

DEFINITIONS:

"Company" means BBS Forks Australia PTY LTD (22 142 154 416), its Directors, agents and authorised employees.

"Equipment" means the equipment described in this Hire Agreement and includes all accessories, fittings, additions and replacement parts fitted to the Equipment during the Hire Period.

"Hire Agreement" means the agreement to hire Equipment from the Company and includes these Terms and Conditions of Hire as set out herein.

"Hirer" includes without limitation the person, company or agent of the Hirer as stated in the Hire Agreement or on the tax invoice from the Company. The Hirer confirms and represents to the Company that any person or agent of the Hirer who signs for the equipment for on and on the Hirer's behalf has full express or implied authority of the Hirer to receive the equipment.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"Security Interest" has the meaning attributed to the term "*security interest*" in the PPSA.

TITLE TO EQUIPMENT:

The Hirer acknowledges that in all circumstances, the Company retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will any such Equipment be deemed a fixture. The rights of the Hirer to use the Equipment are as a bailee only.

The Hirer must not assign sub-let, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Company of the Equipment.

HIRE PERIOD:

Subject to clause 5, the Hire Period commences when the Hirer takes possession of the Equipment or when the Company delivers the Equipment in accordance with the Hirer's instructions and the period of hire ends when the Equipment is back in the possession of the Company (in total, "the Hire Period"). The Hire Period includes weekends and public holidays and is irrespective of when the Equipment is being used.

The Hirer will be charged for the Hire Period and subject to the recommended usage specified below; the Hirer is entitled to use the Equipment for the Hire Period. Any variation to the Hire Period must be with the written consent of the Company.

RECOMMENDED USAGE:

Hire Charges are calculated based on the following recommended usage of the Equipment:

- Casual Hire: equipment usage not exceeding 8 hours per day.
- Weekly Hire: equipment usage not exceeding 40 hours per week.
- Fixed Term Hire (>= 90 days): equipment usage not exceeding an average of 40 hours per week.

The Hirer will be charged an Excess Use Charge of 70 % of the hourly rate if the Hirer usage of the Equipment exceeded the Recommended Usage. Excess hours X hourly rate X 70%

COLLECTION BY COMPANY:

Where the Company agrees to collect the Equipment from the Hirer, at least 24 hours' notice must be given by the Hirer to the Company to allow for collection of the Equipment. If insufficient notice is given, the Hirer will be charged a minimum of an extra half day hire at the Company's absolute discretion. The Hire Period listed on any tax invoice will not be deemed notice to the Company that the Equipment is ready for collection. The Hirer remains liable for any theft, loss or damage to the Equipment until the Equipment is collected by the Company.

OTHER ADDITIONAL CHARGES:

The Company may at the Company's absolute discretion charge the Hirer additional charges for:

- Any late return of the Equipment calculated from the last day of the Hire Period until the Equipment is returned to the Company in a satisfactory condition;
- Acceptance of payment by credit card

PAYMENT TERMS:

The Hirer will pay to the Company the hire charges set out in the Hire Agreement. The Hirer is further liable for any duty, GST and all other applicable taxes.

Hire Charges may be varied from time to time by the Company by giving 7 days written notice to the Hirer.

Late payment interest – If the Hirer does not pay the amount of the hire charges as set out in the Tax Invoice by the payment date specified, the Company may at its discretion impose a late payment fee of 2.5% per month. In addition the Hirer will indemnify and keep the Company fully indemnified for all expenses incurred by the Company in recovering any amounts which the Hirer fails to pay by due date including but not limited to any amount payment to any agents and legal costs.

DEPOSIT:

All Hirers unless prior arrangements are made, are required to pay a deposit of 50% to reserve the Equipment within 7 days of making a Purchase Order for hire. Failure to place a deposit may mean the Equipment will not be available for hire.

CONDITION OF EQUIPMENT:

The Hirer acknowledges that by signing the Hire Agreement which these Terms and Conditions are attached, the Hirer has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment. The Company gives no warranty whatsoever that the Equipment is suitable for the Company's purpose.

It is the responsibility of the Hirer to report to the Company any discrepancy in the quantity of the equipment or any faulty equipment immediately upon delivery or collection of the Equipment. Failure to do so immediately may result in the Hirer being billed for all hire charges. The Hirer will be liable for any breakages or damage of any equipment during use or transportation.

MAINTENANCE & REPAIRS:

The Hirer is at all times responsible for the maintenance of the Equipment during the Hire Period. Maintenance for purposes of the Hire Agreement includes but not limited to fuelling, topping of oils, coolants, checks and tyre pressure etc on a daily basis. The Hirer must conform to the Equipment's manufacturer's guidelines when conducting any maintenance on the Equipment. The Company will include for any equipment less than 7 tonnes, one (1) set of replacement tyres if and when required. The Hirer is responsible for the replacement of any tyres of any equipment equal to 7 tonnes or more. In general, all repairs must be carried out by the Company or by nominated agents of the Company. Minor repairs or replacements of parts (costing under \$500) may subject to verbal consent of the Company be carried out by the Hirer using manufacturer's recommended parts.

If the Hirer requires the Company to conduct certain repairs, the Company may impose a call out service fee of \$360.00 for any call out to site location exceeding a 75 km radius of Perth. Further additional charges may apply if the call out is made for any hours before 8.00am and after 5.00pm on a working day or for any public holidays or weekends.

COMPLIANCE WITH LEGISLATION:

The Hirer warrants to the Company that at all times the Hirer will operate the Equipment strictly in accordance with all laws and regulations governing the use of such equipment and in accordance with its manufacturer's instructions.

INSURANCE:

Fixed Term Hire: The Hirer must insure and keep the Equipment insured against fire, accident, theft and such other risks as the Company may require for an amount equivalent to the full insurable value of the equipment with a reputable insurer approved by the Company in the names of both the Hirer and the Company or noting the rights and interest of the Company.

The Hirer is responsible for all relevant insurance during the Hire Period including any public liability insurance (where applicable).

DAMAGE TO EQUIPMENT:

The Hirer must promptly notify the Company of any damage to the Equipment during the Hire Period providing full details of any loss or damage.

Where the Equipment or any part or accessory part of the Equipment is damaged or lost during the Hire Period (fair wear and tear excepted), the Hirer will be liable for any costs incurred by the Company in repairing or replacing the damage part or parts and making good the Equipment (including all labour costs).

Pending the repair or replacement of the damage part or where applicable, the entire Equipment, the Hirer remains liable for the Hire Charges and such other penalty charges (if any) which may be levied by the Company for loss of use of the Equipment.

EXCLUSION OF LIABILITIES:

Subject to clause 15(b) below and except expressly provided to the contrary, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise relating to the Company's obligations under this Hire agreement are excluded.

Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits, provisions in the contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to have been included in these Terms and Conditions provided that the liability of the Company for breach of the specific term, condition or warranty is limited to (at the Company's election) the repair or replacement of any equipment or the supply or substitution of alternate equipment and in no event will any liability for damages be greater than the cost of the Hire Charges being stated in this Agreement.

The Company will not be liable for any consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any third party claim) in contract, tort (including negligence) under statute or otherwise from or in relation to this Hire Agreement.

The Hirer agrees to indemnify and keep the Company fully indemnified against any claims resulting from the Hirer's use or misuse (including any third party claims for loss or damage to any property or injury to any person) of the Equipment including any legal costs incurred by the Company in defending such claims on a solicitors-client basis.

TERMINATION:

The Company may terminate the Hire Agreement by giving 24 hours' notice to the Hirer. The Company has to right to determine the type of work carried out by the Equipment and reserves the right to refuse or terminate any hire if the Company considers the use of the Equipment to be unreasonable.

If the Hirer is in breach of the Hire Agreement or if the Agreement is terminated by the Company pursuant to clause 16(a) above, the Company may take all reasonable steps to recover the Equipment from the Hirer including entering the Hirer's premises to collect the same without being liable for any loss or damage on the part of the Hirer.

The Hirer will also be liable for any costs associated with the recovery of the Equipment by the Company in accordance with this clause.

PERSONAL PROPERTY SECURITIES ACT:

PPSA Further Steps

- (a) If the Company determines that this Hire Agreement or any other agreement or arrangement between the Company and the Hirer (or a transaction in connection with any of them) ("Agreements") is or contains a Security Interest for the purposes of the PPSA, the Hirer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information (including but not limited to serial numbers)) which the Company asks and considers necessary for the purposes of:
- i. ensuring that the Security Interest is enforceable, perfected or otherwise effective; or
 - ii. enabling the Company to apply for any registration, or give any notification, in connection with the Security Interest so that the Security interest has the priority required by the Company; or
 - iii. enabling the Company to exercise rights in connection with the Security Interest.
- (b) If paragraph (a), above, applies, and the Company determines that (after doing all things practicable under paragraph (a), above) the Company's security position or its rights, or obligations under or in connection with any of the Agreements have been or will be adversely affected, the Company may give notice to the Hirer cancelling any of the arrangements between the Company and the Hirer and requiring return of any or all Hire Equipment and any other goods of the Company in the possession of the Hirer within 14 days after the date of the notice.

PPSA Undertaking

The Hirer undertakes at all times to take steps to identify Security Interests for the purposes of the PPSA in its favour in relation to or in connection with any Equipment.

If the Hirer holds any Security Interests for the purposes of the PPSA in relation to or in connection with any Equipment, irrespective of whether such Security Interests are permitted or not under the Hire Agreement, the Hirer undertakes to ensure that at all times such Security Interests are continuously perfected whereby:

- (a) The Hirer obtains the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest); and
- (b) The Hirer ensures that that a third party does not acquire an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

If the Company asks, the Hirer undertakes to arrange at its expense an audit of its PPSA procedures, the outcome of which must be acceptable to the Company.

This clause does not give the Hirer a right to grant any Security Interest, and to the extent the Hirer does grant a Security Interest it must only do so in accordance with the Hire Agreement.

Costs of further steps and undertaking

Everything the Hirer is required to do under this clause ("Personal Property Securities Act") is at the Hirer's expense. The Hirer agrees to pay or reimburse the costs of the Company in connection with anything the Hirer is required to do under this clause. Additionally, the Hirer will indemnify and keep the Company fully indemnified from any loss or damage incurred as a result of the Hirer's failure to comply with this clause.

Exclusion of PPSA provisions

If an Agreement is or contains a Security Interest for the purposes of the PPSA, each party agrees that, to the extent the law permits them to be excluded:

- (a) Sections 142 and 143 of the PPSA are excluded and the relevant secured party need not comply with the following provisions of the PPSA: sections 95, 96, 118, 121(4), 125, 127, 128, 129, 130, 132(3)(d), 132(4), 134(1), and 135 (or equivalent provision where amendments to the PPSA result in section numbers changing) and any other provision of the PPSA notified to the grantor by the relevant secured party after the date of the Hire Agreement; and
- (b) The Company need not give any notice required under any provision of the PPSA.

Disclosure

The parties agree that neither party may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a confidentiality agreement under the PPSA. The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

SPECIAL CONDITIONS:

The special conditions contained in this clause prevail to the extent of any inconsistency over any contrary provisions of these Terms and Condition.