



**A1 Plant Hire (Australia) Pty Ltd**  
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T: (08) 6252 1443 [www.a1planthire.com.au](http://www.a1planthire.com.au)

## **A1 Plant Hire Terms and Conditions**

To be used in conjunction with Hire Schedule.

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### **1 Hire of Equipment**

#### **1.1 Hire Agreement**

These Terms and Conditions, together with any:

- (a) Credit Application;
- (b) Deed of Guarantee and Indemnity or other Guarantee provided by a director of any Customer in favour of A1 Plant Hire; and/or
- (c) Hire Schedule;

together constitute the entire Hire Agreement between the Customer and A1 Plant Hire, provided that in the event of any inconsistency between those documents, the Hire Schedule shall prevail to the extent of the inconsistency.

#### **1.2 Acceptance of terms of Hire Agreement**

These Terms and Conditions apply to all transactions between A1 Plant Hire and the Customer relating to the hire of Equipment. Any of the following shall constitute acceptance by the Customer of these Terms and Conditions, and shall be sufficient evidence of the Customer's consent and acceptance of these terms of the Hire Agreement which acceptance shall form a legally binding agreement between the Parties:

- (a) The Customer or their representative signing or otherwise endorsing these Terms and Conditions, Hire Schedule or a Credit Application; or
- (b) The Customer, after receiving a copy of these Terms and Conditions, requesting, ordering or taking delivery of any Equipment from A1 Plant Hire.

#### **1.3 Hire**

- (a) A1 Plant Hire agrees to hire the Equipment to the Customer, and the Customer agrees to accept the hire of the Equipment for the Hire Period on and subject to the terms and conditions of this Hire Agreement, and to the Special Terms (if any).
- (b) Any extension of the Hire Period shall be on the same terms as contained in this Hire Agreement unless otherwise agreed in writing by the Parties.

#### **1.4 Fee**

The Customer must pay to A1 Plant Hire:

- (a) The Deposit (if any) in the amount and within the time period as set out in the Hire Schedule;
- (b) The Fee in the manner and amounts detailed in the Hire Schedule, for the duration of the Hire Period, with each instalment being payable in full without deduction or set-off of any kind, on its due date for payment;
- (c) The Further Fee in respect of each hour the Equipment is used by the Customer during any period not within the Specified Hours. For the purpose of this sub-clause 1.4(c), the Customer shall take hour meter readings in respect of the Equipment on a weekly basis and report these readings to A1 Plant Hire;
- (d) Any taxes, duties, or charges including GST payable in respect of this Hire Agreement or arising from the supply of or the Customer's use of the Equipment;
- (e) Any expenses, fees and legal costs incurred by A1 Plant Hire in enforcing the Hire Agreement, including all Interest accruing thereon;
- (f) All fees, charges and other costs payable by the Customer under the Hire Agreement, including without limitation any costs incurred by A1 Plant Hire in reinstating any Equipment to its Return

Condition as stipulated under sub-clause 2.1(b) and any additional fees, charges and other costs referred to in the Hire Schedule; and

- (g) Unless otherwise specified in this Hire Agreement or the Hire Schedule all invoices issued to the Customer by A1 Plant Hire must be paid within 30 days from the date of the relevant invoice.

### **1.5 A1 Plant Hire's right to repossession**

In addition to any other rights of repossession that A1 Plant Hire has under this Hire Agreement if the Customer does not make each payment as required under clause 1.44 as and when due, the Customer grants to A1 Plant Hire an absolute right to:

- (a) Enter the premises where the Equipment is situated and repossess the Equipment; and
- (b) If necessary, sever the Equipment from any structure or vehicle to which it is affixed.

### **1.6 Customer's liability for costs of repossession**

The Customer indemnifies A1 Plant Hire against any Claim, action, damage, Loss, liability, cost, charge, expense, outgoing or payment which A1 Plant Hire suffers, incurs or is liable for in respect of A1 Plant Hire's exercise of its rights to repossess the Equipment under this Hire Agreement.

### **1.7 Overdue Accounts and Interest**

- (a) Any amount owing by the Customer to A1 Plant Hire and not paid by the due date for any reason, shall incur interest at a rate of 8.3% per annum, or part thereof, on the unpaid amount. Interest shall be calculated on the daily balance of the outstanding amount on the basis of a 365 day year and is payable on demand.
- (b) The Customer agrees to pay all costs and expenses (including legal costs on a full indemnity basis, commissions paid by A1 Plant Hire to any commercial or mercantile agent and dishonour fees) incurred by A1 Plant Hire in connection with the recovery of overdue amounts and enforcing any charge or Security Interest granted hereunder.

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## **2 Expiry of Hire Period**

### **2.1 Return of Equipment and refund of Deposit**

Upon expiration of the Hire Period:

- (a) The Customer must return the Equipment to A1 Plant Hire at the Customer's cost, or otherwise deal with the Equipment as directed by A1 Plant Hire, on the Expiry Date and in accordance with sub-clause 2.1(b);
- (b) The Equipment returned pursuant to sub-clause 2.1(a) must in the reasonable opinion of A1 Plant Hire be in a condition equivalent to or better than the Return Condition. Failure by the Customer to deliver the Equipment in the Return Condition shall entitle A1 Plant Hire to have the Equipment reinstated to the Return Condition at the sole cost of the Customer and to retain the Deposit for this purpose. The Customer irrevocably authorises and directs A1 Plant Hire to deduct from the Deposit any costs incurred by A1 Plant Hire in restoring the Equipment to the Return Condition;
- (c) If A1 Plant Hire determines at its sole discretion that the Equipment has been returned in the Return Condition, the Deposit will be refunded to the Customer.

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## **3 Risk and Title**

### **3.1 Title**

The Customer acknowledges that A1 Plant Hire owns the Equipment and in all circumstances retains the title to the Equipment. Nothing in this Hire Agreement confers on the Customer any right, title, ownership or interest whatsoever in or over the Equipment except as expressly provided in this Hire Agreement.

### **3.2 Risk**

Risk in the Equipment passes to the Customer on the earlier of:

- (a) Collection of the Equipment by the Customer; or
- (b) Delivery of the Equipment to the Customer.

### 3.3 Insurance

- (a) The Customer must take out and maintain a policy of insurance that covers Loss or damage to all Equipment during the Hire Period for not less than the full new replacement cost of the Hire Equipment and public liability insurance policy with an appropriate "goods in care, custody or control" sub limit ("**Equipment Insurance**").
- (b) The Customer will be responsible for all costs arising out of the Equipment Insurance without limitation all premiums and excess payments and any shortfall in repair or replacement costs from any insurance payout.
- (c) The Customer must also take out and maintain for the Hire Period, suitable insurance for any Equipment which will be used off-shore, over water or in underground mines.
- (d) The Customer must not:
  - (i) do anything to prejudice or invalidate any insurance taken out in accordance with this Hire Agreement;
  - (ii) enforce, conduct or settle a claim without A1 Plant Hire's consent.

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## 4 Obligations of the Customer

### 4.1 Responsibilities

In addition to the responsibilities allocated to the Customer under the Hire Schedule and any other obligations imposed on the Customer under this Hire Agreement, for the duration of the Hire Period, the Customer:

- (a) Must provide and maintain adequate premises, facilities, equipment and vehicles and do all other things necessary to ensure that the Equipment remains in good condition and is stored, handled and transported in accordance with appropriate standards as to safety, cleanliness and efficiency;
- (b) Must permit any representative of A1 Plant Hire to inspect the condition of the Customer's premises, facilities, equipment and vehicles used for storing, handling and transporting the Equipment to ensure compliance by the Customer with its obligations under this clause 4;
- (c) Must observe all legal requirements in relation to:
  - (1) its possession and use of the Equipment; and
  - (2) carrying out its obligations under this Hire Agreement,including, but not limited to, obtaining and maintaining all necessary permits, licences and registrations and, in particular, meeting all legal requirements;
- (d) Must promptly inform A1 Plant Hire of all matters concerning the Equipment or this Hire Agreement which come to the Customer's attention;
- (e) Must not allow or authorise any other person or entity (whether or not they are a Related Party) to use, rehire or have possession of the Equipment at any time unless with the express prior written consent of A1 Plant Hire;
- (f) Must not 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;
- (g) Must not alter the Equipment in any way or change or obscure the identification lettering or numbering on the Equipment without the prior consent of A1 Plant Hire; and
- (h) Must ensure that:
  - (1) The Customer complies with any requirements of A1 Plant Hire's insurance provider at all times whilst in possession of the Equipment and does not do any thing that invalidates or is likely to invalidate A1 Plant Hire's insurance;
  - (2) All personnel are suitably licenced, qualified and able to competently operate and maintain the Equipment;
  - (3) The Equipment is not operated, handled or otherwise dealt with by any person who is under the influence of or otherwise affected by drugs and/or alcohol;
  - (4) The Equipment is only used for its intended purpose and in a reasonable and careful manner, and is not subjected to conditions beyond the Equipment's capabilities as provided by the Equipment's relevant manufacturer;

- (5) The Equipment is not operated during any period that its load-measuring, speed-measuring or other similar instruments or limiters are actually or are suspected to be malfunctioning or not functioning;
  - (6) All Equipment is serviced, maintained, used and operated in strict compliance with accepted systems, protocols and procedures as authorised or recognised by law, Australian standards, international standards, industry standards and any guidelines or requirements set by the Equipment's manufacturer and/or distributor;
  - (7) The Customer displays and maintains all safety signs and instructions (as required by law), and ensures that all instructions and signs are observed by operators of the Equipment;
  - (8) All persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer;
  - (9) The Customer and all of its agents and employees comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Equipment.
- (i) Must comply at all times with the Special Terms (if any).

#### **4.2 Damage, Theft, Loss and Repairs**

- (a) The Customer agrees to inspect all Equipment immediately on collection or delivery and must notify A1 Plant Hire within 48 hours of receiving any Equipment if they become aware of any damage, defect or fault in or to the Equipment that has not been acknowledged in writing by A1 Plant Hire. If the Customer does not notify A1 Plant Hire of such damage, defect or fault within 48 hours, then the Equipment shall be taken to have been accepted by the Customer free of any damage, defect or fault. The Customer agrees to return the Equipment in the same condition it was in prior to collection or delivery, and otherwise in accordance with the Return Condition requirements.
- (b) The Customer is responsible for any Loss suffered by A1 Plant Hire as a result of any Equipment suffering damage, being stolen or requiring repairs whilst in the possession of the Customer or otherwise becoming apparent on return of the Equipment to A1 Plant Hire.

#### **4.3 Indemnity**

- (a) The Customer indemnifies and shall keep indemnified A1 Plant Hire against any damage, Loss, Claim, action, liability, cost, expense, outgoing or payment, of whatever nature and however arising, suffered paid or incurred by A1 Plant Hire in connection with:
  - (1) Any failure by the Customer to comply with its obligations under this Hire Agreement (including, for the avoidance of doubt, Loss suffered for damaged, lost or stolen Equipment);
  - (2) The Customer's possession, use, demonstration, holding or operation of the Equipment;
  - (3) The possession, use or operation of the Equipment by any other person during the Hire Period (whether or not authorised by the Customer); and
  - (4) Damage to property, death or bodily injury suffered by any person arising whether directly or indirectly out of the Customer's possession, use, demonstration, holding or operation of the Equipment,

#### **4.4 Limitation of Liabilities**

To the maximum extent permitted by law A1 Plant Hire's total liability arising out of or in connection with its performance of its obligations pursuant to the terms of any Hire Agreement or arising out of or in connection with the supply of any Equipment (including pursuant to or for breach of these Terms and Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) A1 Plant Hire shall have no liability to the Customer for any Consequential Loss;
- (b) A1 Plant Hire's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to A1 Plant Hire for the specific services that gave rise to the Loss in question.

Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Terms and Conditions or in connection with the supply of any goods or services by A1 Plant Hire under law or statute or custom or international convention, are hereby fully and expressly excluded.

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## **5 Termination**

### **5.1 Termination by A1 Plant Hire**

A1 Plant Hire may terminate this Hire Agreement by 24 hours written notice to the Customer. Termination shall be without prejudice to any Claim either Party may have against the other Party arising from any breach of the Hire Agreement or any act, default or omission (including negligence) prior to the date of termination.

### **5.2 Consequences of termination**

- (a) In the event that A1 Plant Hire terminates this Hire Agreement in accordance with clause 5.1, the Customer:
  - (1) Must return the Equipment to A1 Plant Hire within 48 hours of notice being provided to the Customer under clause 5.1, in accordance with the instructions of A1 Plant Hire and at the Customer's cost; and
  - (2) Must immediately pay to A1 Plant Hire any other outstanding amounts owing to A1 Plant Hire in full, and whether invoiced or not.
- (b) Should the Customer fail to return any Equipment in accordance with clause 5.2(a) the Customer acknowledges A1 Plant Hire's right to enter the premises where the Equipment is located and remove that Equipment in accordance with this Hire Agreement.

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## **6 Personal Property Securities Act**

- 6.1 In this clause 6, all capitalised terms that are not otherwise defined in these Terms and Conditions have the same meaning as ascribed to them in the PPSA unless the context otherwise requires, and references to sections are to sections of the PPSA.
- 6.2 The Customer acknowledges that these Terms and Conditions (together with any Credit Application, where applicable) constitutes a Security Agreement and creates a general Security Interest in all of the Customer's present and after acquired Personal Property.
- 6.3 The Customer must immediately, if so requested by A1 Plant Hire, sign any and all documents, provide any and all necessary information and do anything else required by A1 Plant Hire to ensure that each of A1 Plant Hire's Security Interests are Perfected.
- 6.4 The Customer will not enter into any Security Agreement that permits any other person to have or to register any Security Interest in respect of the Equipment until A1 Plant Hire has Perfected its Security Interests, or otherwise without A1 Plant Hire's consent.
- 6.5 The Parties agree to contract out of the application of sections 125, 132(3)(d), 132(4), 135, 142, 143, 129(2) and (3), 132, 133(1)(b) (as it relates to the Security Interest of the Secured Party), 134(2), 135, 136(3 to 5) of the PPSA.
- 6.6 The Customer hereby waives any rights the Customer may otherwise have to receive any notice under the PPSA (including notice pursuant to section 95 or 130 of the PPSA and notice of a verification statement) unless that notice is mandatory.
- 6.7 The Customer and any Guarantor hereby indemnify A1 Plant Hire against any costs A1 Plant Hire incurs in perfecting and maintaining any Security Interest in the Equipment or other Personal Property under the PPSA and any costs A1 Plant Hire may incur, including legal costs, in the course of enforcing any of its rights under these Terms and Conditions, the PPSA or at law generally.

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## **7 General**

### **7.1 Assignment**

The Customer must not assign its rights under this Hire Agreement without A1 Plant Hire's prior written consent. A1 Plant Hire may give or withhold its consent in its sole discretion.

### **7.2 Variation of agreement**

A variation of any Hire Agreement must be in writing and signed by both Parties or by persons authorised to sign for them.

### **7.3 Public liability**

Notwithstanding any other provision of the Hire Agreement, the Customer represents and warrants to A1 Plant Hire that it holds public liability insurance for not less than \$10,000,000 for any one occurrence in respect of

the use of the Equipment during the Hire Period and shall provide A1 Plant Hire with a copy of the policy and evidence of payment of the premium upon request to do so.

#### **7.4 Force Majeure**

7.4.1 A1 Plant Hire is not obliged to perform any obligation pursuant to these Terms and Conditions to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond A1 Plant Hire's reasonable control, A1 Plant Hire is unable to perform, in whole or in part, that obligation. A1 Plant Hire is not liable to the Customer for any Loss which is or may be suffered by the Customer whether as a direct or indirect result of any event or circumstance that is or was beyond A1 Plant Hire's control.

7.4.2 Nothing in clause 7 will limit or exclude the Customer's responsibility and liability under the Hire Agreement for Equipment 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 the Customer's conduct or negligence.

#### **7.5 Severability**

If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

#### **7.6 Entire Agreement**

The Hire Agreement as defined in clause 1 comprises the entire agreement between the Parties. No additional terms and conditions (including any terms contained in any purchase order or other document prepared by, on behalf of or for the benefit of, the Customer) apply to the hire of the Equipment unless agreed in writing by the Parties.

#### **7.7 Governing Law**

This Hire Agreement is governed and interpreted in accordance with the Laws of Western Australia and any dispute arising under this Hire Agreement is to be heard and determined within the jurisdiction of Western Australia.

#### **7.8 No Reliance**

The Customer acknowledges that neither A1 Plant Hire nor any person acting on A1 Plant Hire's behalf have made any representation or other inducement to the Customer to enter into the Hire Agreement and the Customer has 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 representations contained in this Hire Agreement.

#### **7.9 No Waiver of Rights**

No delay or omission by A1 Plant Hire to exercise any right, power or remedy available to it as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of A1 Plant Hire's rights to take action or make a Claim in respect of a continuing breach or default.

#### **7.10 Execution**

8.11.1 The person signing any document 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.

8.11.3 The Customer warrants to all information provided by the Customer contained in this Hire Agreement is true and correct.

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### **8 Definitions**

"**A1 Plant Hire**" means A1 Plant Hire (Australia) Pty Ltd (ACN 644 340 367)

"**Claim**" means, in relation to any person, a claim, action, proceeding, judgment, damage, Loss, cost, expense or liability of whatsoever kind and howsoever arising, incurred by or to or made or recovered by or against the person, and whether based in common law or statute or on judicial precedent, and whether direct, indirect, present, ascertained, unascertained, immediate, future, possible, potential, or contingent.

"**Consequential Loss**" means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a Claim under indemnity, contract, tort (including negligence), statute or otherwise.

**“Credit Application”** means a properly completed and submitted application for credit by the Customer to A1 Plant Hire which A1 Plant Hire has approved and accepted.

**“Customer”** means the Party named as the customer in a Credit Application or Hire Schedule, or any other person or entity named in the Hire Schedule or a Credit Application to whom A1 Plant Hire has agreed to supply or has supplied Equipment, and includes any authorised persons, successors and assigns of that Party, person or entity.

**“Deed of Guarantee and Indemnity”** means the A1 Plant Hire deed of guarantee and indemnity completed or required to be completed by the Customer and/or any of the Customer’s directors or other individual guarantors as may be required by A1 Plant Hire from time to time.

**“Deposit”** means any deposit required to be paid by the Customer to A1 Plant Hire in the amount shown and (if applicable) on the terms set out in the Hire Schedule.

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

**“Equipment”** means the equipment described in the Hire Schedule, and where applicable includes any other item of property, chattel, machinery, vehicle or other plant and/or equipment provided by A1 Plant Hire to the Customer from time to time.

**“Fee”** means the fees described in the Hire Schedule payable by the Customer to A1 Plant Hire for the hire of the Equipment.

**“Further Fee”** means the fees payable by the Customer in addition to the Fee on the terms set out in the Hire Schedule and in accordance with clause 1.4(c) of these Terms and Conditions.

**“GST”** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**“Guarantee”** means any personal guarantee, indemnity and/or charge provided or granted in favour of A1 Plant Hire pursuant to a Deed of Guarantee and Indemnity or otherwise.

**“Hire Agreement”** means the agreement between A1 Plant Hire and the Customer relating to the hire of Equipment, as described in clause 1.1 of these Terms and Conditions.

**“Hire Period”** means the period specified in the Hire Schedule.

**“Hire Schedule”** means the schedule to these Terms and Conditions provided to the Customer containing further details and key terms upon which the Equipment is to be hired to the Customer.

**“Loss”** means any expense, loss, cost or damage of any kind and howsoever arising, and includes Consequential Loss, pure economic loss, and any fine, damages or penalty imposed by a court, statutory or other authority.

**“Party”** means a party to this Hire Agreement and **“Parties”** has a corresponding meaning.

**“PPSA”** means the Personal Property Securities Act 2009 (*Cth*), and where applicable includes all regulations made pursuant to the PPSA.

**“Related Party”** means any related body corporate of the Customer as defined under section 50 of the Corporations Act 2001 (*Cth*).

**“Return Condition”** means the state of condition and repair the Customer must ensure the Equipment is in prior to returning the Equipment to A1 Plant Hire, including at a minimum ensuring each of the conditions stipulated under Item 10 of the Hire Schedule have been met.

**“Specified Hours”** means the hours for which the Customer has agreed to hire the Equipment as detailed in the Hire Schedule.

**“Special Terms”** means any terms specific to a particular type of Equipment or Customer as detailed under Item 16 of the Hire Schedule.

**“Terms and Conditions”** means these hire agreement terms and conditions.