

GENERAL TERMS AND CONDITIONS OF HIRE AGREEMENT & SECURITY AGREEMENT

G R PLANT HIRE
ABN 45 688 054 263

1. HIRE AGREEMENT BETWEEN G R PLANT HIRE AND THE CUSTOMER

1.1 These General Terms and Conditions form part of the Hire Agreement & Security Agreement ("Hire Agreement") and the Customer agrees to be bound by and adhere to the General Terms and Conditions of Hire Agreement & Security Agreement and the Customer fully understands that those terms and conditions include:

- (a) retention of title provisions;
- (b) the right to require immediate payment of any amount owing, notwithstanding any previous indulgences;
- (c) rights to recover interest, and collection and other expenses, in default of payment; and
- (d) terms limiting the liability of G R Plant Hire for damages, and giving G R Plant Hire the right to nominate the Court in which any legal proceedings may be instituted and prosecuted.

2. DEFINITIONS

'G R Plant Hire' means G Musico and R.A Musico trading as G R Plant Hire ABN 45 688 054 263.

'Customer' means the customer identified in the Hire Agreement & Security Agreement and includes any employees, agents and contractors.

'Hire Agreement' means this agreement entered into by G R Plant Hire and the Customer.

'Goods' means vehicles, plant, equipment, goods and/or services supplied by G R Plant Hire to the Customer or ordered by the Customer but not yet supplied and includes goods described in the Hire Agreement, quotation, invoice, hire.

'Hire Period' means any equipment specified in the Hire Schedule the period described under clause 5.

'Hire Charges' means either:

- (a) the cost of hiring Goods as specifically agreed between G R Plant Hire and the Customer; or
- (b) in the absence of any prior agreement, as set by G R Plant Hire and shall be subject to change from time to time without notice.

3. G R PLANT HIRE'S COMMITMENT TO THE CUSTOMER

G R Plant Hire agrees to hire Goods to the Customer and will:

- (a) provide Goods that are clean, in good repair and safe working order;
- (b) subject to clause 7.2, allow the Customer to exclusively use the Goods during the Hire Period.

4. USE OF EQUIPMENT

4.1 The Customer agrees that the Goods are to be used:

- (a) in a skilful and proper manner and the user is suitably instructed, trained and qualified (including holding a current licence to perform and/or operate the Goods) and the user is wearing suitable clothing and/or safety equipment to use the Goods;
- (b) for the purpose and within the capacity for which it was designed; and
- (c) for legal purposes or in a legal manner and comply with any laws, policies and regulations in relation to the possession, use or maintenance of the Goods, and will only use the Goods for the purpose for which they were hired and specifically stated to G R Plant Hire at the time of hire. G R Plant Hire strongly recommends the Customer use the Dial Before You Dig service.

4.2 G R Plant Hire will have the exclusive right to determine the type of operation in which the Goods may be used and the suitability of the Goods for the work to be performed and to terminate the hire at any time.

4.3 The Customer must not in any way alter, modify, tamper with, damage or repair the Goods without G R Plant Hire's written consent.

4.4 G R Plant Hire will be liable for all servicing, repairs and maintenance of Goods.

4.5 G R Plant Hire will coordinate servicing, when required, of Goods.

4.6 The Customer will provide access to G R Plant Hire to maintain and service the Goods and undertake statutory inspections if required during normal business hours, failing which additional charges for out of hours service and maintenance may apply.

4.7 The Customer must ensure that the Goods are stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Goods.

4.8 Vehicles must not be operated by a learner driver.

4.9 Vehicles must be used only on roads which are properly formed and constructed as a sealed, metalled or gravel road.

4.10 The Goods must not be used and stored outside of a 60km radius of the Adelaide metropolitan area.

5. HIRE PERIOD

5.1 The Hire Period commences when, either:

- (a) the Customer takes possession of the Goods; or
- (b) the time when the Goods are delivered at the address provided to G R Plant Hire in the Hire Agreement.

5.2 The Hire Period ends when the Goods are back in the custody of G R Plant Hire.

5.3 The Hire Period includes weekends and public holidays.

5.4 The Hire Period can only be changed if the Customer requests a variation to the Hire Agreement and G R Plant Hire agrees to that variation in writing.

6. RESPONSIBILITY FOR GOODS

The Customer is responsible for the Goods for the Hire Period.

7. DELIVERY AND RETURN OF GOODS

7.1 Where G R Plant Hire is delivering Goods to or collecting Goods from the Customer, clear access must be available to the delivery or collection site. The Customer will be responsible for any demurrage, delay or futile deliveries or collection costs of Goods where this is not available.

7.2 Delivery and collection dates and times are estimates only. G R Plant and Hire is not responsible for the failure or delays in the delivery or collection of Goods.

7.3 G R Plant Hire will notify the Customer as reasonably practicable of any delay in delivery or collection of Goods.

7.4 The Customer must ensure that safe loading, securing and transport of all goods in accordance with laws, industry guidelines and manufacturer's guidelines. The Customer must ensure that any transportation contractor observes any safety directions advised by G R Plant Hire and/or manufacturer of the Goods for its loading and safe handling.

7.5 The Customer agrees to return the Goods to G R Plant Hire during regular business hours unless agreed otherwise.

7.6 G R Plant Hire may terminate the Hire Agreement at its sole discretion and the Customer authorises G R Plant Hire and its servants to enter upon such land as may be necessary to recover the Goods.

7.7 Upon the expiration or earlier termination of the Hire Agreement, the Customer shall return the Goods to G R Plant Hire in good repair, condition and working order.

7.8 Upon the expiration or earlier termination of the Hire Agreement, the Customer shall return the Goods to G R Plant Hire with a full tank of fuel.

8. HIRING CHARGES

8.1 The Customer will pay the Hire Charges together with any deposit as G R Plant Hire may require prior to the Goods being released for the Hire Period to the Customer.

8.2 Hire Charges are charged at the rate in and the manner specified during the period. Prices include GST. G R Plant Hire will charge GST at the rate set by the Government in respect to any supply made to the Customer.

8.3 The Hire Charges may be subject to alteration by mutual agreement between the Customer and G R Plant Hire if the agreed Hire Period or Goods hired is altered in any way by the Customer.

8.4 Hire charges are subject to change without notice.

- 8.5 Any quotations provided by G R Plant Hire remain valid for acceptance for a period of 30 days from the date of quotation. After this time this quotation is voidable at the option of G R Plant Hire which may in its absolute discretion determine this quotation and subsequently revise the price or any other of the conditions so quoted.
- 8.6 Clerical errors are subject to correction and do not bind G R Plant Hire.
- 8.7 Hire charges include the provision of insurance of Goods for the Hire Period.
- 8.8 The Customer is liable to pay to G R Plant Hire upon request the excess amount in connection with an insurance claim where G R Plant Hire deems the Customer responsible for an loss, theft or damage to Goods.
- 9. OTHER CHARGES**
In addition to the Hire Charges, the Customer will be required to pay:
- for any consumables or trade materials supplied to the Customer;
 - if the Customer requires G R Plant Hire to deliver, collect or install the Goods, the cost of delivery, collection or installation, as detailed in the Hire Agreement;
 - for any costs incurred due to delay or additional labour performed due to the Customer's failure to prepare and take delivery of the Goods;
 - if the Customer fails to return the Goods in a clean and good working condition, charges for the cleaning and repair of the Goods as necessary;
 - the new replacement cost of any Goods which is not returned to G R Plant Hire upon expiration of the Hire Period;
 - all costs incurred by G R Plant Hire in recovering possession of the Goods;
 - all tolls, fines, penalties, levies or charges payable in connection to the Customer's use of the Goods;
 - any GST payable at the rate set by the Government in respect to any supply made to the Customer; and
 - any other fee or charge that G R Plant Hire considers reasonable.
- 10. LATE RETURN**
Where Goods are not returned at the end of the Hire Period, the Customer will continue to incur Hire Charges and other charges until the Goods are returned.
- 11. FAILURE OF GOODS**
- 11.1 G R Plant Hire is not liable for any loss sustained by the Customer.
- 11.2 Where the Goods become unsafe or in a state of disrepair, the Customer agrees to immediately discontinue use and to notify G R Plant Hire immediately.
- 11.3 The Customer will not attempt to repair the Goods without the consent of G R Plant Hire and will immediately return the Goods to G R Plant Hire.
- 11.4 Where the failure is not caused due to the Customer's negligence or misuse, G R Plant Hire agrees, in its discretion to:
- repair the Goods within a reasonable time;
 - make similar Goods available; or
 - adjust the rental charge.
- 12. LOSS, DAMAGE AND FAULTY GOODS**
- 12.1 The Customer is liable for the cost of repairing any damaged Goods or for the cost of replacing Goods lost or stolen while in the Customer's possession. The Customer may be liable for continuing Hire Charges until the repair or replacement of the Goods.
- 12.2 The Customer acknowledges that no item of Goods hired are covered by G R Plant Hire's insurance whilst on hire and the Customer covenants to insure Goods in the name of the Customer and G R Plant Hire jointly whilst on hire.
- 12.3 The Customer agrees to advise G R Plant Hire immediately of any loss, theft or damage to Goods or faulty Goods.
- 13. INDEMNITIES AND EXCLUSION OF LIABILITIES**
- 13.1 G R Plant Hire disclaims any and all other warranties, express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, except that the Customer warrants that G R Plant Hire has the right to hire the Goods, as provided in the Hire Agreement.
- 13.2 The Customer is responsible for ensuring the safe use and transport of the Goods and does not rely on representations of G R Plant Hire as to how the equipment should be used or transported.
- 13.3 The Customer agrees to accept full responsibility for all claims, actions or demands in respect to any death or injury to persons, loss of productivity or loss or damage to property or otherwise, arising out of the delivery, servicing, storage, possession, use or failure of the Goods during the Hire Period whether or not due to the negligence of the Customer, its employee or agent or any other person and agrees to indemnify G R Plant Hire in respect to these claims.
- 13.4 The Customer will not allow any lien to be created over the Goods nor sell, transfer, mortgage or charge the Goods and will indemnify G R Plant Hire against any losses or expenses incurred as a result of its loss of possession of the Goods for any reason.
- 14. OWNERSHIP OF GOODS**
The Goods are, and shall at all times remain the sole and exclusive property of G R Plant Hire, and the Customer shall have no right, title or interest therein or thereto except as expressly set out in the Hire Agreement.
- 15. SUBLEASE, LOANS OF GOODS AND ASSIGNMENTS**
The Customer must not sublease, loan or assign its rights under the Hire Agreement without G R Plant Hire's written permission.
- 16. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**
- 16.1 The Customer consents to G R Plant Hire affecting and maintaining a registration on the register (in any manner G R Plant Hire considers appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Goods and the proceeds arising in respect of any dealing in the Goods and the Customer agree to sign any documents and provide all assistance and information to G R Plant Hire required to facilitate the registration and maintenance of any security interest (including any purchase money security interest).
- 16.2 The Customer and G R Plant Hire agree to contract-out of the PPSA in accordance with section 115 to the extent that section applies for the benefit of, and does not impose a burden on G R Plant Hire. The Customer waives its right to receive a copy of any Financing Statement or any Financing Charge Statement registered by G R Plant Hire in respect of the security interest created by these Terms and Conditions.
- 16.3 The Customer waives its right to receive notice of a verification statement in relation to a registration by G R Plant Hire on the register.
- 16.4 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms:
- section 95: Notice of removal of accession – to the extent that it requires G R Plant Hire to give notice to the Customer;
 - section 96: When a person with an interest in the whole may retain an accession;
 - section 121(4): Enforcement of liquid assets – notice to grantor;
 - section 125: Obligation not to dispose of or retain collateral;
 - section 130: Notice of disposal to the extent that it requires G R Plant Hire to give notice to the Customer;
 - section 132(3)(d): Contents of statement of account after disposal;
 - section 132(4): Statement of account if no disposal;
 - section 134(1): Retention of collateral;
 - section 135: Notice of retention of collateral;
 - section 142: Redemption of collateral; and
 - section 143: Reinstatement of security agreement.
- 16.5 G R Plant Hire agrees with the Customer not to disclose information of the kind mentioned in s 275(1) of the PPSA except in circumstances required by s 275(b)-(e).
- 16.6 The Customer agrees that, until all monies owing to G R Plant Hire are paid in full, it shall not sell or grant any other security interest in the Collateral.

16.7 The Customer agrees to reimburse G R Plant Hire, upon demand, for all costs and/or expenses incurred or payable by G R Plant Hire in relation to registering or maintaining any financing statement, releasing in whole or in part of G R Plant Hire’s security interest or any other document in respect of any security interest.

17. PAYMENT

17.1 The Customer will pay the Hire Charges together with any deposit as G R Plant Hire may require prior to the Goods being released for the Hire Period to the Customer.

17.2 Where credit is advanced to the Customer these further payments will be due within 7 days from the date of the hire invoice rendered to the Customer by G R Plant Hire.

17.3 A surcharge for credit card payments may be charged at the discretion of G R Plant Hire.

18. LATE PAYMENTS

Interest will be charged on overdue amounts at the 2% above the prevailing bank overdraft rate from the due date for payment up to and including the date of payment.

19. COLLECTION COSTS

19.1 The Customer agrees to pay all reasonable costs of collection and/or legal proceedings bought to recover any amounts outstanding to G R Plant Hire.

19.2 The Customer will be liable for any dishonoured cheques or bank fees associated with dishonoured payment of the Customer.

20. SEVERABILITY

The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

21. JURISDICTION

The Hire Agreement shall be governed by and construed in accordance with the laws of the State of South Australia.

22. VARIATION

G R Plant Hire may at any time vary these terms and conditions which will come into effect 14 days after notice is given to the Customer. Any other variation to the Hire Agreement must be agreed in writing by G R Plant Hire and the Customer.

23. TERMINATION

G R Plant Hire reserves the right to terminate the contract at any time.

24. PRIVACY

24.1 G R Plant Hire provides access to information held by G R Plant Hire in accordance with its Privacy Policy and the Australian Privacy Principles which are set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (‘the Act’) which amends the *Privacy Act 1988*.

24.2 The Customer acknowledge and gives consent that G R Plant Hire may make enquiries as to the credit and financial situation of the Customer, including any proprietor, director, trustee and guarantor and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the credit application, for the purposes of assessing this application for creditworthiness or continuing creditworthiness and as G R Plant Hire reasonably sees fit from time to time, for purposes including but not limited to:

- (a) obtaining and exchanging the information with a credit reporting agency or credit provider, credit insurer or insurance broker;
- (b) passing the information on to a debt collector or legal advisor;
- (c) exchanging further personal information, including consumer and/or commercial credit information, with another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Act; and

24.3 The Customer acknowledges that the consent hereby given remains in force until all amounts owing in respect of any commercial credit provided are paid in full and the Customer no longer has an account with G R Plant Hire.

24.4 The Customer acknowledges that they have read and understood the G R Plant Hire’s Privacy Policy.

25. SIGNING THE HIRE AGREEMENT

25.1 The person signing any documents which forms part of the Hire Agreement for and on behalf of the Customer hereby warrants that he or she has the Customer’s authority to enter into the Hire Agreement on the Customer’s behalf and grant the security interests in connection with it and is empowered to bind the Customer to the Hire Agreement and each security interest granted in connection with it.

25.2 Except where clause 25.1 applies, the Customer signing the Hire Agreement indemnifies G R Plant Hire against all losses, costs and claims incurred by G R Plant Hire arising out of the person so signing the Hire Agreement not in fact having such power and/or authority.

Customer acknowledgment and acceptance of General Terms & Conditions of Hire Agreement & Security Agreement

DATED the _____ day of _____ 20_____

Signature _____

Print Name _____