



DONNELLEY HIRE PTY LTD – TERMS & CONDITIONS OF HIRE

Effective 1 February 2024

1. Definitions

Company: means Donnelley Hire Pty Ltd - ABN 82 102 791 542.

Customer/Hirer: means the person/entity hiring the Plant as named on the Plant On Hire Schedule.

Plant: means the items for hire listed on the Plant On Hire Schedule.

Fees: means the fees and charges payable by the Hirer under these Terms for the hire of the Plant.

Force Majeure: means a circumstance beyond the control of the Company which results in the Company being unable to observe or perform on time an obligation under this Hire Contract, including without limitation, acts or omissions or the failure to cooperate by any third party, fire, epidemic or pandemic or other casualty, quarantine restrictions, acts of God, natural disasters, strikes or labour dispute, war or other violence, civil disturbances, or any other law, order, or requirement of any governmental agency or authority.

Hire Contract: means the Terms together with the Plant On Hire Schedule and any quotation where provided.

Plant On Hire Schedule: means the document provided by the Company to the Hirer which includes details of the Plant hired, the Fees, the hire period, and other administrative details.

Operator: means an employee or agent of the Company supplied to the Customer to install, operate or maintain the Plant.

PPSA: means the *Personal Property Securities Act 2009*, as amended, and any other legislation and regulations in respect of it.

Terms: means these Terms and Conditions of Hire, as amended from time to time.

2. Hire of Plant

2.1 The Company agrees to hire the Plant to the Customer subject to the Hire Contract.

2.2 The Hire Contract sets out the terms of the hire agreement between the Company and the Customer. The provision or acceptance of a Plant On Hire Schedule shall not form a separate agreement, but shall constitute part of this Hire Contract.

2.3 Unless expressly agreed otherwise by the Company in writing, these Terms override and supersede any agreement or understanding between the parties and any other documents, including any terms and conditions contained in a purchase order.

3. Hire Period

3.1 The Customer is entitled to use the Plant for the period of time specified in the Plant On Hire Schedule. Any variation to this period must be agreed by the Company. Under no circumstances, and despite anything else in these Terms, can the hire period, including any option or extension of it, be longer than 2 years.

3.2 The hire period commences when the Customer takes possession of the Plant or when the Company delivers the Plant in accordance with the Customer's instructions.



3.3 The hire period ends when the Plant is returned to the Company or when the Company issues the Customer with an off-hire notice.

4. Title to Plant

4.1 The Customer acknowledges that in all circumstances the Company owns the Plant and in all circumstances the Company retains title to the Plant (even if the Customer goes into liquidation or becomes bankrupt during the hire period). The rights of the Customer to use the Plant are as a bailee only. In no circumstances will the Plant become, or be deemed to be, a fixture.

4.2 The Customer will not be entitled to offer, sell, assign, mortgage, pledge or otherwise deal with the Plant in any way which is inconsistent with the rights of the Company.

4.3 The Customer must not, without the Company's written permission, move the Plant to another state or territory. A Customer may move the Plant to another site at its own expense.

4.4 The Customer acknowledges that the Company may hire or lease Plant from a third party (**Third Party Company**), and if this occurs, title in the Plant remains with the Third Party Company.

5. PPSA

5.1 Under no circumstances, and despite anything else in these Terms, can the hire period, including any option or extension of it, be longer than 2 years.

5.2 This clause applies only to the extent that this Hire Contract provides for a 'security interest' for the purposes of the PPSA.

5.3 The Company may register any actual or impending security interest in any manner it considers appropriate.

5.4 The Hirer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of ensuring that the Company's security interest is enforceable, perfected, first priority and otherwise effective under the PPSA.

5.5 The Company may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.

5.4 The rights of the Company under this Hire Contract are in addition to and not in substitution for the Company's rights under other law (including the PPSA) and the Company may choose whether to exercise rights under this Hire Contract, and/or under any other law, as it sees fit.

5.5 To the extent that Chapter 4 of the PPSA applies to the security interest under this Hire Contract, and the PPSA requires the Company to give a notice or allow time or provide any account to the Hirer, the Hirer and Company agree that to the extent allowable under the PPSA that requirement does not apply and, for the purposes of s.115 of the PPSA it is "contracted out" of this agreement in respect of all goods to which that section can be applied. Provisions of the PPSA confer rights on the Company. The Hirer agrees that in addition to those rights, the Company will, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under these Terms and the Hirer agrees that the Company may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.



- 5.6 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under s.157 of the PPSA. The Company and the Hirer agree not to disclose information of the kind that can be requested under s.275(1) of the PPSA. The Hirer must do everything necessary on its part to ensure that s.275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing the Company the benefit of s.275(6)(a) and the Company will not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.
- 5.7 The Hirer must not create, purport to create, or permit to be created, any security interest in the Plant other than with the express written consent of the Company.

6. Fees and Other Charges

The Customer agrees to pay the following Fees to the Company:

- 6.1 **HIRE:** The hire charges and associated fees are set out in a quotation or the Plant On Hire Schedule. Additional hire charges will apply if the Plant is used in excess of the nominated running hours as set out in the Plant On Hire Schedule.
- 6.2 **CONSUMABLES:** Unless otherwise specified in the Plant On Hire Schedule, the reasonable cost of consumables and fuel provided by the Company and/or used by the Customer during the hire period.
- 6.3 **TAX AND GOVERNMENT CHARGES:** GST and all other applicable taxes, duties, levies, penalties and any other government charges arising out of the Hire Contract. This includes any fines or penalties arising out of the Customer's use of the Plant.
- 6.4 **CREDIT CARD PAYMENTS:** Any charges for accepting payments by credit card.
- 6.5 **DELIVERY & INSTALLATION:** If the Customer requires the Company to transport, deliver, collect or install the Plant, the Customer shall be liable for the cost of transport, delivery, collection or installation.
- 6.6 **LATE RETURN OF PLANT:** If the Plant is not in readiness for collection by the Company, or has not been returned to the Company, by the end of the hire period, the Customer will be charged a minimum of an additional 4 hours' hire.
- 6.7 **PAYMENT DUE DATE:** The Customer is required to pay all Fees within the number of days specified in the invoice issued to the Customer.
- 6.8 **CLEANING & REPAIRS:** If the Customer does not return the Plant in the same clean condition and working order it was in at the start of the hire period, the Customer may be charged for the cleaning and repair of the Plant.
- 6.9 **LABOUR:** Any additional labour charges for overtime, loadings, penalties, allowances, shift work, weekends, standby, public holidays, meals, travel and accommodation, payable to Operators in accordance with their terms of engagement or applicable award.
- 6.10 **ENVIRONMENTAL CHARGE:** Applicable to any item of Plant as detailed in the Plant On Hire Schedule.
- 6.11 **LATE PAYMENT:** If a Customer does not pay the Fees by the payment due date, an administrative fee of 3% per month on outstanding Fees may be imposed to cover the costs incurred by the Company from the late payment. In addition, the Customer will be liable to indemnify the Company for all expenses and legal costs incurred by the Company as a result of the Customer's failure to pay the Fees by the payment due date.

7. Obligations of the Parties

- 7.1 **POSSESSION AND USE BY CUSTOMER:** The Hire Contract is personal to the Customer and the Customer will not, without the express written consent of the Company:



- (a) Allow any other person or entity to use or have possession of the Plant at any time during the hire period . The customer must not create, purport to create or permit to be created any “security interests” (as defined in the PPSA) in the Plant.
- (b) Use the Plant off-shore, underground, in an area where friable asbestos is present, or move the Plant over water .
- (c) Sub-hire or cross hire the Plant to a third party.

7.2 OPERATION OF PLANT BY CUSTOMER: The Customer agrees that at all times it will, at its own cost:

- (a) Operate the Plant safely, strictly in accordance with all laws, including environmental laws, only for the purpose for which it was designed by the manufacturer, and in accordance with the manufacturer’s instructions and manuals.
- (b) Ensure persons operating the Plant are suitably trained or instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use it.
- (c) Display, maintain and draw attention to safety signs and instructions (as required by law), ensure that instructions are observed and signs are not removed or defaced.
- (d) Maintain appropriate records of any servicing or maintenance carried out on the Plant and a weekly running sheet of the Plant in a form acceptable to the Company which shows the level of usage by the Customer. The Hirer is responsible for performing daily pre-starts on the Plant and reporting any faults to the Company prior to using the Plant and in any event within 24 hours.
- (d) Ensure all persons operating the Plant wear suitable clothing and protective Plant.
- (e) Ensure that no persons operating the Plant are under the influence of drugs or alcohol.
- (f) Conduct a site hazard assessment prior to using the Plant at a site.
- (g) Re-fuel and re-oil the Plant in accordance with the manufacturer’s instructions and the adhesive signage on the Plant.
- (h) Use only fuel, oil, coolant and lubricants specified by the Company and check lubrication and cooling levels of the Plant daily.

7.3 INSTALLATION AND OPERATION OF PLANT BY COMPANY: If the Company installs the Plant, or supplies an Operator with the Plant, then for that relevant part of the hire period:

- (a) The Operator will work in co-operation with the Customer who must consult with and fully brief the Operator on the proposed task, the site, site conditions, matters affecting the health and safety of the Operator and other relevant matters including information requested by the Company.
- (b) The Customer will not allow any other person to operate the Plant without the Company’s prior written consent.
- (c) The Company will ensure that its Operators are appropriately trained and possess all required licences to operate the Plant.
- (d) The Company will not be liable to the Customer for any acts or omissions of the Operator where they are acting under the Customer’s direction or control.

7.4 SAFEKEEPING: The Customer must ensure that during the hire period (and until the Plant is collected by the Company) the Plant is stored safely and securely and is protected from theft or seizure. The Customer must also ensure, at its own cost, that the Plant is kept clean, fuelled, lubricated and in generally good condition in accordance with the manufacturer’s and Company’s instructions.



- 7.5 **ALTERATION AND IDENTIFYING MARKS:** The Customer must not:
- (a) Alter, modify, or tamper with the Plant without the Company's prior written consent;
 - (b) Alter, remove, deface or erase any identifying mark, plate, number, notices or safety information on the Plant.
 - (c) Remove fuel or oil tank caps, bund plugs or seals from the Plant.
- 7.6 **SUITABILITY:** The Customer is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Plant unless the Company is otherwise notified within 24 hours of the commencement of the hire period.
- 7.7 **INSPECTIONS:** The Customer consents to the Company inspecting the Plant from time to time during the hire period. In addition, the Customer may arrange a joint inspection with the Company at the end of the hire period.
- 7.8 **SAFE LOADING:**
- (a) The Customer will safely secure all Plant (or items loaded in or on the Plant) loaded in or on the Customer's vehicle.
 - (b) Any specifications, dimensions or weights of the Plant provided by the Company are indicative in nature only and may not be specific to the actual Plant delivered to the Customer. The Customer is responsible for ensuring that any machines used to lift the Plant, or any surfaces where the Plant is placed, can tolerate the specification, weight and dimensions of the Plant. The Customer indemnifies the Company for any loss or damage that may occur from a failure to comply with this sub-clause.
- 7.9 **ELECTRICAL TESTING & TAGGING:** Any electrical Plant will be tested and tagged before it is hired to the Customer. During the hire period, the Customer is responsible, at its own expense, for arranging the re-testing and re-tagging of any electrical Plant in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. The Customer will be liable for any damage caused to the Plant resulting from incorrect testing or tagging during the hire period.

8. Lost, Stolen or Damaged Plant

If the Plant is lost, stolen or damaged during the hire period (and until the Plant is collected by the Company), the Customer shall be liable for:

- (a) Any costs incurred by the Company in recovering, repairing or replacing the Plant;
- (b) Any other costs whatsoever incurred by the Company as a result of the loss, theft or damage to the Plant; and
- (c) The Fees, and all hire fees outside the hire period, for the period that the Plant is being recovered, repaired or replaced.

9. Plant Breakdown

- 9.1 **OBLIGATIONS OF CUSTOMER:** in the event that the Plant breaks down or becomes unsafe to use during the hire period the Customer shall:
- (a) Immediately stop using the Plant and notify the Company;
 - (b) Take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Plant;
 - (c) Take all steps necessary to prevent any further damage to the Plant;
 - (d) Not repair or attempt to repair the Plant without the Company's written consent.



9.2 **OBLIGATIONS OF THE COMPANY:** in the event that the Plant breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Company:

- (a) Will take all steps necessary to repair the Plant or provide suitable substitute Plant as soon as reasonably possible after being notified by the Customer; and
- (b) Will not impose a hire charge for that portion of the hire period for which the Plant was broken down or unsafe.

10. Termination

10.1 The Company may terminate the Hire Contract immediately by notice to the Customer, if:

- (a) The Customer breaches any term of the Hire Contract; or
- (b) The Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

10.2 The Company may terminate the Hire Contract for any other reason by 24 hours' notice.

10.3 The Customer indemnifies the Company in respect of any breach by the Customer of any provision of this Hire Contract.

11 Recovery of Plant

If the Customer is in breach of the Hire Contract or if the Company has terminated the Hire Contract with the Customer pursuant to clause 10 above, the Company may take all steps necessary (including legal action) to recover the Plant, including entering the Customer's premises to do so.

12 Indemnities and Exclusion of Liabilities

12.1 Subject to clause 12.2 and except as expressly provided to the contrary in the Hire Contract all guarantees, terms, conditions, warranties, undertakings, inducements or representations, whether express or implied, statutory or otherwise, relating to the Company's obligations under the Hire Contract are excluded, to the maximum extent permissible by law.

12.2 Where any Act of Parliament implies a term, condition or warranty in this Hire Contract and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty shall be deemed to be included in this Agreement provided that the liability of the Company for breach of the term, condition or warranty is limited to (at the Company's election):

- (a) In the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- (b) In the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

12.3 Subject to the Company's obligations under clause 12.2, and to the maximum extent permitted by law, the Company's maximum aggregate liability for all claims under or relating to this Hire Contract or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the net fees paid by the Customer under this Hire Contract.

12.4 The Company shall not be under any liability whatsoever to the Customer for consequential, indirect or special 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 claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Plant or this Hire Contract, whether or not such loss or damage was foreseeable.



- 12.5 Except to the extent caused by the negligence of the Company, the Customer is liable for and indemnifies the Company against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Company) arising from or incurred in connection with the Customer's hire and use of the Plant or its breach of the Hire Contract.
- 12.6 Each indemnity in this Hire Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Contract. The Customer must pay on demand any amount it must pay under an indemnity in this Hire Contract.
- 12.7 The Customer indemnifies the Company for any damage or break down caused by its failure to operate or maintain the Plant in accordance with clause 7.2, or in accordance with the manufacturer's or Company's instructions.

13 Reduced Liability Payment (RLP)

- 13.1 RLP is an agreement by the Company to reduce the Customer's liability in certain circumstances for loss, theft or damage to the Plant to the RLP excess.
- 13.2 The Customer must pay the RLP fee detailed in the Plant On Hire Schedule unless the Customer obtains insurance that covers the loss, theft or damage to the Plant during the Hire Period for the full replacement value of the Plant, and provides evidence of such insurance to the Company.
- 13.3 Subject to clause 13.5, where the Customer pays the RLP fee, Company agrees to reduce the Customer's liability for loss, theft or damage to the Plant during the Hire Period if:
- (a) The Customer submits to Company within 5 business days:
1. In the event of theft - a written Police report and incident number (unless Company provides written confirmation that such report is not required); and
 2. In the event of loss or damage - any written or photographic evidence requested by Company (which may include sworn statements and statutory declarations); and
- (b) The Customer pays to Company the RLP excess as follows:
1. In the event of theft or disappearance of the equipment or damage resulting from either of these:
 - a) If the plant item is motorised and of capacity 6 tonne or less - \$5,000
 - b) All other plant items - \$2,500
 2. In the event of damage to the equipment:
 - a) resulting from the equipment tipping over - \$5,000
 - b) all other damage - \$2,500
 3. A further age excess payment of \$750 will apply where the driver of the equipment is 25 years of age or less at the time of the incident
- 13.4 The RLP fee will be automatically added to the hire charges and will appear on the Plant On Hire Schedule as RLP.
- 13.5 Even if the Customer pays the RLP fee, the Customer is liable for and indemnifies Company for all loss, theft and damage to the Plant if:
- (a) The Customer was negligent;



- (b) The Customer has paid the RLP fee after the loss, theft or damage occurred;
- (c) Company reasonably believes that the Customer failed to take reasonable precautions to protect, lockup and secure the Plant;
- (d) The Plant is, or is ordinarily, used off-shore, over water or in underground mines or is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (e) The loss or damage is:
 - 1. to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
 - 2. to mirrors or glass, including breakage;
 - 3. caused by vandalism, including graffiti on the Plant;
 - 4. to Plant paintwork; and/or
 - 5. due to wrongful conversion of the Plant or any components of the Plant;
- (f) The loss or damage was caused, or contributed to, by:
 - 1. a breach of the Terms;
 - 2. an act or omission of the Customer;
 - 3. the use of the Plant in violation of any relevant laws or regulations or contrary to Company's or the manufacturer's instructions;
 - 4. a lack of, or faulty lubrication, or general servicing by the Customer without Company authorisation, of the Plant;
 - 5. collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
 - 6. the use or operation of the Plant by a person under the influence of alcohol or any drug;
 - 7. the misuse, abuse, overloading of, or incorrect loading of the Plant or any of its components;
 - 8. the overloading of electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
 - 9. an exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.; and
 - 10. the transport of the Plant, except where transported by Company. This sub clause will not apply to Motor Vehicles, trailers or trailerised Plant.

14 Severability

If any part of this Hire Contract 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.

15 Governing Law

The Hire Contract is governed by the laws of New South Wales and each party submits to the exclusive jurisdiction of the courts of that state.

16 Entire Agreement

The Hire Contract comprises the entire agreement of the parties. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between the parties in relation to its subject matter.

17 No Reliance

The Customer acknowledges that neither the Company, nor any person acting on the Company's behalf, has made any representation or other inducement to it to enter into this Hire Contract and that it has not entered



into this Hire Contract in reliance on any representations or inducements (including in relation to the use of the Plant) except for those representations or inducements contained in the Hire Contract.

18 Privacy

18.1 The Company will comply with the Australian Privacy Principles in all dealings with the Customer.

18.2 The Company may need to collect personal information about the Customer, including but not limited to, full name and address, drivers licence details, credit card details, date of birth, and credit or business history. The Customer consents to the Company using its personal information in order to:

- (a) Fulfill functions associated with the hire of Plant, including assessing the Customer's credit worthiness;
- (b) Provide services to the Customer;
- (c) Prevent theft of the Company's Plant;
- (d) Enter into contracts with the Customer or third parties, and
- (e) To market to, and maintain a client relationship with, the Customer.

18.3 The Customer also consents to the Company disclosing the Customer's personal information:

- (a) To any credit provider or credit reporting agency for the purposes of obtaining information about its consumer or commercial credit or business history or its commercial activities or credit worthiness; and
- (b) To the Company's service providers, contractors and affiliated companies from time to time to help improve and market the Company's services to the Customer.

19 General

19.1 The Company may vary these Terms from time to time by giving the Customer 28 days' written notice of the varied Terms. If the Customer has reasonable grounds to believe that the variation will be detrimental to their rights, the Customer may terminate this Hire Contract without penalty by giving the Company written notice within 28 days of receiving the Company's written notice.

19.2 The Company may assign this Hire Contract to any third party or related body corporate without the Customer's consent.

19.3 The Company shall not be liable for any delay or failure to perform its obligations under this Hire Contract if such delay is indirectly or directly due to Force Majeure. Any actual or anticipated delay or non-performance by the Company due to Force Majeure may result the suspension of the Company's obligations until the Force Majeure has abated.

19.4 If the Customer comprises more than one person, the obligations of those persons as the Customer are joint and several.

19.5 A waiver by one party of a breach by the other party of any term of this Hire Contract does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Hire Contract.

19.6 The rights and remedies in this Hire Contract are cumulative and not exclusive of any rights or remedies provided by law.

19.7 Termination of this Hire Contract will not affect any of the conditions that are expressed or implied to operate or have effect after termination.

19.8 Each person signing this Agreement on behalf of the Customer warrants to the Company that, as at the date of signing, that person has full authority to sign this Agreement on behalf of that party.



**Donnelley
Hire**