

Diamond Hire - Hire Contract Conditions

Definitions

“agreement” - refers to the Hire Contract and these Hire Contract Conditions and is interchangeable with these terms

“Commencement” – the start date on the Hire Contract

“Diamond Hire” - the owner of the Equipment, including the individual owners of Diamond Hire

“Equipment” – all plant and equipment, trailers, tools, accessories and parts supplied to the Hirer by Diamond Hire and listed on the Hire Contract

“Hire Contract” – the document provided to the Hirer listing the Equipment, Hire charges, the Hirer, the Hire Contract number, the Hire Period, Opening Hours and includes these Hire Contract Conditions

“Hirer” – the person, firm, organisation, partnership, corporation or other entity (including a trust) named on the Hire Contract

“Use of the Equipment” – includes all activities occurring during the period of hire including pick-up, drop off, delivery, transportation, storage, operation and non-operation of the Equipment

1. Hirer’s Responsibilities

The Hirer will:

- 1.1 determine if the Equipment is suitable for the designated use and the Hirer acknowledges that it has not in any way relied on the skill or judgement of any representation made by Diamond Hire in respect to the use, purpose or performance of the Equipment;
- 1.2 agree that the use of the Equipment carries with it inherent dangers and risks of injury and the Hirer agrees to accept those dangers and risks;
- 1.3 use the Equipment in a skillful and proper manner and only for the purpose and within the capacity for which it was designed and in accordance with the law and any manufacturer’s instructions whether supplied by Diamond Hire or indicated on the Equipment and with due care and diligence;
- 1.4 accept full responsibility for, and indemnify Diamond Hire against, all claims in respect to any injury to persons or damage to property arising out of the use of Equipment and have adequate insurances to cover any legal liabilities incurred as a result of the use of the Equipment;
- 1.5 ensure all persons operating or erecting the Equipment or otherwise involved in the use of the Equipment are suitably instructed in the safe and proper use and where necessary hold an appropriate and current certificate of competency and / or are fully licensed;
- 1.6 comply with all occupational health and safety laws relating to the Equipment and its operation including a hazard and risk assessment and providing the operator with appropriate safety clothing, equipment, necessary manuals and instructions (both written and oral) necessary for the safe use of the Equipment;
- 1.7 not allow the Equipment to be exposed to or used with any hazardous substances such as but not limited to, asbestos or silica dust;
- 1.8 keep the Equipment in a safe and restricted access area and accept full responsibility for and indemnify Diamond Hire against all claims in respect of all loss, theft, or damage, 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;
- 1.9 at its own expense clean, fuel, lubricate, keep and maintain the Equipment in good repair and condition failure of which the Hirer will reimburse Diamond Hire for any costs, claims, loss, damage or expenses (including legal expenses on a solicitor client basis) incurred by Diamond Hire;

- 1.10 be responsible for the cost of any repair or replacement of any flat and/or damaged tyres occurring in the use of the Equipment;
- 1.11 return the Equipment to Diamond Hire within the Hire period in clean condition and in good repair;
- 1.12 not tamper with, damage, alter, modify, make addition to, deface or erase any identifying mark, plate or trademark writing or number on the Equipment;
- 1.13 not exceed the recommended or legal load or capacity limits of the Equipment;
- 1.14 not tow the Equipment with a vehicle that does not comply with the legal load or capacity limits;
- 1.15 safely secure all items loaded in or on the Equipment or in or on the Hirers vehicle, or accept responsibility for any items loaded by Diamond Hire, and indemnify Diamond Hire in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Hirer;
- 1.16 operate the Equipment with an appropriate motor vehicle and/or power source and in accordance with the manufacturer's operating instructions and the applicable law;
- 1.17 advise Diamond Hire as soon as possible of any accident or damage to the Equipment (as described in Clause 8.4) or theft and if requested provide a written report and full details; and
- 1.18 co-operate fully with any investigation, settlement or defense of any claim or matter requested by Diamond Hire and/or its insurer relating to this Hire Contract.

2. Hire charges

- 2.1 Hire charges will be estimated by Diamond Hire as a deposit and are payable in full on or before the commencement of the Hire Period by the Hirer and may include the cost of fuel, consumables, standard delivery or collection charges provided by Diamond Hire.
- 2.2 The hire charges are shown on the Hire Contract and are based upon:
 - a) a minimum of a half day (where applicable) which comprises 4 hours during opening hours;
 - b) a full day which comprises an 8-hour period within 24 hours (except where otherwise specified). If Equipment is used for more than an 8-hour period, additional charges may arise at the absolute discretion of Diamond Hire; or
 - c) a week which comprises 7 full days
- 2.3 Equipment returned after the expiration of the Hire Period will be charged for at the hiring charge appropriate for the total hire period.
- 2.4 An adjustment to the hire charges will be payable immediately by the Hirer at the return of the hired Equipment or if identified at a later time to reflect the following:
 - a) any extension to the hire period for all or part of the Equipment;
 - b) any additional Equipment, fuel or consumables, delivery or collection added during the hire period;
 - c) the new list price of any Equipment which is for whatever reason not returned to Diamond Hire at the conclusion of the Hire Period;
 - d) all costs incurred in cleaning the Equipment if not returned in a clean state including but not limited to, the removal of concrete, paint, cement or grout;
 - e) all costs of repairing any damage caused by the ordinary use of the Equipment;
 - f) the cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;
 - g) the cost of repairing any damage to the Equipment caused by vandalism, or (in Diamond Hire's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;

- h) stamp duties, Goods and Services Tax, any other taxes or duties and all tolls, fines, penalties, levies or charges payable in respect of this agreement and the hiring;
 - i) all costs incurred by Diamond Hire in delivering and recovering possession of the Equipment;
 - j) any late payment fee calculated daily at 10% per month on all unpaid hire charges; and
 - k) any expenses or legal costs (including commission payable to a commercial agent) incurred as a result of the failure of the Hirer to pay any hire charges when due.
- 2.5 Diamond Hire may charge the Hirer a reasonable fee for accepting payment by credit or debit card and this may be up to the applicable permissible charge under legislation.
- 2.6 An adjustment to the hire charges will be payable immediately by Diamond Hire to the Hirer at the return of the hired Equipment to reimburse the Hirer for an overestimation of hire charges or a return to Diamond Hire of agreed unused consumables.

3. Hire Period

- 3.1 The Hire Period commences at the Start Date time recorded on the Hire Contract (including weekends and public holidays, not only the time the Equipment is used) and concludes either when returned to Diamond Hire by the Hirer or the Hirer is issued an off-hire confirmation by Diamond Hire.
- 3.2 The Hirer is entitled to use the Equipment for the Hire Period.
- 3.3 Any extension of the Hire Period must be requested by the Hirer and agreed to by Diamond Hire before the expiration of the Hire Period.
- 3.4 The Hirer agrees to return the Equipment on or before the expiration of the Hire Period and acknowledges non-return may incur further hire charges or may be reported to the police.
- 3.5 The Hirer is responsible for the return of the Equipment to Diamond Hire within Diamond Hire opening hours unless a collection has been agreed with Diamond Hire at the time of hire or during the Hire Period.

4. Breach of Hire Agreement by Hirer

If the Hirer breaches any clause whatsoever of this agreement, or becomes bankrupt, insolvent or ceases business, then Diamond Hire shall be entitled to:

- (a) terminate this agreement, and/or
 - (b) sue for recovery of the Hire Charges, and/or
 - (c) repossess the Equipment (and is authorised to enter any premise where the Equipment is located to do so).

5. Liability and Warranties

- 5.1 To the full extent permitted by law and except to the extent arising from actions or omissions of Diamond Hire or from things beyond the reasonable control of the Hirer, the Hirer indemnifies Diamond Hire from all claims and demands on Diamond Hire arising out of the use or misuse of the Equipment under the hire, including in respect of injuries to or deaths of persons and any damage to property.
- 5.2 All warranties and conditions are excluded to the full extent permitted by law and Diamond Hire's only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Equipment again or to the repair of the Equipment.
- 5.3 Diamond Hire is not liable to the Hirer or any third party for any indirect loss or consequential loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if the Diamond Hire has been advised of the possibility of such loss.

- 5.4 The Hirer cannot recover from Diamond Hire compensation for any damages (including for consequential loss) arising in respect of this agreement or the hiring or the use of the Equipment.

6. Title to the Equipment

- 6.1 The Hirer acknowledges that Diamond Hire retains title to the Equipment and that the Hirer has rights to use the Equipment as a mere bailee only. The Hirer agrees that the Hirer has no rights to pledge the Diamond Hire's credit in connection with the Equipment.
- 6.2 The Hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the Equipment and not to conceal or alter the goods or make any addition or alteration to, the Equipment.
- 6.3 The Hirer will protect the Equipment against execution or seizure and will indemnify Diamond Hire against all resultant losses (including consequential losses), costs, charges, damages and expenses (including any legal costs incurred by Diamond Hire) as a result of a breach of this agreement.
- 6.4 The Hirer acknowledges that Diamond Hire may inspect the Equipment at any time during the period of hire, whether notice of the inspection is given or not, and the Hirer shall provide Diamond Hire will all assistance and cooperation necessary to facilitate such inspection of the Equipment. The hirer shall indemnify Diamond Hire in relation to any action of trespass in the course of reasonable exercising this right to inspect.
- 6.5 This agreement constitutes a Security Agreement pursuant to the Personal Property Securities Act 2009.

7. Repossession and remedies on default

- 7.1 Diamond Hire may retake possession of the Equipment if:
- a. the hire is terminated or becomes liable to be terminated by Diamond Hire; and/or
 - b. the Hirer does not pay amounts owing to the Diamond Hire when due.
- In the case of repossession due to a breach of this agreement the Hirer grants the Diamond Hire permission to enter any premises where the Equipment is situated to disconnect, decommission and/or remove that Equipment. In addition to the Diamond Hire's right to retake possession Diamond Hire may, following any termination of this agreement, sue for recovery of any damages or charges or loss suffered by Diamond Hire and/or to cancel any insurances effective in respect of the Equipment hired.
- 7.2 Diamond Hire may assign or sub-contract it's rights and obligations under this agreement without notice to the Hirer.

8. Loss or Damage to the Equipment

- 8.1 If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify Diamond Hire of the details. Notification shall not absolve the Hirer of its obligations under this agreement to safeguard the Equipment.
- 8.2 In the event the Equipment breaks down or becomes unsafe to use, the Hirer shall.
- a. immediately stop using the Equipment, and
 - b. takes all steps necessary to prevent the Equipment sustaining further damage, and
 - c. take all steps necessary to prevent injuries from occurring to any persons or property as a result of the condition of the Equipment, and
 - d. not repair or attempt to repair the Equipment without the Diamond Hire's prior written consent.

- 8.3 Diamond Hire will take all steps necessary to repair the Equipment or provide substitute Equipment as soon as is reasonable possible in the circumstances after receipt of a request from a Hirer.
- 8.4 If the Equipment is lost or damaged, and the loss or damage is caused by the negligence of the Hirer or a breach of a term of this agreement by the Hirer, the Hirer shall be liable for:
- a. any costs incurred by Diamond Hire in repairing or replacing the Equipment, and
 - b. hire charges for the Equipment until the Equipment is repaired or replaced; and
 - c. any other costs incurred by Diamond Hire as a result of the damage or loss of the Equipment.
- 8.5 If Diamond Hire is required by any relevant authority or requested by the Hirer or elects in its unfettered discretion to salvage the Equipment, then all salvage costs shall be paid by the Hirer
- 8.6 Diamond Hire shall not be liable for any expenditure, damage, loss or inconvenience incurred by the Hirer arising out of any breakdown in the Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of Diamond Hire or any other reason whatsoever.

9. Termination of Hire

- 9.1 Diamond Hire may at any time terminate the hire of the Equipment to the Hirer at which time the Hirer shall immediately complete all of its obligations under this contract and make the Equipment available for collection.
- 9.2 The Hirer may terminate the Equipment during opening hours (or as otherwise agreed) by:
- a. returning the Equipment to Diamond Hire, or
 - b. notifying Diamond Hire that the Equipment is ready for collection (provided the Equipment is safely stored for collection) and the Hirer has obtained an off-hire confirmation from Diamond Hire.
- 9.3 After terminating of hire, and until the Equipment has been collected by Diamond Hire, the Equipment shall remain at the sole risk of the Hirer, and the Hirer will indemnify Diamond Hire in respect of any loss of or damage to the Equipment in those circumstances and where an off-hire confirmation has been obtained but Diamond Hire has not collected the Equipment.
- 9.4 If the Equipment is returned to or collected by Diamond Hire in a state that is unsatisfactory or in breach of the terms of this agreement then the Hire Period will be deemed to continue until the Equipment is in a state which is satisfactory to Diamond Hire, or any breach of this agreement is remedied (whichever is the later). Diamond Hire undertakes to take all reasonable steps to put the Equipment into a satisfactory state as soon as possible after the return or collection of the Equipment.
- 9.5 Upon termination of the hire, Diamond Hire is entitled to:
- a. enter upon any land or premises upon which the Equipment is situated or where Diamond Hire has any reason to believe the Equipment may be situated, and
 - b. disconnect, dismantle and remove the Equipment whether or not it is affixed to the land or the premises, connected to property or equipment not owned by Diamond Hire or any other person or containing property not owned by Diamond Hire.
- 9.6 The Hirer releases Diamond Hire and indemnifies Diamond Hire against any claims arising from the removal and collection of the Equipment in accordance with this agreement. Should the Equipment contain any property not owned by Diamond Hire, Diamond Hire shall store that property for a period of 14 days from the termination of the hire. Diamond Hire may charge the Hirer reasonable storage fees for the storage of that property. Should the property not be collected at the expiry of 14 days after the termination of the hire of the Equipment Diamond Hire may sell the property, and the Hirer releases Diamond Hire from

and indemnifies Diamond Hire against any claims which any person may have directly or indirectly arising from the sale of the property or whether through negligence, sale at under value, sale of property owned by a third party or howsoever.

10. Insurance

The Hirer will maintain at its own expense all appropriate policies of insurance:

- 10.1 for all damage to or arising out of the hire of the Equipment in an amount not less than the full new replacement cost of the Equipment howsoever occurring, and
- 10.2 for all third party and public liability risks in respect of the hire or use of the Equipment by the Hirer for not less than A\$10 million for any one occurrence.

This document is available at www.diamondhire.com.au

Relevant equipment manuals and safe operating procedures (SOPS) are available at www.diamondhire.com.au