

## 1 Definition

**Credit Application** means our formal Credit Application for the provision of Our Equipment on rental hire on account.

**Credit Approved** means you have properly completed a Credit Application that we have approved in writing.

**Damage Waiver Amount** means an additional 12.5% of the Hire Fee total that you elect to pay, being the consideration for our agreement to limit your liability for physical loss or damage to Our Equipment in certain circumstances. It is agreed that this is not insurance.

**Equipment** means the buildings, machinery, plant and equipment listed in the Rental Agreement including parts, tools or accessories.

**Rental Agreement** means these conditions of hire, the rental agreement relating to the Equipment being hired and includes any Credit Application, Guarantee & Indemnity, Hire Delivery Docket, special terms or other documentation attached to the any of the documents just mentioned.

**Vehicle** means Equipment that is a truck, utility or trailer including accessories but does not include Equipment like a scissor lift or bobcat.

**We/Us/Our** means EzyQuip Hire Pty Ltd ABN 39 129 600 308, the owner of the Equipment.

**You/Your** means the person/s, partnership, trustee of a trust, company or entity (including agents, employees or contractors) hiring Our Equipment, as listed in the Rental Agreement or Credit Application.

## 2 Hire of Our Equipment

2.1 The hire of the Equipment will commence from the start date specified in the Rental Agreement and continue until the Equipment is back in Our possession and control and fit for the purpose of hire again, and includes all weekends and public holidays during that period (the Hire Period).

2.2 You are entitled to use the Equipment for the Hire Period.

2.3 Any extension of the Hire Period must be agreed to by us.

2.4 A minimum Hire Period may apply. If such a minimum period applies we will notify you.

2.5 If the Equipment is hired on a wet-hire basis, the terms of the Rental Agreement apply in their entirety except where damage or fines result from the negligent operation of the operation. In such a case the costs of the damage and fines will be proportioned according to responsibility for the damage/fines.

## 3 Payment for Your Hire

3.1 You agree to pay Us the hire rates and any Damage Waiver Amount (where applicable) specified in the Rental Agreement for the Equipment for the Hire Period plus any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to the Rental Agreement and the hire, including other charges set out in clause 4 below. (Collectively the Hire Fees)

3.2 Unless you are Credit Approved, the Hire Fees must be paid to Us prior to the start of the Hire Period.

3.3 If you are Credit Approved You must pay Your accounts within 30 days from the end of the month of the date of issue.

## 4 Other Charges

4.1 A cancellation fee may be charged by Us where the Equipment has been reserved by booking and You cancel the booking without reasonable notice or fail to take delivery of the Equipment.

4.2 We may charge you a fee of 2.5% of the Hire Fee for accepting payment by credit card.

4.3 You are responsible for the payment of parking fines or any traffic violations, including penalties for any vehicles hired to You where the Equipment or any part thereof is a Vehicle and the parking fines, or traffic violations or penalties are incurred on the Vehicle during the Hire Period and even if the fines or penalties are received after the Hire Period.

4.4 In addition to the Hire Fees and other fees and expenses set out in the Rental Agreement, You are responsible for any physical damage to the Equipment (subject to clause 5.2), reasonable fees associated with any necessary cleaning on return of the Equipment, consumables, fines arising out of use of the Equipment, in addition to operation training requested by You.

4.5 If You do not pay the Hire Fees in full by the due date, We may:

- (i) charge You, in addition to any other costs recoverable under this agreement, interest calculated monthly on the total outstanding balance. The interest rate used to calculate the interest payable is the 90 day Bank Bill Swap Rate as at the first business day of the month in which payment is due plus 5%; and

- (ii) charge You 100% of all costs and expenses incurred by Us in recovering any unpaid amounts under this Rental Agreement.

4.6 If you require us to deliver the Equipment at the start of the Rental Period and/or collect the Equipment at the end of the Rental Period We will charge you an additional mobilisation/demobilisation fee(s) as applicable, and as set out in the Rental Agreement.

## 5 Damage Waiver Amount

5.1 If You elect not to pay the Damage Waiver Amount, You must insure the Equipment and provide to Us before the Hire Period starts a certificate of currency for an appropriate policy of insurance that covers physical loss or damage and theft to the Equipment during the Hire Period for an amount not less than the full new replacement value of the Equipment.

5.2 If You elect to pay the Damage Waiver Amount, We shall be responsible for the physical loss or damage and theft of the Equipment during the Hire Period save and except for any excess payable by Us to Our insurer on any claim made for the Equipment by Us pursuant to Our policy of insurance, and/or for any shortfall between the sum insured and the actual full new replacement value of the Equipment. Where any such excess and/or shortfall in the sum insured is payable by Us, We will deliver an account to you for the excess and/or shortfall and You must make payment of that account within 7 days.

5.3 Clause 5.2 in no way entitles you to, or implies the availability of, compensation from us for any liability incurred by You in relation to the use of the Equipment.

5.4 Our responsibility under clause 5.2 will not continue if the loss or damage:

- (i) has arisen as a result of Your breach of the Rental Agreement;
- (ii) has been caused by Your negligence;
- (iii) has been caused by 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;
- (iv) has been caused by any misuse, abuse, wilful or malicious acts or omissions, or reckless use (including overloading of the Equipment or components thereof) of the Equipment by You;
- (v) has arisen due to the lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of You under the Rental Agreement;
- (vi) has been caused by Your disregard for instructions given to You by Us in respect of the proper use of the Equipment or in contradiction of the Manufacturer's Instructions (including intended purpose of use) if supplied with the Equipment at the start of the Hire Period;
- (vii) has arisen due to any unexplained disappearances of the Equipment;
- (viii) has been caused by theft of the Equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, and where proper security is not used by You to secure the Equipment whilst it is left unattended;
- (ix) has arisen out of Your use of the Equipment or Vehicle in, on, under or over water without express written permission by Us;
- (x) has arisen out of Your use of the Equipment or Vehicle in forestry activities without express written permission by Us;
- (xi) has arisen out of by Your use of the Equipment or Vehicle in underground activities without express written permission by Us;
- (xii) has arisen out of Your loading or off loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of the Equipment on any wharf or bridge or over any body of water; or
- (xiii) if the Equipment is or includes a Vehicle, has arisen out of:
  - (a) driving the Vehicle under or into an object lower than the height of the Vehicle;
  - (b) damage to tyres (including, punctures, cuts and abrasions), the underbelly of the Vehicle when no other vehicle is involved, windscreens or headlights (including chipping);
  - (c) damage caused while the Vehicle is being driven or towed upon a road that is unsealed or not a public road;
  - (d) damage caused by total or partial immersion in water regardless of cause; or
  - (e) damage to the interior of the vehicle including the need for professional cleaning or deodorising.

5.5 Our responsibility under clause 5.2 will not apply in the event of an on-hire agreement being entered into between you and a third party without our express written permission.

## 6 Your Use, Operation and Maintenance of Our Equipment

6.1 You agree that the use of the Equipment carries with it dangers and risks of injury and you agree to accept all dangers and risks.

6.2 The Equipment must not be used by anyone other than You without Our express written permission.

6.3 You will ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required that the operator shall hold a valid Certificate of Competency and/or be fully licensed to use the Equipment.

6.4 You agree, at your own cost, to operate, maintain, store and transport the Equipment strictly in accordance with any instruction provided by Us and with due care and diligence.

6.5 You agree that you will ensure that the Equipment will be stored in a safe and secure environment and where available to store the Equipment in locked yards, buildings or sheds.

6.6 You agree that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by Us or posted on the Equipment in regard to its operation, maintenance and storage.

6.7 You agree to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.

6.8 You agree that if the Equipment is or includes a Vehicle that:

- (i) any driver of a Vehicle must hold a valid unrestricted licence to drive that class of vehicle;
- (ii) at no time shall any driver of a Vehicle have a breath or blood alcohol concentration exceeding the maximum lawful concentration or be under the influence of any drug, toxin, or illegal substance;
- (iii) the Vehicle shall only be operated with tyre pressure, fluid and fuel maintained to the proper levels;
- (iv) the Vehicle shall not be operated in circumstances where recommended or legal load limits are being exceeded;
- (v) the Vehicle shall not be used to tow or propel a vehicle other than a trailer within recommended limits;
- (vi) no illegal, prohibited or dangerous substances will be used or carried in the Vehicle;
- (vii) the Vehicle shall not be used to travel outside the State or Territory where the Vehicle is hired without Our express prior written permission;
- (viii) The Vehicle shall not be used for any illegal purpose; and
- (ix) The Vehicle shall not, without our prior written permission be altered, tampered with, repaired or modified in any way nor shall any other person be permitted so to do.

#### **7 On-hire to Third Parties**

7.1 You must not on-hire the Equipment to any third party without Our prior written permission. In the event of a third party on-hire being agreed, You shall remain liable to Us as per the terms of the Rental Agreement as though the on-hire agreement did not exist.

7.2 Any agreement by Us to You entering into an on-hire agreement with a third party shall be subject to the third party agreeing to operate under the same terms and conditions as contained in the Rental Agreement.

#### **8 Our Preventative Maintenance**

8.1 We may undertake preventative maintenance on the Equipment and on doing so will charge You a per kilometre charge for distances travelled exceeding 50kms (round trip) plus the consumables and labour involved in the preventative maintenance.

8.2 For the avoidance of doubt, You remain responsible for the daily maintenance and care of the Equipment in accordance with the Rental Agreement, notwithstanding Our election to provide preventative maintenance.

#### **9 Your warranties**

9.1 You warrant that:

- (i) the Equipment will be used in accordance with the conditions outlined in the Rental Agreement;
- (ii) the particulars in the Rental Agreement are correct in every respect and are not misleading in any way including, without limitation, by omission;
- (iii) You 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) Your vehicle is suitable for towing the Equipment if required;
- (vi) You will not, without Our prior written permission, tamper with, repair or modify the Equipment in any way, or permit another to do so;
- (vii) You agree that the Equipment complies with its description, is in merchantable condition and is fit for Your purpose; and
- (viii) You agree that the Equipment has been received by You in a clean and good working order.

#### **10 Your Indemnities**

10.1 To the full extent permitted by law, You release, discharge and indemnify Us from all claims and demands by third parties upon Us arising out of or consequent on the use or misuse of the Equipment during the Hire Period.

10.2 Without limiting clause 10.1 of the Rental Agreement, You agree that to the full extent permitted by law, no warranties are given by Us in respect of the Equipment. Any liability of Us pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the Equipment or for the cost of resupplying the Equipment, at Our sole discretion.

#### **11 Your Responsibility for Loss, Damage or Breakdown**

11.1 Subject only to Our obligations following payment of the Damage Waiver Amount by You in accordance with the Rental Agreement, You will be

responsible for any loss or damage to the Equipment irrespective of how the loss or damage occurred, including all wear and tear, during the Hire Period.

11.2 You are liable for the payment of the new list price of any Equipment not returned to us.

11.3 If the Equipment is damaged you must notify us within 24 hours of becoming aware of the damage.

11.4 If there is a breakdown or failure of the Equipment You must immediately stop using the Equipment and notify Us in writing.

11.5 You must take all necessary steps to prevent injury occurring to persons or property as a result of the condition of the Equipment.

11.6 You must take all necessary steps to prevent any further damage to the Equipment itself.

11.7 You must not repair or attempt to repair the Equipment.

#### **12 Repair of Our Equipment**

12.1 We will, upon receiving notice of the breakdown or failure of the Equipment, take all necessary steps to repair or have the Equipment repaired or will provide a suitable replacement as soon as reasonably possible after receiving notification from You. The delivery costs of providing replacement Equipment will be at Our expense.

#### **13 Our Insurance**

13.1 We will maintain current insurance policies in respect of the Equipment to its full insurable value. This insurance does not cover you unless You elect to pay the Damage Waiver Amount and then only to the extent set out in the Rental Agreement.

13.2 We shall provide, when reasonably requested by You, evidence of the insurance applying to You which We maintain under the Rental Agreement.

13.3 You acknowledge that You:

- (i) Have satisfied yourself as to the nature and extent of Our insurance (including any exclusions, conditions and excesses noted on the policies);
  - (ii) may, if You require it, take out insurance to insure for any risks not insured by Our insurance or to cover any exclusions, conditions or excesses in Our insurance; and
  - (iii) Will have no claim against Us arising out of or in connection with the failure by Us to effect or maintain the relevant insurance policies in accordance with the terms of the Rental Agreement.
- (iv) The Damage Waiver Amount is not insurance, but rather an amount payable to limit Your liability to Us for physical loss and damage to the Equipment during the Hire Period in certain circumstances.

#### **14 Your Liability**

14.1 You 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 Your possession, use, maintenance, repair, storage or transport of the Equipment.

#### **15 Personal Property Securities Act 2009 & Related Regulations (PPS Act)**

15.1 In relation to any security interest constituted or contemplated in the Equipment by this Rental Agreement, and in relation to any proceeds arising from any dealing in the Equipment, You consent to Us affecting and maintaining a registration on the register (in the manner We consider necessary) of that security interest. You also agree to sign any documents and provide all cooperation to us required to facilitate that registration and maintenance. At our sole discretion we may register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest) at any time. Your right to receive notice of a verification statement regarding the registration of a security interest on the register in respect of the Equipment is hereby waived.

15.2 You agree not to register a financing change statement in respect of a security interest contemplated or constituted by the Rental Agreement, or in favour of a third party, without Our prior written consent; and

15.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with the Rental Agreement and sections 115(1) or 115(7) of the PSS Act allows for contracting out, then the following provisions of the PPS Act will not apply and You will have no rights under them:

- (i) in respect of section 115(1), section 95 (to the extent of notices to the grantor); section 96; section 118 (to the extent of notices to the grantor); sections 121(4); 125; 130; 132(3)(d); 132(4); 135; 142; and 143; and
- (ii) in respect of section 115(7): sections 127; 129(2); 129(3); 130(i); 132; 134(s); 135; 136(3); 136(4); 136(5); 137; and 275(7)(c).

15.4 You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act.

15.5 For the sake of clarity, the Equipment is the collateral and the security agreement is the Rental Agreement pursuant to the PPS Act.

15.6 Money received from you in connection with the Rental Agreement may be applied by us towards your obligations under any security interest contemplated or constituted by the Rental Agreement in any way We determine.

15.7 You agree to notify us immediately in writing of any material change to the information contained in or associated with Your Credit Application.

#### **16 Disclaimer**

16.1 To the extent permitted by law, we disclaim all liability for and do not give any warranties to you as to the condition of the Equipment.

#### **17 Remember We own the Equipment**

17.1 You acknowledge that we retain title to the Equipment and that you have rights to use the Equipment as a mere bailee only. You agree that You have no rights to pledge Our credit in connection with the Equipment.

17.2 Subject to clause 15, You agree not to offer to sell, assign, sub-let, charge, lend, pledge, mortgage, let or hire or otherwise part with or attempt to part with personal possession of, or create any security interest over, the Equipment.

17.3 You agree not to conceal, alter or make any addition to the Equipment.

#### **18 If You default**

18.1 We may retake possession of the Equipment if:

- (i) You are in breach of any provision of this Rental Agreement; or
- (ii) You do not pay your account in the time agreed; or
- (iii) the Hire Period ends and You have not returned the Equipment to Us.

18.2 All costs incurred by us in repossessing due to a breach are to be paid by You.

18.3 In the case of repossession due to a breach of this agreement you agree to grant Us permission to enter any premises where the Equipment listed in the Rental Agreement is situated to disconnect, decommission and/or remove that Equipment.

18.4 In addition to Our right to retake possession We are entitled in Our sole discretion, following any breach of any provision of this agreement by You, to terminate this agreement and/or sue for recovery of any damages or charges or loss suffered by Us, and/or to cancel any insurances effective in respect of the Equipment.

#### **19 When the Hire Period Ends**

19.1 You must ensure the Equipment is returned to Us:

- (i) clean of all foreign matter or agree to a reasonable cleaning fee being charged by Us;
- (ii) with the same quantity of fuel as was provided by Us at the start of the Hire Period;
- (iii) with other consumables in the same condition (including but not limited to ground engaging tools and wear parts) provided by Us at the start of the Hire Period.

For the sake of clarity any consumables used by You are to be charged at a reasonable commercial rate by Us.

19.2 You agree to return the Equipment to Our address on or before the end of the Hire Period as outlined in the Rental Agreement and any failure to do so can be criminal theft and may be immediately reported to the police.

19.3 If We have agreed to collect the Equipment, You shall give Us written notice at least one week prior to the Equipment being available for collection.

#### **20 Force Majeure**

20.1 Subject to clause 20.2, neither You or Us will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

20.2 Nothing in clause 20.1 will limit or exclude Your responsibilities and liabilities under the Rental Agreement for Equipment that is lost, stolen, or damaged during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence or breach of the Rental Agreement.

#### **21 Variation**

21.1 If we intend to amend the terms of the Rental Agreement, We will give You 30 days notice of the intended amendments. Any failure by you to dispute the amendments within 7 days of notice means you accept the amendments. Any other variations to these terms and conditions shall be agreed in writing between the parties.

#### **22 Security**

22.1 As security for Your obligations and liabilities under the Rental Agreement, You agree to charge all of Your legal and equitable interests (both present and future) of any nature, however held, in any and all real property.

22.2 You agree to sign any documents and do all things reasonably required by Us to register a mortgage security or other instrument of security (including a caveat noting Our interest) over any real property and if You fail to do so immediately, You irrevocably appoint any solicitor engaged by Us to be your lawful attorney to sign and register such instruments of security.

22.3 You agree to indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such instrument of security.

#### **23 Non-merger**

23.1 The covenants, agreements and obligations contained in the Rental 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.

#### **24 Severance**

24.1 If any provision of the Rental 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.

#### **25 Governing law**

25.1 The Rental Agreement is governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of that Court of that State.

#### **26 Privacy**

26.1 We will comply with the National Privacy Principles in all dealings with you. Information on our privacy policy is available on request.

#### **27 GST**

27.1 You agree to pay to Us with and in addition to any fees and charges pursuant to this agreement any goods and services tax on the supply of any good or service by Us to You which may be assessed on such transaction pursuant to the A New Tax System (Goods and Services Tax) Act 1999 and its associated legislation.

#### **28 Provisions of this Agreement Excluded from Consumer Contracts**

28.1 Where You are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of the Rental Agreement will not apply:

- (i) Variation clause (clause 21);
- (ii) Security clause (clause 22).

#### **29 Claim for Payment**

29.1 This Rental Agreement and any associated tax invoice is a claim for payment under the *Building and Construction Industry Payments Act 2004* (QLD), the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Construction Contracts (Security of Payments) Act 2009* (NT), the *Building and Construction Industry Security of Payment Act 2002* (VIC), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Construction Contracts Act 2004* (WA), the *Building and Construction Industry (Security of Payment) Act 2009* (ACT), and/or the *Building and Construction Industry Security of Payment Act 2009* (TAS)