties, conditions, descriptions or representations whether express or implied as to the description, state, quality, merchantability or fitness for purpose of the equipment for which it is hired is hereby excluded; and
- b) the Owner shall not be liable to the Hirer for any loss and/or damage that the Hirer may directly or indirectly suffer arising from breakdown for failure of performance of the equipment whether such claim arises out of breach of contract, contractual duty or negligence or any reason whatsoever and the Hirer hereby releases the Owner from all claims in respect thereof.

18. Risk and Insurance

During the Hire Period and any extension thereof, the equipment shall be at the risk of the Hirer and during that period:

- a) the Hirer must at its own expense insure the equipment against loss and/or damage for the insurable value specified in the schedule with an insurer acceptable to the Owner; and
- b) the Hirer, as part of this agreement and on demand, must produce a certificate of insurance to the Owner.

The Hirer hereby irrevocably authorises the Owner in its absolute discretion to receive any insurance moneys payable pursuant to a policy of insurance effected pursuant to this agreement or payable by any other person in respect of loss or damage to the equipment and the Hirer hereby appoints the Owner to be the Hirer's attorney to recover or compromise any claim for loss or damage under such policy and to give effect and/or release and receipts for the same.

The Hirer must at all times comply with the terms and conditions of any policy of insurance and must not do or fail to do any act to prejudice such insurance.

19. Further Indemnity

The Hirer must indemnify and keep the Owner indemnified in respect of any liability, loss (including, without limitation, consequential loss) or expense of whatever nature which the Owner may suffer as a result of the Hirer's failure to comply with any of the terms and conditions of:

- a) this Agreement; or
- b) any policy of insurance effected pursuant to this Agreement.

20. Security

The Hirer;

- a) Must at its own expense provide a safe and secure area to store the equipment when not in use.
- b) Accepts responsibility for rectification of damage caused by vandalism.
- c) Shall be responsible for any excess imposed on the owner as result of an insurance claim lodged for rectification of damage.
- d) At all times shall grant access to personnel required to enter the compound for the purpose of repairs and maintenance.
- e) The above mentioned conditions and requirements apply to both wet and dry hire.

21. No Assignment

The Hirer must not, without prior written consent of the Owner, assign or otherwise deal with its rights or interests pursuant to this Agreement.

22. Entire Agreement

This Agreement constitutes the entire agreement between the Owner and the Hirer who agree that no promise, oral or written statement, representation, warranty, covenant or undertaking given or made by the Owner or the Owner's agents or employees prior to the parties entering into this Agreement is enforceable by either party.

23. Termination

Without prejudice to any other remedies available to the Owner, and despite any other term or condition of this agreement, the Owner may terminate this Agreement:

- a) on ten days written notice for any reason whatsoever;
- b) immediately upon giving written notice in the case of default; and
- c) immediately upon giving written notice to the Hirer in the case of equipment failure.

Upon termination of this agreement, the Owner may, at the expense of the Hirer, take possession of the equipment and the Hirer hereby authorises the Owner or its agents or employees to enter upon any land or premises under the control of the Hirer for the purpose of taking possession of the equipment.

This Agreement is governed by and shall be interpreted in accordance with the laws of Queensland and, where applicable, the laws of the Commonwealth of Australia and the Owner and Hirer submit to the exclusive jurisdiction of the Courts of Queensland.

22. Special Conditions

Please note the equipment remains on hire and hire fees are payable until such time as the machine is delivered back to Ground Below and or until such time as Ground Below deem the machine to be off hire and the contract is at an end.

Executed as an agreement:

Executed for and on behalf of GROUND BELOW PTY LTD ABN: 90 637 365 318	
Signature of Authorised Representative	Signature of Witness
Name of Authorised Representative	Name of Witness
Position of Authorised Representative	

Executed for and on behalf of Client _____ ABN _____ by an Authorised Representative	
Signature of Authorised Representative	Signature of Witness
Name of Authorised Representative	Name of Witness
Position of Authorised Representative	