

GENERAL TERMS AND CONDITIONS OF HIRE – TUTT BRYANT HIRE NSW

1. DEFINITIONS

- a. The “Company” is Kingston Industries Pty Ltd ABN 25 002 894 439 trading as TUTT BRYANT HIRE.
- b. The “Hirer” is the person, firm, entity or corporation that engages the services of the Company for the purpose of hiring plant and equipment.
- c. The “Plant and Equipment” is 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.
- d. “PPS Act” MEANS THE Personal Properties Security Act 2009 (Cth) (as amended).

2. HIRE AGREEMENT

These General Terms and Conditions of Hire, together with:

- a. an Application for Credit completed by the Hirer and submitted to the Company;
- b. each Hire Contract provided to the Hirer by the Company, whether signed or not;
- c. and Special Terms specific to the type of Plant and Equipment hired to the Hirer and attached to the Hire Contract; and
- d. any specific Terms and Conditions of Hire agreed to by both parties in writing.

Make up the entire Hire Contract between the Hirer and the Company. The provision or acceptance of a Hire Contract shall not form a separate agreement between the parties, but shall constitute part of this Hire Contract.

3. CONSTRUCTION:- In these General Terms and Conditions, unless context otherwise requires or states;

- a. Words importing:
 - i. the singular include the plural and vice versa,
 - ii. any gender includes the other gender;
- b. An obligation of two (2) or more parties binds them jointly and severally;
- c. If a word or phrase is defined, cognate words and phrases have corresponding definitions;
- d. 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

- a. 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.
- b. 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

- a. The Hirer acknowledges and agrees that to the extent the Hire Contract (governed by these Terms and Conditions of Hire) creates a PPS lease, as defined in the PPS Act, the Company has a security interest in the Plant and Equipment for the purposes of the PPS Act and to the extent applicable the PPS Act applies.
- b. The Hirer acknowledges that the Company may take all reasonable steps, including but limited to registering any security interest which the Company has over the Plant and Equipment on the Personal Properties Security Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirements of the PPS Act. You agree without charge to provide all information and do all things reasonable to assist the Company in complying with the matters outlined in this Section 5 of the Terms and Conditions of Hire. You waive pursuant to s.157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the Register.
- c. The Hirer and the Company agree that the security interest the Company has over the Plant and Equipment is a PPS lease, as defined in the PPS Act, which does not secure payment or performance of an obligation, and accordingly that chapter 4 of the PPS Act does not apply.

6. TERMS OF PAYMENT

- a. Hire is charged for the time the Plant and Equipment is out of 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.
- b. 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.
- c. The Company reserves the right to revise its Schedule of Hire Rates and related charges without notice, unless the supply of the Plant and Equipment is varied by an agreed supply contract Schedule.
- d. The Company may charge interest on all amounts not paid by the Hirer by the due date at the rate of 2% 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 PERIODS

- a. The Hourly Hire Rate will apply to Wet Hire Plant only, and will incur loadings for weekend, public holiday and night work.
- b. The Half Day Rate is based upon the Plant and Equipment being hired for a maximum of 4 Hours, if used in excess of 4 Hours the Daily Hire Rate shall apply.
- c. The Daily Hire Rate is based upon the Plant and Equipment being hired for a maximum of 8 Hours in any one day.
- d. The Weekly Hire Rate is based upon the Plant and Equipment being hired for a maximum of 5 days unless specified or varied in writing.



8. LATE RETURN

a. In respect to Dry Hire (Without Operator), hiring commences from the time the Plant and Equipment is collected by the Hirer from the Company's premises. 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 the Company's General Terms and Conditions of Hire which will be faxed or emailed to the Hirer. 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, the Hirer will be charged an additional one half day's hire if the Plant and Equipment is returned before 12:00 noon on the following day, or an additional full day's hire if the Plant and Equipment is returned after 12:00 noon but before the close of business on the following day. Further hire charges will likewise apply for each additional day that the Hirer fails to return the Plant and Equipment.

b. 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. 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. 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 and within the Company's discretion.

9. BREAKDOWN

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

10. HIRER'S OBLIGATIONS

a. The Hirer must:

- i. Prior to the use of the Plant and Equipment determine the condition and suitability of the Plant and Equipment hired for the purpose required.
- ii. Use the Plant and Equipment in a skillful 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.
- iii. 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.



- iv. 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.
 - v. Accept full responsibility for all flat and/or damaged tyres, except in the case of Wet Hire.
 - vi. 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.
 - vii. Accept full responsibility for the safekeeping and insuring 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.
 - viii. 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.
 - ix. 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.
 - x. 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.
 - xi. Pay the Company all hire related charges and other costs as stipulated in accordance with the Company's Terms of Payment.
 - xii. Accept responsibility and fully reimburse the Company for the cost of freight and other charges to retrieve the Plant and Equipment for any reason.
 - xiii. Ensure that all safety information supplied with the Plant and Equipment will be conveyed to any person using the Plant and Equipment.
 - xiv. 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.
 - xv. Ensure that all safety and operating instructions and notices are observed and are not defaced or removed from the Plant and Equipment.
 - xvi. 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.
 - xvii. 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.
 - xviii. Return all Plant and Equipment, where applicable, with a full tank of fuel or pay the Company the applicable rate to fill the tank.
- b. 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.

11. TERMINATION OF HIRE

- a. Without prejudice to any other remedies available to the Company and notwithstanding any period of hire specified, the Company may terminate the Hire Contract;
 - i. At any time by giving the Hirer 24 Hour's notice of its intention to so terminate, such termination to be effective as of the expiry of 24 hours; and
 - ii. Without notice, if the Hirer commits any breach of the Hire Contract, 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.
- b. Upon termination of the Hire Contract, 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. DAMAGE WAIVER OPTION

- a. The Hirer is responsible for any theft, loss 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. Where the DAMAGE WAIVER OPTION has been charged to the Hirer, the Company agrees upon submission of a written Police Report, to waive its rights to claim for damage to the Plant and Equipment caused by fire, storm, collision, accident, providing adequate precautions have been taken to safeguard the Plant and Equipment and the damage was not due to negligence by the Hirer. Such waiving of rights is subject to payment by the Hirer of an excess of:
 - i. In the event of damage to the Plant Equipment \$1,000.00 per item or 15% of the cost of the repairs and/or replacement of the Plant and Equipment (whichever is the greater).
- b. Expressly excluded circumstances from DAMAGE WAIVER OPTION are defined as:
 - i. Theft of Plant and Equipment;
 - ii. Damage due to misuse, abuse or overloading of the Plant and Equipment;
 - iii. Disappearance or wrongful conversion of the Plant and Equipment;
 - iv. Damage in contravention of the 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, except where transported by the Company;
 - xiv. Damage to items on which the DAMAGE WAIVER OPTION is not charged;
 - xv. Damage caused by the negligence of the Hirer; and
 - xvi. Damage to any aluminium scaffold, planks or ladders.
 - xvii. Damage to motor vehicles and trucks on Hire.
- c. 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
- d. Damage Waiver is compulsory for temporary accounts; and
- e. Damage Waiver is optional for 30 day accounts'

13. EXCLUSION OF CONDITIONS AND WARRANTIES

- a. Certain conditions and warranties may be implied into the Contract 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.

14. EXCLUSION OF LIABILITY

- a. 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.

15. MISCELLANEOUS

- a. The person signing this agreement for and on behalf of the Hirer hereby covenants with the Company that he 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 Company against all losses and costs incurred by the Company arising out of the person so signing this agreement not in fact having such power and/or authority.
- b. Termination of the hire period will not affect any of the conditions that are expressed or implied to operate or have effect after termination
- c. Time is to be of the essence of all obligations of the Hirer in these conditions.

16. PROVISIONS SEVERABLE

- a. It is hereby agreed as a term of this agreement that if any provision or part of any provision of this agreement is unenforceable, such unenforceability will not affect any other part of such provision or any other provision hereof.

17. LAW AND JURISDICTION

- a. These Terms and Conditions are to be governed and construed by the laws of the State or Territory in which this Agreement is duly executed.
- b. Any proceeding in respect of any matter or thing with respect to the Hirer must be instituted or carried on the State or Territory in which this Agreement was duly executed.