

Hire Agreement Conditions

1 Definitions

- (a) **"Hire Agreement"** means the Hire Agreement entered into between Kanes and the Hirer for the hire of the Plant and includes any quotation, Purchase Order, and these Conditions.
- (b) **"Kanes"** means Kanes Hire Pty Ltd A.B.N. 96 001 683 781.
- (c) **"Hirer"** means the person, firm or corporation hiring Plant from Kanes.
- (d) **"Plant"** means all equipment, including tools, accessories, consumables and parts supplied by Kanes to the Hirer.
- (e) **"Depot"** and **"Premises"** means 19 Sirius Road Lane Cove, New South Wales 2066 or other address Kanes notifies the Hirer.
- (f) **"Interest Rate"** means the overnight cash rate set by the Reserve Bank of Australia from time to time plus a margin of 14.75% per annum.
- (g) **"Payment Terms"** means the payment terms set out in the Hirer's Credit Application Form.
- (h) **"Schedule of Hire Rates"** means the schedule of hire rates notified by Kanes to the Hirer prior to the Hirer entering into the Hire Agreement.

2 Calculation of Hire Period

Hire is charged for the time the Plant is out of the possession of Kanes (inclusive of weekends and public holidays), not only the time the Plant is used.

3 Minimum Hire Period

The hiring rate is based upon the Plant being hired for the minimum hire period as per Kanes' Schedule of Hire Rates. If the Plant is not returned to the Premises by the end of the hire period, additional hiring charges will be payable in accordance with Kanes' Schedule of Hiring Rates.

4 Calculation of Hire Charges

Hiring will commence from the time the Plant is collected by the Hirer from the Premises, until returned to the Premises. Should Kanes agree with the Hirer to deliver and collect the Plant, hire charges shall commence from the time the Plant leaves the Premises until Kanes is notified by the Hirer that the Plant is available for collection, at which time Kanes will give an "OFF-HIRE" number as verification that such notification has been received. The notification shall be given by the Hirer in time for the Plant to be picked up and returned to the Premises by 5.00 pm on the day of cessation of hire. However, in the event of insufficient notice being given, the Hirer will be held responsible for the safekeeping of the Plant until collection and may be charged additional hire charges, at and within Kanes' absolute discretion.

5 Plant Breakdown

- (a) Provided the Hirer notifies Kanes immediately (or as soon as reasonably practicable) of any Plant breakdown, hiring charges will not be payable during the time the Plant is not working, unless due to negligence or misuse on the part of, or attributable to, the Hirer.
- (b) Such notification does not absolve the Hirer from its obligation to safeguard the Plant and in the event of a breakdown, the Hirer must immediately cease use of the Plant and not repair or

attempt to repair the Plant without Kanes' prior consent.

- (c) Where the Australian Consumer Law applies, the Hirer has the benefit of guarantees in relation to the hire of Plant which cannot be excluded.
- (d) Where the Australian Consumer Law applies and the Plant is not of a kind ordinarily acquired for personal, domestic or household use or consumption, Kanes' liability is limited to the replacement or repair of the Plant or the cost of having the Plant repaired or replaced.
- (e) To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, Kanes makes no representations and gives no warranties other than those set out in these Conditions and will not be liable under Australian law to the Hirer for any damages, costs or other liabilities, loss or inconvenience (including for loss of profits and other consequential or indirect loss) arising out of any breakdown of the Plant

6 Hirer's Responsibilities

Subject to the provisions of the Australian Consumer Law that cannot be excluded the Hirer must:

- (a) **Suitability for Purpose**
Prior to the use of the Plant, satisfy itself as to the condition and suitability of the Plant hired for the purpose required.
- (b) **Use of Plant**
Use the Plant in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that Kanes gives no warranty as to capacity.
- (c) **Licensed Operators**
Ensure that at all times the Plant is only operated by a suitably certified or licensed operator (whether supplied by the Hirer at its cost, or employed and provided by Kanes) who will work strictly in accordance with the direction of the Hirer or its authorised representative.
- (d) **Maintenance of Plant**
At its own expense, service, clean, fuel, lubricate and maintain the Plant in good and substantial repair and condition, except for prearranged major servicing which will be carried out by Kanes during normal working hours.
- (e) **Tyre Damage**
Accept full responsibility for all punctured, deflated or damaged tyres.
- (f) **Cleaning of Plant**
Clean the Plant properly and thoroughly upon completion of the hire or be charged at and within the absolute discretion of Kanes, a cleaning fee as per Kanes' pricing schedule for any cleaning required to be performed by Kanes or its representative/s.
- (g) **Safekeeping of Plant**
Accept full responsibility for the safekeeping of the Plant, and except as specified hereafter, indemnify Kanes for all loss, theft or damage to the Plant 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.
- (h) **Indemnity for Loss**
Accept full responsibility for, and indemnify Kanes against all claims in respect of any injury to, or death of, persons, or loss or damage to property arising out of the delivery, servicing, storage, possession or use of the Plant during the hire period however arising, whether from negligence of the Hirer or Kanes or otherwise and, without limiting the generality of the foregoing, whether or not the Plant was being operated by an employee of Kanes or any other

person, whose acts Kanes might be held to be responsible for, in connection with the operation of the Plant.

(i) **No Lien over Plant**

Not be entitled to claim any lien over the Plant nor sell, transfer, mortgage, charge or encumber in any way the Plant nor, without Kanes prior written consent, part with possession of the Plant nor assign the benefit of the hire agreement nor remove the Plant or allow it to be removed from the State in which it was hired.

(j) **Interference with Plant**

Not alter, make additions to, deface or erase any identifying mark, plate or number on or in the Plant or in any other manner interfere with the Plant.

(k) **Payment**

Pay to Kanes, all hire and related charges and other costs as stipulated herein in accordance with Kanes Payment Terms and any expenses or legal costs (including commission payable to a commercial agent) incurred in attempting to recover such amounts as a result of the failure of the Hirer to pay any Charges when due.

(l) **Collection Costs for Plant**

Accept responsibility for and fully reimburse Kanes for the cost of freight and other charges to retrieve Plant for any reason.

7 Termination

Without prejudice to any other rights or remedies available to Kanes and notwithstanding any period of hire specified, Kanes reserves the right to terminate the hire agreement:

- (a) At any time by giving to the Hirer 24 hours-notice of its intention to so terminate, such termination to be effective as of the expiry of the said 24 hours.
- (b) By notice if the Hirer breaches any term or condition of the hire agreement, does or allows to be done any act or thing whereby Kanes' rights in the Plant may be prejudiced, or has a winding up petition presented against it or be wound up, or go into voluntary liquidation or administration or commits 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 its business is placed under official management or if it ceases to carry on business.

Upon termination of the hire agreement, Kanes will be entitled to take possession of the Plant and for this purpose the Hirer irrevocably appoints Kanes and its officers and employees as its agents and authorises Kanes and its officers and agents to enter on any land or premises owned by or under the control of the Hirer upon which the Plant is then situated and remove the plant and agrees to release, hold harmless and indemnify Kanes in respect of any claims, damages and expenses arising out of any action taken under this clause.

8 Theft, Loss or Damage

The Hirer is responsible for the theft, loss or damage to the Plant and/or its attached tools and accessories howsoever caused whilst on hire and the cost of replacement or repairs to the Plant will be charged to the Hirer.

9 Authority

The person signing the purchase order for and on behalf of the Hirer, warrants to Kanes that he or she has the authority of the Hirer to enter into the Hire Agreement on the Hirer's behalf and personally indemnifies Kanes against all loss and damages including consequential loss, loss of profits and all legal costs incurred by Kanes arising out of the person signing the purchase order failing to have such authority.

10 Payment

- (a) Payment in full for all hiring charges and any other amounts payable in accordance with the Hire Agreement is required 30 days from the date of statement. In the absence of manifest error, no claims for credit will be recognised after 14 days from the date of invoice.
- (b) Payment must be by credit card or bank funds transfer. Payment by cheque or any other means will not be accepted.
- (c) Interest on all amounts not paid by the Hirer by the due date, will be charged at the Interest Rate for the period that the amount owing remains unpaid.
- (d) Kanes reserves the right to revise the Schedule of Hire Rates and related charges at any time, but any increase in rates will not apply to hire agreements entered into before the increase is notified to the Hirer;
- (e) If Kanes makes a precondition of any hire that payment of hire charges and any other amount payable by the Hirer is to be made by way of lodgement of a signed but incomplete credit card docket, then the Hirer irrevocably authorises and directs Kanes to complete the credit card docket by filling in the amount owing pursuant to the Hire Agreement. Provided that the sum charged to the credit card is in accordance with the Hire Agreement, the Hirer agrees that it will not dispute or seek to cancel the payment of such sum. Alternately, if Kanes has taken a copy of the Hirer's credit card the Hirer irrevocably authorises Kanes to debit all amounts owing by the Hirer to the Hirer's credit card.
- (f) If a Hirer fails to pay the total amount owing to Kanes by the due date for payment and the Hirer has been given a discount off Kanes' standard rates, then Kanes will be entitled to reverse the discount and the Hirer will be required to pay the full amount based on Kanes' standard rates and disregarding the discount that the Hirer would have enjoyed had the Hirer paid on time.

11 Motor Vehicle Use

- (a) In the case of the hire of a motor vehicle the Hirer must ensure and warrants to Kanes that all drivers of the motor vehicle are aged over 21 years, hold a current motor vehicle driving licence valid in the State of hire for the class required by law to drive the motor vehicle, have not been convicted of any offence relating to the driving of a motor vehicle under the influence of drugs or with more than the legally prescribed level of alcohol content and have not been refused any motor vehicle insurance.
- (b) The Hirer shall forthwith pay all fines, penalties and other charges arising out of the use of the motor vehicle and must reimburse Kanes on demand where it has made such payment.
- (c) All motor vehicles must be returned with a full tank of fuel, failing which the Hirer will be charged with the cost of filling same.

12 Electronic Communications and Signatures

- (a) In addition to delivery in person, via post and via facsimile, the Hirer agrees to have invoices and statements sent via email;
- (b) The Hirer agrees that communications from Kanes to the Hirer or the Hirer to Kanes constitute an "electronic communication" within the meaning of the Electronic Transactions Act 2000 (NSW) ("ETA");
- (c) The Hirer agrees that in agreeing to receive invoices via email, and the service of notices under the ETA, or any like or similar legislation that may be applicable in the State or Territory where the Plant is located to the Hirer via email, the Hirer is in both instances designating an information system within the meaning of the ETA;

- (d) The Hirer agrees that evidence of the “dispatch” (within the meaning of the ETA) by Kanes of an email, is also *prima facie* evidence of the “receipt” of the email by the Hirer within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of dispatch of the email;
- (e) Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the ETA or any other applicable provisions of that Act or any other applicable provisions of any regulations referred to therein.

13 Personal Property Securities Act

13.1 Definitions

In this clause:

- (a) PPSA means the Personal Property Securities Act 2009 (Cth); and
- (b) words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

13.2 Consent to registration

The Hirer consents to Kanes perfecting any security interest that it considers this document provides for by registration under the PPSA. The Hirer agrees to do anything Kanes reasonably asks to ensure that the security interest:

- (a) is enforceable, perfected and otherwise effective; and
- (b) has priority over all other security interests.
- (c) To the extent the law permits, the Hirer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent Kanes from giving a notice under the PPSA.
- (d) The Hirer agrees not to exercise its rights to make any request of Kanes under section 275 of the PPSA. However, this does not limit the Hirer's rights to request information other than under section 275.

13.3 Enforcement of security interest

- (a) To the extent the law permits, Kanes need not comply with, and the Hirer may not exercise rights under, any provisions of chapter 4 of the PPSA that may be contracted out of.

14. Entire Agreement

The Hire Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of the Hire Agreement are merged in the Hire Agreement and are of no further effect. No oral explanation or information provided by a party to another, affects the meaning or interpretation of the Hire Agreement or constitutes any collateral agreement, warranty or understanding. If there is any inconsistency between the Hire Agreement and the Hirer's terms of trade, then the terms of the Hire Agreement will prevail.

15 Governing Law and Jurisdiction

- (a) The laws of New South Wales govern the agreement; and

(b) The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

16 Privacy

- (a) The Hirer hereby grants permission in accordance with the Privacy Act, 1988 to Kanes to carry out such credit enquiries as Kanes may in its sole discretion determine and to provide such information concerning the Hirer to any other parties as Kanes may in its sole discretion determine and the Guarantor further hereby indemnifies Kanes in respect of any claims or actions arising out of the obtaining or providing of information concerning the Guarantor in exercise of its discretion as outlined herein.
- (b) Kanes may give credit information regarding the Hirer and guarantors to credit reporting Bodies.
- (c) Kanes will comply with the Australian Privacy Principles in all dealings with Hirers. A copy of Kane's privacy policy is available on request.

17 Force Majeure

- (a) Subject to clause 17.(b), neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, pandemic, 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.
- (b) Nothing in clause 17.(a) will limit or exclude your responsibility and liability under the Hire Agreement for Plant that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of your conduct or negligence.