

# TERMS OF HIRE

1 July 2023 Edition

## 1. HIRE AGREEMENT

- 1.1 A Hire Agreement is formed on the provision of a Hire Schedule to You by Us (the **Hire Agreement**). The Hire Agreement applies to all Equipment hired by You.
- 1.2 The Hire Agreement consists of, in order of precedence:
  - (a) these Terms of Hire;
  - (b) the Hire Schedule; and
  - (c) any Special Conditions specific to the type of Equipment You have hired.
- 1.3 Any terms contained in any document supplied by You, including any terms in Your purchase order, will not form part of the Hire Agreement.

## 2. OUR HIRE COMMITMENT TO YOU

- 2.1 We agree to:
  - (a) hire the Equipment to You for the Hire Period;
  - (b) provide the Equipment to You in good working order; and
  - (c) subject to the rest of this Hire Agreement, allow You to exclusively use the Equipment during the Hire Period.

## 3. HIRE PERIOD

- 3.1 The Hire Period commences on the earlier of the following:
  - (a) when You take possession of the Equipment; or
  - (b) if You request delivery of the Equipment, the time We deliver the Equipment to the address in the Hire Schedule, or other address as advised by You.
- 3.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our control or possession.
- 3.3 The Hire Period includes weekends and public holidays.
- 3.4 A Minimum Hire Period may apply in respect of certain items of Equipment. We will advise you at the time of hiring if a Minimum Hire Period applies, or if no Minimum Hire Period is specified the relevant Minimum Hire Period set out in clause 29 will apply. If You return the Equipment to Us before the expiration of the Minimum Hire Period, You must pay all Hire Charges in respect of the Minimum Hire Period.

## 4. HIRE RATES AND CHARGES

- 4.1 You must pay Us the Hire Charge set out in the Hire Schedule. The Hire Schedule will specify the rate which applies to You and the method of calculation.
- 4.2 You will be charged for the hire of Equipment for the full Hire Period. You must continue to pay the Hire Charges and other additional charges until the Equipment is returned to Us (unless We notify You otherwise in writing of an earlier off-hire date).
- 4.3 We may increase our rates for Hire Charges quarterly based on increases in the PPI and the CPI. If You do not accept the increase in Hire Charge You must return the Equipment to Us. You will not be entitled to claim a credit from Us if We have put

You on notice of a change in our rates and You have continued to use the Equipment.

## 5. ADDITIONAL CHARGES

- 5.1 In addition to the Hire Charges, You agree to pay:
  - (a) for any consumables, fuel or trade materials We supply to You;
  - (b) for fuel where You return Equipment to Us that requires refueling;
  - (c) delivery, collection or installation charges if You require Us to deliver, collect, install or decommission the Equipment, as detailed in the Hire Schedule. Additional Hire Charges may also apply if:
    - (i) the nominated time for delivery or collection of the Equipment is delayed by You or is outside of normal business hours;
    - (ii) the delivery or pick up location is outside of a 25km radius of Our branch; or
    - (iii) delivery, collection or installation is cancelled by You within 24 hours of the agreed time.
  - (d) excess hourly charges if non-static Equipment (including but not limited to mechanical or motor driven Equipment) is used by You for more than 12 hours per day;
  - (e) cleaning and repair charges if You do not return the Equipment in clean and good working condition;
  - (f) a charge for pumping out waste tanks or refilling water or fuel tanks;
  - (g) any stamp duty or GST arising out of this Hire Agreement and any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
  - (h) any applicable charges for credit payments (We will be entitled to apply a surcharge if You elect to pay by credit card);
    - (i) an environmental charge in relation to the Equipment;
    - (j) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;
  - (k) charges in connection with the administration of Your Credit Account, which may include printing and postage costs;
  - (l) increased Hire Charges, if You request that we hire Equipment from a third party or require enhancements to the Equipment specification;
  - (m) any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours; and
  - (n) if applicable, the LTD Waiver Fee.

5.2 If We have agreed to collect the Equipment, it must be available for collection no later than the time at which Your hire commenced. For example, if Your hire commenced at 10am, the Equipment must be ready for collection no later than 10am on the day it is due for collection. If the Equipment is not ready for collection as required, We reserve the right to charge additional Hire Charges.

## 6. PREVENTATIVE CHARGES

- 6.1 We will manage a PMP for our Equipment.
- 6.2 You must allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during ordinary business hours. If We cannot inspect or maintain the Equipment during ordinary business hours, then additional charges may apply.
- 6.3 The PMP for all Equipment located at a Long Distance Location will be subject to a per kilometer charge both to and from the premises nominated by You. There will be no charge for the first 50 km either way.
- 6.4 The PMP for multiple items of Equipment which are located at the Long Distance Location will only be charged as one call out.
- 6.5 If the Equipment breaks down at a Long Distance Location, You must pay Us the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.

## 7. PAYMENT

- 7.1 You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.
- 7.2 The Hire Charges are exclusive of GST. If GST is payable on a supply made under or in connection with this Hire Agreement, the party providing the consideration for that supply must also pay, upon the receipt of a valid tax invoice, the GST amount at the prevailing rate as additional consideration.
- 7.3 If We are required by law to make a deduction or withholding from an amount payable to You under this Hire Agreement, whether in respect of tax or otherwise, We will be entitled to make the deduction or withholding and pay that amount in the manner required to the relevant authority entitled to receive it. You agree that You have no claim against Us for any amounts withheld and paid in accordance with law under this clause 7.
- 7.4 If You do not pay an invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:
- (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first Business Day of that month plus 2%; and
  - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.
- 7.5 We are entitled to set off against any amount We owe You, any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.
- 7.6 You are not entitled to set-off or withhold payment to Us. You must raise any dispute on Our invoices within 14 days of the date of the invoice.
- 7.7 We do not agree to provide You with Recipient Created Tax Invoices (RCTI), invoices in a specified format, or otherwise with progress claims.

## 8. YOUR OBLIGATIONS TO US

- 8.1 This Hire Agreement is personal to You and You must not allow or authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 8.2 You agree that before taking delivery of the Equipment, You are satisfied as to the suitability and condition of the Equipment. We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 8.3 If You find the Equipment is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, the Equipment You collected or received will be deemed to have been in good order and condition on collection or delivery (as applicable).
- 8.4 You must:
- (a) ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer and in accordance with the manufacturer's instructions;
  - (b) operate the Equipment safely and strictly in accordance with all applicable laws and ensure the Equipment is stored safely and securely at all times;
  - (c) ensure persons operating or erecting the Equipment: (i) are suitably trained on its safe and proper use; (ii) are appropriately qualified and where necessary, hold a current licence and/or Licence to Perform High Risk Work (as required by law) to operate the Equipment; (iii) wear suitable clothing and protective equipment when operating the Equipment as reasonably required or otherwise specifically recommended by Us or the manufacturer; (iv) are not under the influence of drugs or alcohol and do not carry illegal, prohibited or dangerous substances while in, on or around the Equipment;
  - (d) to the extent required or recommended by Us, the manufacturer or applicable workplace, health and safety laws, conduct a job safety analysis prior to using the Equipment;
  - (e) display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Equipment;
  - (f) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
  - (g) arrange for the emptying of any waste tanks and water carts as required in accordance with the manufacturer's instructions and prior to returning the Equipment to Us; and
  - (h) ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines.
- 8.5 You must not:
- (a) in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
  - (b) deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;
  - (c) remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when You return the Equipment;
  - (d) remove the Equipment from the State or Territory in which You hired it without Our prior written consent;

- (e) use the Equipment off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent;
- 8.6 You warrant that You will comply with all Environmental Laws and immediately rectify any breach of an Environmental Law caused by Your use of the Equipment.
- 8.7 You must:
- (a) ensure the Equipment is not contaminated with any hazardous substances (including asbestos);
  - (b) advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent; and
  - (c) effectively decontaminate the Equipment and provide Us with written details of such decontamination. If, in Our reasonable opinion, the Equipment is not capable of being decontaminated, You must pay the replacement cost of the Equipment.
- 8.8 Any electrical Equipment provided by Us will be tested and tagged before it is hired to You. If, during the Hire Period, the Equipment requires re-testing and re-tagging, You must do so at Your cost and in accordance with the manufacturers instructions, the applicable Australian standards, and regulatory authority requirements. If You are unable to do so, We may re-test and re-tag at Your cost. You are liable for any damage caused to the Equipment resulting from any re-testing or re-tagging carried out by You.
- 8.9 If, at Your request, We supply an operator to operate the Equipment (the **Operator**):
- (a) the Operator will be under Your direction and control during the Hire Period and will comply with Your reasonable directions;
  - (b) We will not, while the Operator is working under Your direction and control, seek to direct or supervise any of the work undertaken by Operator;
  - (c) We will have no Liability to You for any acts or omissions of the Operator where they are acting under your direction and control during the Hire Period; and
  - (d) You will not allow any other person to operate the Equipment without Our prior written consent.
- 9. OWNERSHIP OF THE EQUIPMENT**
- 9.1 Subject to clause 9.4, We own the Equipment and retain title to the Equipment at all times. Your rights to use the Equipment are as a bailee only.
- 9.2 You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 9.3 In no circumstances will the Equipment be deemed to be a fixture.
- 9.4 We may hire or lease Equipment from a third party (a **Third Party Owner**). Title in the Equipment owned by a Third Party Owner remains with the Third Party Owner at all times.
- 10. PPSA**
- 10.1 You acknowledge and agree:
- (a) this Hire Agreement constitutes a security agreement and a PMSI for the purposes of the PPSA; and
  - (b) a security interest is taken in all Equipment previously supplied by Us to You (if any) and all Equipment that will be supplied in the future by Us to You during the parties' relationship.
- 10.2 You agree to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which We ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
  - (b) enabling Us to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
  - (c) enabling Us to exercise rights in connection with the security interest.
- 10.3 You waive any rights you may have:
- (a) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1) and 135 and 157 of the PPSA; and
  - (b) under sections 142 and 143 of the PPSA.
- 10.4 The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.
- 10.5 Neither party will disclose information of the kind mentioned in section 275(1) of the PPSA, and You will not authorise, and will ensure that no other party authorises, the disclosure of such information.
- 11. RETURN OF EQUIPMENT**
- 11.1 You must return the Equipment to Us in the same condition and good working order as when You received it, Fair Wear and Tear excepted.
- 11.2 If You do not properly clean and decontaminate the Equipment, We will charge You a cleaning cost in accordance with clause 5 and You are liable to continue to pay the Hire Charges while the Equipment is being cleaned by Us.
- 11.3 You must return the Equipment to the branch You hired it from during ordinary business hours.
- 11.4 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.
- 12. BREAK DOWN, LOST, STOLEN OR DAMAGED EQUIPMENT**
- 12.1 If the Equipment breaks down, becomes unsafe to use, is lost, stolen or damaged during the Hire Period You must:
- (a) in the case of damage, unsafe use or breakdown, immediately stop using the Equipment;
  - (b) immediately notify Us and provide all relevant particulars of the incident;
  - (c) for incidents of theft, promptly report the incident to the police and provide Us with a written police report;
  - (d) take all steps necessary to prevent injury occurring to persons or property and to prevent further damage to the Equipment; and
  - (e) not repair or attempt to repair the Equipment without Our written consent.
- 12.2 If the Equipment breaks down, becomes unsafe to use or is damaged:
- (a) as a result of Fair Wear and Tear; or
  - (b) in connection with any act or omission of Us,
- then upon receiving notice from You in accordance with clause 12.1, We will:

- (c) take all reasonable steps to repair the Equipment or provide a suitable replacement, at Our cost, as soon as reasonably possible; and
- (d) not impose a Hire Charge for that portion of the Hire Period during which the Equipment was broken down or unsafe.

## 12.3 If the Equipment:

- (a) breaks down, becomes unsafe to use or is damaged:
  - (i) for any reason other than as a result of Fair Wear and Tear or Our act or omission;
  - (ii) in connection with any act or omission of You or any other third party; or
- (b) is lost or stolen during the Hire Period, then, upon receiving notice from you under clause 12.1, and subject to clause 13, We will take all reasonable steps to repair the Equipment or provide a suitable replacement as soon as reasonably possible, and You are liable for:
  - (c) the costs and expenses suffered or incurred by Us to recover, repair or replace the Equipment; and
  - (d) the Hire Charges for the portion of the Hire Period during which the Equipment was broken down, unsafe, damaged and/or being recovered, repaired or replaced.

## 13. YOUR LIABILITY TO US

13.1 We agree to limit Your liability to Us for loss, theft or damage to the Equipment in certain circumstances (Loss Theft Damage Waiver – ‘LTD Waiver’). The LTD Waiver is not insurance.

13.2 Unless You have demonstrated that You maintain Your own insurance in accordance with clause 14, You agree to pay Us the LTD Waiver Fee when You hire Equipment from Us.

## 13.3 The LTD Waiver Fee:

- (a) will be set out in the Hire Schedule;
- (b) will be automatically charged to You in addition to the Hire Charges; and
- (c) is calculated by Us as a percentage of the Hire Charges.

13.4 If You have paid Us the LTD Waiver Fee, subject to the provisions in this clause 13, We agree to limit Your Liability for loss, theft or damage to the Equipment to an amount as calculated by Us for each item of Equipment, as follows:

- (a) **(Replacement):** where the Equipment is lost, stolen or damaged beyond repair:
  - (i) if the New Replacement Cost is less than \$500, You will be required to pay an amount equal to the New Replacement Cost;
  - (ii) if the New Replacement Cost is greater than \$500, You will be required to pay an amount equal to the greater of:
    - (A) \$500; and
    - (B) 15% of the New Replacement Cost.
- (b) **(Repair):** where the Equipment is partially damaged and can be repaired:

- (i) if the repair cost is less than \$500, You will be required to pay the lesser of the repair cost and the New Replacement Cost;
- (ii) if the repair cost is greater than \$500, You will be required to pay an amount equal to the greater of:
  - (A) \$500; and
  - (B) 15% of the repair cost.

13.5 The LTD Waiver will not apply if You do not co-operate with Us and provide Us with full details of the loss, theft or damage incident, including any written or photographic evidence We may require.

13.6 The LTD Waiver will not apply where the loss, theft or damage has arisen as a result of or has been caused by:

- (a) Your breach of a clause of this Hire Agreement;
- (b) Your negligent act or omission;
- (c) Your use of the Equipment in violation of any laws;
- (d) Your failure to use the Equipment for its intended purpose or in accordance with Our instructions or the manufacturer's instructions;
- (e) the Equipment being located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (f) lack of lubrication or failure to properly service or maintain the Equipment;
- (g) collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
- (h) overloading of the Equipment or any components thereof;
- (i) electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
- (j) exposure to any Harsh Environments including corrosive or caustic substances, cyanide, salt water or acid;
- (k) vandalism;
- (l) any reason, in the case of tyres or tubes; or
- (m) any reason, in the case of windscreens, mirrors, glass, or perspex.

13.7 Notwithstanding Our agreement to limit Your Liability in accordance with this clause 13:

- (a) You will remain liable for all Hire Charges during the period the Equipment is not available due to any loss, theft or damage; and
- (b) the limitation on Your liability in clause 13 is only with respect to loss, theft or damage to the Equipment and does not apply to Your liability with respect to the indemnity in clause 13.8.

13.8 You are liable for and indemnify Us and our Related Bodies Corporate against all Liability in respect of:

- (a) personal injury;
- (b) damage to property; or
- (c) a claim by a third party,

in respect of Your hire or use of the Equipment and Your breach of the Hire Agreement. Your Liability under this indemnity is



reduced to the extent that Our breach of the Hire Agreement or Our negligence causes the Liability.

13.9 We will not be liable to You for any acts or omissions of any person supplied by Us, including under clause 8.9, where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all Liability arising from or incurred in connection with such acts or omissions.

## 14. YOUR INSURANCE

14.1 You may choose to maintain insurance for Your liability in relation to clause 13.

14.2 Subject to clause 14.3 and 14.4, if You maintain insurance for the full replacement value of the Equipment for the Hire Period, the LTD Waiver is not applicable and We will not charge the LTD Waiver Fee.

14.3 Your insurance must:

- (a) cover loss, theft or damage to the Equipment arising during the Hire Period from any cause;
- (b) be for the full replacement value of the Equipment specified in the Hire Schedule;
- (c) be taken out with a reputable insurer satisfactory to Us;
- (d) name Us as an interested party on the policy; and
- (e) be maintained for the whole Hire Period.

14.4 You must provide Us with a certificate of currency evidencing Your compliance with clause 14.3 prior to commencement of the Hire Period.

14.5 Notwithstanding the provisions in this clause 14, You are required to pay Us the LTD Waiver Fee for any portion of the Hire Period where a certificate of currency required to be provided by You pursuant to clause 14.4 remains outstanding.

14.6 You are solely responsible for:

- (a) any premiums, excess and any other costs associated with Your insurance;
- (b) any shortfall to the extent any proceeds received under Your insurance policies do not cover Your total Liability arising under the Hire Agreement (including but not limited to the cost of any repair or replacement of the Equipment or any Hire Charges during the period the Equipment is not available due to any loss, theft or damage).

## 15. OUR LIABILITY TO YOU

15.1 Notwithstanding any other clause of this Hire Agreement, to the extent permitted by law and whether arising in contract, tort (including negligence), equity, warranty, indemnity, statute or otherwise:

- (a) Our aggregate Liability arising out of or in connection with this Hire Agreement is limited to an amount equal to the fees paid by You under this Hire Agreement; and
- (b) We are not liable for any Consequential Loss howsoever caused or for any loss suffered by third parties under or in connection with this Hire Agreement.

15.2 Subject to clause 15.3, and except as expressly set out in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement are excluded to the maximum extent permitted by law.

15.3 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking or representation by law in relation to this Hire Agreement (a **Non-Excludable Provision**), then Our Liability for breach of a Non-Excludable Provision is limited to (at Our option):

- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

## 16. TERMINATION OF HIRE AGREEMENT

16.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:

- (a) the other party breaches any term of the Hire Agreement and fails to remedy the breach within 7 days of written notification of the breach; or
- (b) the other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights You may have under the *Corporations Act 2001*.

16.2 We may terminate the Hire Agreement and any Hire Period for any reason on 24 hours' written notice.

16.3 We may terminate the Hire Agreement immediately if You or any third party has made a false statement or breached any provision of the Relevant Documents.

16.4 These rights of termination are in addition to any other rights either party has under the Hire Agreement and do not exclude any right or remedy available under law or equity.

## 17. RECOVERY OF EQUIPMENT

17.1 If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 16, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

## 18. PRIVACY

18.1 We will comply with the Australian Privacy Principles in all dealings with You.

18.2 We may need to collect personal information about You, including Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to:

- (a) fulfill functions associated with the hire of Equipment to You, including assessing Your credit worthiness, or exercising Our rights under clause 10;
- (b) provide services to You;
- (c) prevent theft of Our Equipment;
- (d) enter into contracts with You or third parties, and
- (e) market to You and maintain a client relationship with You.

18.3 You consent to Us disclosing Your personal information:

- (a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- (b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

18.4 You have the right to access the personal information We hold about You.

18.5 Copies of Our Privacy Policy and Credit Reporting Policy are available upon request or visit [www.coates.com.au](http://www.coates.com.au).

## 19. CONFIDENTIALITY

- 19.1 Each party will, and will ensure that its personnel will, keep any Confidential Information it receives under this Hire Agreement confidential and will not disclose such Confidential Information without the prior written consent of the other party.
- 19.2 The obligations contained in clause 19.1 do not apply to disclosures to the extent that they are:
- (a) required by law (including disclosure to any stock exchange);
  - (b) made to its legal advisers, accountants or auditors; or
  - (c) required to enable the disclosing party to make or defend any claim under this Hire Agreement.

## 20. FORCE MAJEURE

- 20.1 If a party (the **Affected Party**) is prevented, in whole or in part, from carrying out its obligations under this Hire Agreement (other than an obligation to pay Hire Charges during the Hire Period) (the **Affected Obligations**) as a result of Force Majeure:
- (a) the Affected Obligations are suspended;
  - (b) the Affected Party must: (i) use reasonable endeavours to overcome the effects of the Force Majeure as soon as reasonably practicable; (ii) take all reasonable steps to mitigate the impact of the Force Majeure on the Affected Obligations; and
  - (c) unless this Hire Agreement is terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure ceases.
- 20.2 If an event of Force Majeure continues for a continuous period of 90 days or more, then either party may terminate this Hire Agreement by written notice to the other.
- 20.3 Nothing in this clause 20 will limit or exclude Your responsibility and liability under clause 12.3.
- 20.4 You remain liable to pay Hire Charges for the Hire Period whilst the Equipment is not in Our possession.

## 21. SECURITY

- 21.1 If required by Us, within 2 Business Days of receiving the Equipment You must provide the Security to Us for the amount set out in the Hire Schedule.
- 21.2 We may have recourse to the Security to recover:
- (a) any debts or amounts due, or which may become due, from You to Us whether under or in connection with this Hire Agreement (including any damages or liquidated amounts) or otherwise; and
  - (b) all costs, charges, damages, liquidated sums and expenses that We may have paid or incurred that You are liable to bear, pay or reimburse to Us under this Hire Agreement.
- 21.3 You must not take any steps to injunct or otherwise restrain any issuer of the Security from paying Us pursuant to the Security or Us from taking any steps (such as making a demand) which may be a precondition to obtaining payment under the Security or to restrain Us from using moneys received under the Security.
- 21.4 You acknowledge and agree that where there is a dispute in relation to the Security that it is the intention of the parties that We obtain and keep for Our own purposes the proceeds of such Security pending the outcome of any dispute process. We are entitled to any interest payable on the proceeds.

21.5 We will release and return to You the balance of the Security within 20 Business Days after the return of the Equipment to us in accordance with the term of this Hire Agreement.

21.6 If at any time We are required to release Security to You and We consider We have any unsatisfied claim against You (including without limitation for any liquidated or unliquidated damages), then We will only be obliged to release the Security to the extent that the aggregate balance the Security being released exceeds the aggregate of:

- (a) the amount We are otherwise entitled to retain under this Hire Agreement; and
- (b) the amount of Our unsatisfied claim,

but We must release the excess balance of Security withheld under this clause (if any), within 20 Business Days of the unsatisfied claim being satisfied.

21.7 As security for Your obligations and liabilities under this Hire Agreement:

- (a) You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property ("Charged Property"); and
- (b) without limiting the generality of the charge in this clause, You consent and agree, on Our request, to the lodgment by Us of a caveat noting our interest on the Charged Property.

## 22. REVIEW OF YOUR CREDIT APPROVAL

- 22.1 From time to time We may review any Credit Account We have granted to You without notice.
- 22.2 We may, at Our discretion, decide to withdraw credit for any reason, including if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.
- 22.3 If we withdraw credit You may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:
- (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
  - (b) pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is returned to Us and is in Our possession.

## 23. AUTHORITY

- 23.1 The person signing or accepting the terms of any document which forms part of the Hire Agreement or Relevant Documents for and on behalf of You hereby warrants that they have Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.
- 23.2 The person signing or accepting the terms of this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

## 24. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS

- 24.1 The following provisions will not apply if the Hire Agreement is a Consumer Contract or a Small Business Contract:
- (a) clause 16.2 (Termination on 24 hours' notice); and
  - (b) clause 21 (Security).

## 25. TELEMETRY DATA

25.1 We are not liable with respect to Your use or reliance on any telemetry data We have provided to You in relation to the Equipment (the Data).

25.2 You acknowledge that:

- (a) We own all rights, title and interest (including intellectual property rights) in the Data;
- (b) You must obtain our prior written consent for the purposes for which You intend to use the Data and You must not disclose the Data to any third party;
- (c) We do not warrant the accuracy of any Data or guarantee that such Data will be available to You throughout the Hire Period;
- (d) We are not required to retain any Data and such Data may not be available for retrieval after the Hire Period; and
- (e) We may disclose, from time to time, any Data to a third party who is not a party to this Hire Agreement (for example, location and utilisation data with respect to the Equipment) and we are not required to obtain Your prior consent with respect to such disclosure and such disclosure will not constitute a breach of this Agreement by Us.

25.3 You release and indemnify us with respect to all Liability incurred in relation to Your use and reliance on any Data, arising with respect to the disclosure of Data to, and use of Data by, a third party arising under or in connection with this clause.

## 26. CHAIN OF RESPONSIBILITY OBLIGATIONS

26.1 You must:

- (a) comply with all Chain of Responsibility Laws and must ensure that any activity relating to the Equipment (including scheduling, load restraint, Transport Movement) is undertaken in accordance with Your Chain of Responsibility obligations;
- (b) ensure that all of Your subcontractors (where You subcontract any Transport Movement under this Hire Agreement) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 26.

26.2 You will allow Us to audit your Chain of Responsibility Laws compliance and related documents, procedures, policies and records to ensure that you have the appropriate processes in place to manage Your Chain of Responsibility Laws obligations.

## 27. DISPUTES

27.1 Until the parties have complied with this clause 27, a party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except to seek urgent injunctive or declaratory relief.

27.2 Where any dispute arises under this Hire Agreement, a party may give notice to the other party setting out the material particulars of the dispute (the **Dispute Notice**).

27.3 Within 10 Business Days of the Dispute Notice (or any other period agreed in writing between the parties), the parties (or their nominees) must meet to attempt to resolve the dispute.

27.4 If the dispute is not resolved within 20 Business Days of the Dispute Notice, either party may commence legal proceedings.

## 28. GENERAL

28.1 This Hire Agreement constitutes the entire agreement between the parties and supersedes all previous communications or agreements, whether oral or written, relating to the subject matter of this Hire Agreement.

28.2 If any provision or part of any provision of the Hire Agreement is invalid, illegal or unenforceable, such provision or part thereof shall be severed from the Hire Agreement and the remainder shall continue in full force and effect.

28.3 Any waiver of rights will not be deemed a waiver unless it is in writing and signed by an authorised officer of the party waiving such rights and any such waiver will only operate to the extent so specified.

28.4 The Hire Agreement shall be governed by the laws of New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.

28.5 You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those expressly contained in this Hire Agreement.

28.6 We may assign this Hire Agreement to any third party without Your consent (including a Related Body Corporate). Where You are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, then we may assign this Hire Agreement to a Related Body Corporate provided that Related Body Corporate has the financial and operational resources to comply with the terms of the Hire Agreement.

28.7 To the extent that a variation to this Hire Agreement is not detrimental to You, from time to time, We may vary this Hire Agreement. Any other variation of the Hire Agreement must be agreed in writing by You and Us.

28.8 Clauses 4, 5, 6.2, 7, 8.6, 9, 11.2, 12.3, 15, 17.1, 19, 21, 27, 28 and 29 and any other provisions which expressly or by implication are intended to survive termination or expiry, survives termination or expiry of this Hire Agreement.

## 29. DEFINITIONS AND INTERPRETATION

29.1 In these Terms of Hire, unless the context otherwise requires:

- (a) "including" and similar words do not imply any limitation;
- (b) headings are for ease of reference only and shall not affect interpretation;
- (c) singular includes the plural and vice versa;
- (d) a reference to "\$" or "dollars" is a reference to Australian currency;
- (e) references to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- (f) references to statutes include all statutes amending, consolidating or replacing such statutes and includes any subordinate legislation.

29.2 In these Terms of Hire, unless otherwise defined:

**ACL** means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

**Australian Privacy Principles** means the Australian Privacy Principles set out in the *Privacy Act 1988 (Cth)*.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

**Chain of Responsibility Laws** means all laws relating to chain of responsibility obligations including the Heavy Vehicle National Law and any law relating to driver fatigue, fatigue management, vehicle mass and dimension, vehicle

# TERMS OF HIRE

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maintenance, loading requirements (including load restraint), speed management, towing and coupling requirements, vehicle permits, transport documentation for goods, container weight declarations, dangerous goods and/or any other matters relating to the safe operation of vehicles.

**Confidential Information** means each party's information made available to the other at any time concerning the business, operations, finances, plans or contractors of the disclosing party (or the disclosing party's Related Bodies Corporate), including customer lists and pricing information and including any information that is derived from such information, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Hire Agreement; or
- (b) is independently known to, or developed by, the receiving party as evidenced by the receiving party's written records.

**Consequential Loss** means indirect or special loss or damage, loss of actual or anticipated profit, loss of business, business interruption, loss of overhead, loss of contract, loss of revenue or loss of opportunity or wasted costs.

**Consumer Contract and Small Business Contract** has the same meaning as in the ACL.

**CPI** means Consumer Price Index being the weighted average of the All Groups Price Index Numbers for the eight capital cities of the states and territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

**Credit Account** means any billing arrangement We have extended to You upon Our approval of a credit application.

**Environmental Laws** means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including the use or protection of the environment.

**Equipment** means any equipment provided by Us to You under the Hire Agreement, including any associated or attached tools, accessories and parts available for hire.

**Fair Wear and Tear** means normal deterioration which could be reasonably expected over the Hire Period under normal operating conditions, where the Equipment is operated by a reasonably competent operator, having regard to the condition, age, existing wear and other specific characteristics of the Equipment, but excludes deterioration to the Equipment caused by use in Harsh Environments.

**Force Majeure** means events that are beyond the reasonable control of a party and that cause or result in the default or delay in the performance by the Affected Party of any of its obligations under this Hire Agreement and that the Affected Party could not reasonably have been expected to have foreseen, prevented, avoided or overcome including acts of God, pandemics, war, terrorism, civil commotion, riots, embargoes, industrial disputes, 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.

**GST** means the goods and/or services tax levied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions "supply" and "tax" have the same meanings as in that Act.

**Harsh Environments** means sites with exposure to salt water, mine sites or prospective mine sites, underground projects and off shore locations.

**Hire Agreement** has the meaning given to it in clause 1.

**Hire Charge** means the rates and charges payable by You for the hire of the Equipment.

**Hire Period** means the period described in clause 3.

**Hire Schedule** means the document (signed or unsigned) provided by Us to You which includes details of the Equipment You have hired, the Hire Charge, the Security, any other applicable charges, and the address for delivery of the Equipment.

**Liability** includes all liability, claims, damage, loss, costs and expenses (including legal fees, costs and disbursements on a full indemnity basis) and any environmental loss, cost, damage or expense.

**Licence to Perform High Risk Work** means a valid licence issued by the relevant workplace health and safety departments of each respective state government required for the operation of Equipment which is considered to be high risk.

**Long Distance Location** is a location in excess of 50km from Our nearest branch.

**LTD Waiver** has the meaning given to it in clause 13.1.

**LTD Waiver Fee** is the fee charged to You in accordance with clause 13.3.

**Minimum Hire Period** means:

Equipment	Minimum Hire Period
Building Complexes	90 days
Portable Buildings, Shower Blocks, Toilet Blocks, Ablution Blocks, Containers	42 days
Propping, Bridges, Crossings,	14 days
Traffic Products, Shoring, Tarpaulins, Acrow Props, Ladders, Scaffold, Large Diesel Pumps, Dosing Tanks, Rubbish Chutes, Portable toilets	7 days
Confined Space Equipment	3 days
Pipeline Construction/Testing Products	2 days

**New Replacement Cost** means the cost to replace the Equipment with a new item of the same equipment, or if the same equipment is not available, then the cost to replace the Equipment with a new item of equipment of the same quality, function and capacity.

**PMP** is the electronically managed preventive maintenance programme operated by Us (or Our agent) for all Equipment. The PMP involves regular attendance on site by Our service team to conduct routine Equipment servicing and general maintenance requirements.

**PPI** means the Producer Price Index being the Final Demand (excluding exports) published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any other legislation and regulations in respect of it, and the following words have the respective meanings given to them in the PPS Act: *financing change statement, financing statement, purchase money security interest* (or "PMSI"), *register, registration, security interest, security agreement*.

**Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).

**Relevant Documents** means:

- (a) any credit application for a Credit Account completed by You; and



- (b) any guarantee, indemnity or charge (including the Security) which guarantees all monies owing by You to Us.

**Road Law** means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the Heavy Vehicle National Law.

**Security** means an unconditional undertaking, including a bank guarantee or letter of credit:

- (a) directed to Us;
- (b) in a form approved by Us;
- (c) given by a financial institution or insurance entity carrying on business in Australia and approved by Us; and
- (d) which is otherwise in accordance with clause 21.

**Special Conditions** means the Coates special conditions of hire October 2021 edition or as amended from time to time, located at [www.coates.com.au](http://www.coates.com.au).

**Transport Movement** means the period of time during a delivery in which Equipment is being transported by road, which is governed by Road Law and is subject to the Chain of Responsibility.

**We/Us/Our** means Coates Hire Operations Pty Limited (ABN 99 074 126 971) and any Related Body Corporate of Coates Hire Operations Pty Limited and their successors and assigns.

**You/Your** refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us as specified in the Hire Schedule including any of your employees, agents and contractors.