

TERMS AND CONDITIONS FOR HIRE

Agreement

The Hire Agreement constitutes the entire hire agreement between the Supplier and the Hirer.

1. Definitions

Equipment means all equipment and accessories supplied to the Hirer by The Supplier.

Hirer refers to the person, organisation or corporation hiring the Equipment from the Supplier.

Hire Agreement means the agreement between the Supplier and the Hirer for the hire of the Equipment with or without accessories and shall include these Standard Terms and Conditions of Hire together with any other Special Conditions contained in the Hire Agreement.

Hire Location means the location specified in the Hire Agreement.

Hire Quotation means the Quotation issued to the Hirer by the Supplier at the request of the Hirer to hire the Equipment.

Rent means the rental amount payable by the Hirer as specified in the Hire Quotation and/or Hire Agreement.

Return Location means the 25 Valencia Way, Maddington WA 6109 after the end of the Term or such other location agreed in writing by the Supplier.

Supplier means DMB Equipment Pty Ltd ACN 689 358 209 of 25 Valencia Way, Maddington, Western Australia.

Term means the rental period of the Equipment as specified in the Hire Agreement.

2. Hire Quotations

2.1. Hire Quotations made by the Supplier shall not be construed or operate as an offer or obligation to supply in accordance with the quotation but shall be an invitation to treat only. The Supplier reserves the right to accept or reject, in its absolute discretion, any orders or offer to purchase received by the Company.

2.2. Only an authorised signature on the Hire Agreement by the Supplier of the Hirer's offer shall complete a Hire Agreement.

2.3. Placement of an order, in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions. A Hire Agreement must still be signed by both parties prior to dispatch / pickup of equipment.

2.4. Unless otherwise stated, quotations are valid for a maximum period of 30 days from date of quotation and despite the Hirer's purported acceptance after such period has elapsed are subject to confirmation by the Supplier and the Supplier reserves the right to alter or withdraw any quotation.

3. Hire Period

3.1. The Hirer is entitled to use the equipment for the period of time specified in the Hire Agreement.

3.2. The hire period commences when the Supplier dispatches the equipment in accordance with the Hirer's instructions.

3.3. The hire period ends, when the Hirer returns the equipment to the Supplier.

3.4. All Equipment must be returned to the Supplier for service after 800 hours of use or charges for damaged components due to a lack of service will be charged to the Hirer.

3.5. On return of equipment for the purpose of service, the Hirer may request replacement Equipment subject to a new Hire Agreement being executed for the replacement equipment.

4. Inspection

4.1. Prior to accepting possession of the Equipment, the Hirer must complete an inspection report on the Equipment. The Hirer can reject the equipment as a result of this inspection and by accepting possession, the Hirer agrees that the Equipment as at the commencement of the hire period:

4.2. is in good repair, working order and condition and complete in all respects; and

4.3. is fit for the Hirer's purpose.

5. Rent and other charges

5.1. The Supplier can refuse to hire the Equipment to the Hirer for any reason without cause.

5.2. Rent will be charged from day of pick up from the Hire Location until the Equipment is returned to the Supplier at the Return Location. The Hirer will pay the Supplier the hire charges as set out in the Hire Agreement. Subject to clause 10.3, the Hirer is not entitled to any rebate or discount if the equipment is not used by the Hirer for the entire Hire period.

5.3. Subject to clause 9.3 and 17.3:

5.3.a the Rent is non-refundable;

5.3.b if the Hirer terminates the Hire Agreement prior to the expiration of an extended Term Agreement, the Hirer must immediately pay any variation agreed between the extended term rate and standard Rent rate (calculated based on the Rental period of the Term); and

5.3.c all costs in connection with the use of the Equipment are to be borne by the Hirer and are not part of the Rent. All sums payable by the Hirer to the Supplier pursuant to the Hire Agreement are not subject to any defence, set-off, recoupment or counter-claim which the Hirer may have and the Hirer is not entitled to withhold payment of any sum for any reason whatsoever.

5.4. If the equipment is returned in an unclean condition, cleaning and inspection fees will be charged on completion of the Term at reasonable rates advised by the Supplier.

5.5. At the expiration of the Term or upon termination of the Hire Agreement, the Equipment will be assessed for damage and a report shall be issued detailing the damage and the cost to repair. The cost of damage will be charged to and paid by the Hirer. Notwithstanding any of the foregoing the Hirer is not responsible for fair wear and tear, with the exception of tools & hoses.

5.6. Unless otherwise agreed in writing, the rates charged to the Hirer are based on a weekly rate of hire.

5.7. In addition to the Rent, the Hirer agrees to pay:

5.7.a for any consumables, and/or special requirements/alterations made or supplied to the Hirer;

5.7.b the cost of delivery, collection or installation of the Equipment, (if the Supplier is required to deliver, collect or install the Equipment);

5.7.c any duty or GST arising out of the Hire Agreement; and

5.7.d the cost of the provision of training on the use of the Equipment at agreed rates, should the Hirer request and the Supplier provide such training.

6. Duties of the Hirer

The Hirer must at all times:

6.1. exercise reasonable care in using the Equipment;

6.2. properly lubricate, keep and maintain the Equipment in good and serviceable condition and compensate the Supplier for any damage to the Equipment and for any items stolen, missing or damaged, other than that arising from fair wear and tear.

6.3. the Hirer is responsible for all consumables related to rental of Equipment such as rockbreaker tools, pins, compactor rubbers, ripper/bucket teeth and pins, hoses and fittings, etc.

6.4. not make modifications or perform minor works in relation to the Equipment without the prior written consent of the Supplier including not to alter, add, deface or erase any identifying mark, label or number on the Equipment;

6.5. ensure that the Equipment is used in a proper manner and only for the intended purpose;

6.6. ensure that the intended machine, the Equipment is being attached to, is correctly set to the appropriate Flows and Pressures suited to the Equipment and any costs incurred in applying the correct settings are to the Hirer.

6.7. Promptly notify the Supplier by telephone and subsequently in writing to confirm full details of any damage occurring to the Equipment or any damage arising from the use of the Equipment;

6.8. Not attempt to dispose, sell, encumber or create any lien over the Equipment or any interest in it.

6.9. the Hirer must not remove the equipment from the State in which it was hired without The Supplier's written consent.

6.10. Upon reasonable notice by the Supplier, give the Supplier access to the Equipment for inspection as required by the Supplier from time to time; and

6.11. return the Equipment in good order and condition to the Supplier at the return location nominated by the Supplier.

6.12. The Hirer will safely secure all equipment loaded in or on the Hirer's vehicle.

7. Warranties

7.1. The Hirer represents and warrants that:

7.1.a it is fully aware of the correct procedures for use of the Equipment hired and that it is satisfied that the Equipment is adequate for its intended purpose;

7.1.b it has full power and authority to enter into and perform its obligations under the Hire Agreement;

7.1.c all information provided to the Supplier by or on behalf of the Hirer is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading; and

7.1.d it has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into a contract with the Hirer.

7.2. The representations and warranties given in this clause 8 survive the Contract.

8. Insurance

8.1. The Hirer must insure at all times during the Term against:

8.1.a Loss or damage to the Equipment caused by fire, accident or theft (including during transit) for an amount equal to their full insurable value.

8.1.b Public liability for bodily injury or damage to property arising in connection with the Equipment up to \$10,000,000.

8.2. The insurances must be in a form and substance and with a reputable insurance company with a S&P rating of not less than A- or equivalent. The Hirer must, on request from the Supplier, provide to the Supplier certificates of currency or other evidence acceptable to the Supplier (which without limitation may include full copies of the policies of insurance) that the insurance required under clause 8 is in place.

8.3. With respects to insurance matters in which the Supplier has an interest as owner of the equipment the Hirer must not:

8. 3.a do anything, or fail to do anything, which would allow the insurer to refuse or reduce a claim; nor

8. 3.b enforce, conduct, settle or compromise any claim without the Supplier's written consent.

9. Breakdown

9.1. If at any time during the hire, the Equipment breaks down, malfunctions or there is a mechanical failure with the Equipment, it is the Hirer's responsibility to promptly notify the Supplier. The Hirer is not to attempt to repair the Equipment without prior written consent of the Supplier.

9.2. Subject to clause 17.3, the Supplier shall not be liable to the Hirer for any loss, damage or claim arising as a result of hiring the Equipment or caused by any breakdown, mechanical failure or malfunction of the Equipment or its inadequacy for any intended use, including but not limited to consequential damage.

9.3. In the event that the Equipment breaks down through no fault, negligence, recklessness or misuse by the Hirer, the Supplier;

9. 3.a will take all the steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Hirer;

9. 3.b and will not impose a hire charge for the hire period for which the Equipment was broken down or unsafe.

10. Title

10.1. The Applicant agrees that legal and equitable title to the Assets is retained by the Supplier.

11. Personal Property Securities Act

11.1. Capitalised terms in this clause 11, that are not otherwise defined elsewhere in the Hire Agreement, have the same meaning as set out in the Personal Property Securities Act 2009 (Cth) (as amended) (PPSA) unless the context otherwise requires.

11.2. The Hire Agreement constitutes a security agreement pursuant to the PPSA in relation to the Equipment supplied by the Supplier to the Hirer and any Equipment that will be supplied in the future by the Supplier to the Hirer.

11.3. The Hirer acknowledges and agrees that a Security Interest (as that term is defined in the PPSA) may be registered by the Supplier in relation to the Equipment and the proceeds arising in respect of any dealing in the Equipment in accordance with the PPSA (and in any other manner the Supplier considers appropriate).

11.4. The Hirer agrees to do all such things and sign all such documentation and/or provide any further information (such information to be complete accurate and up-to-date in all respects) as are necessary and reasonably required to enable The Supplier to:

11. 4.a acquire a perfected Security Interest in the Equipment and its proceeds;

11. 4.b register a Financing Statement or Financing Change Statement;

11. 4.c ensure that the Supplier's security position, and rights and obligations are not adversely affected by the PPSA.

11.5. The Hirer waives its rights to receive a copy of any Verification Statement after the registration of a Financing Statement or Financing Change Statement in respect of the Security Interest created by the Hire Agreement.

11.6. The Hirer agrees to not:

11. 6.a register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Hire Agreement; or

11. 6.b register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Equipment in favour of a third party

without the Supplier's prior written consent.

11.7. For the purposes of section 20(2) of the PPSA, the collateral is the Equipment including any Equipment which is described in any Hire Agreement provided by the Supplier to the Hirer from time to time.

11.8. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interest(s) created under the Hire Agreement, the parties agree that the following provisions of the PPSA will not apply or are waived, as the context requires:

11. 8.a section 95 (notice of removal of accession to the extent that it requires The Supplier to give a notice to the Hirer);

11. 8.b section 96 (retention of accession);

11. 8.c section 121(4) (notice to grantor);

11. 8.d section 125 (obligations to dispose of or retain collateral);

11. 8.e sections 129(2), 129(3) and 130 (notice of disposal to the extent it requires The Supplier to give a notice to the Hirer);

11. 8.f section 132(3)(d) (contents of statement of account after disposal);

11. 8.g section 132(4) (statement of account if no disposal);

11. 8.h section 135 (notice of retention);

11. 8.i section 142 (redemption of collateral); and

11. 8.j section 143 (re-instatement of security agreement).

11.9. The Hirer will not, without the prior written consent of the Supplier change its name, its details or initiate any change to any documentation registered under the PPSA pursuant to the Hire Agreement.

11.10. Notwithstanding anything in this Hire Agreement to the contrary, the Supplier acknowledges and agrees that the Hirer may on hire the Equipment to another entity approved in writing by the Supplier. The Hirer must ensure that the relevant customer signs an appropriate hire agreement containing such clauses at a minimum equivalent clauses to this clause 11.

11.11. Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an Interested Person, or any other person requested by an Interested Person. 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 the above information.

11.12. If any provisions of the Hire Agreement are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

12. Urgent protection

12.1. If urgent action is necessary to protect the Equipment, other property or people, with reasonable consultation with the Hirer the Supplier may, (but is not obliged to and without prejudice to its other rights), take such necessary action. If the action was action which the Hirer should have taken, the cost reasonably incurred by the Supplier will be a debt due from the Hirer.

13. Term & Termination

13.1. Should the Hirer default in its obligations under the Hire Agreement and that breach is not remedied by the Hirer within 7 Business Days of service of a default notice setting out the nature of the default, the Supplier may, (without prejudice to its other rights), terminate the Hire Agreement by giving notice to the Hirer.

13.2. If the Hire Agreement is terminated, the Hirer must immediately pay the Supplier (without prejudice to the Supplier's other rights):

13. 2.a any outstanding Rent calculated up to the date of the termination takes effect; and

13. 2.b any other amounts due under the Hire Agreement.

13.3. In the event of any substantial loss or destruction of the Equipment, the Hirer may by notice in writing to the Supplier terminate the Hire Agreement and to the extent loss or damage is caused by the Hirer, the Hirer must pay to the Supplier the replacement value of the Equipment less any proceeds of salvage received by the Supplier if and when received. In the event that the replacement value cannot be agreed between the parties the value is to be determined by an independent valuer nominated by the Supplier.

13.4. Notwithstanding any other provision of this Hire Agreement, the Hirer may terminate this agreement for its convenience at any time by giving the Supplier 60 day's written notice.

13.5. The Hirer will have two (2) options to extend the Hire Period for a further twelve (12) months (each an extended term), by giving written notice to the Supplier not less than 60 days prior to the expiry of the initial Hire period or the first Extended Term on the condition that the Hire Equipment is serviced by the Supplier every 800 hours of usage.

14. Recovery of Possession

14.1. On termination of the Hire Agreement due to a default by the Hirer, the Supplier has the right, (without prejudice to the Supplier's other rights), to repossess the Equipment at its absolute discretion and with reasonable notice or any reason to the Hirer.

For the purpose of repossession or inspecting the condition of the Equipment, the Supplier may, subject to 7 days' notice thereof and subject to personnel meeting the requisite, reasonable health and safety conditions applicable to the site enter the Hire Location or any other premises in which the Equipment is or the Supplier reasonably believes the Equipment to be held and the Hirer agrees to indemnify the Supplier or its agents against any reasonable costs suffered by them or any of them whilst exercising or attempting to exercise the rights conferred by this clause.

14.2. If the Equipment is repossessed under clause 14.1 and has been damaged by the Hirer, the Hirer must pay to the Supplier the cost of restoring the Equipment (fair wear & tear excluded) to the extent such damage was caused by the Hirer. All costs associated with the repossession, transport, delivery and removal of the Equipment from the Hire Location to the Return Location are the responsibility of the Hirer.

15. Deliver Up

15.1. At the expiration of the Term or upon its earlier termination, the Hirer must deliver up the Equipment to the Supplier to the Return Location, (or such other location agreed in writing by the Supplier), in the same good order and repair and condition as the Hirer ought to have kept the Equipment under clause 6 and pay to the Supplier the cost of restoring the Equipment to such condition.

15.2. All costs associated with the transport, delivery and removal of the Equipment from the Hire Location to the Return Location are the responsibility of the Hirer.

15.3. Acceptance of the Equipment by the Supplier and payment of any costs does not constitute a waiver of the Supplier's rights under this clause or confirmation that the Hirer has complied with all of its obligations under this clause.

15.4. If the Hirer fails to deliver up the Equipment to the Supplier on the expiration of the Term, the Hirer must pay The Supplier ongoing Rent as set out in the Hire Agreement.

16. Overdue moneys and costs

16.1. The Hirer agrees:

16. 1.a to pay interest at the rate equal to the CBA overdraft cash rate from time to time plus 3% per annum on any money payable pursuant to the Hire Agreement which may from time to time be overdue and on damages which may be recoverable pursuant to the Hire Agreement ; and

16. 1.b to pay to The Supplier on demand by the Supplier the amount of any costs and expenses including legal, collection and storage costs incurred by the Supplier on a full indemnity basis by reason of default by the Hirer under the Hire Agreement.

17. Loss and claims

17.1. The Hirer must indemnify The Supplier against:

17. 1.a loss or damage to the Equipment however caused including but not limited to theft, loss or damage to the Equipment or any of its accessories; and

17. 1.b any claims or costs whatsoever, (including any claims from a third party), arising out of the use, operation or keeping of the Equipment, to the extent caused by negligent act or omission or wilful misconduct by the Hirer or the Hirer's personnel.

17.2. Subject to clause 17.4, and except as expressly provided to the contrary in the Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

17.3. Nothing in the Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

17.4. Where permitted by law the Supplier's obligations resulting from a breach by it of any of those items referred to in clause 17.3 shall be limited to 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

17. 4.a in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again

17.5. Subject to the Supplier's obligations that cannot be excluded by law, (including the Australian Consumer Law), and to the maximum extent permitted by law, the Supplier's maximum aggregate liability for all claims under or relating to the Hire Agreement or its subject matter, whether in contract, tort, (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by the Hirer under the Hire Agreement, (including but not limited to the Rent). The Supplier agrees to indemnify the hirer for personal injury and/or property damage to the extent caused by the Supplier, its employees, contractors, agents or representatives except where such personal injury or property damage was caused by misuse of the hired equipment when operated or controlled by the hirer, its employees, clients, contractors, agents or representatives

17.6. Subject to clauses 17.4 and 17.5, neither party is liable to the other for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs it has incurred, amounts that it is liable for or any loss suffered by third parties under or relating to the Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage. The hirer agrees to return the equipment within the agreed time at the end of the hire term and is not liable for any consequential losses incurred by the Supplier except in the event that the equipment is not returned within this time and rental charges will be applied by the Supplier and payable by the Hirer to the Supplier.

18. Costs

18.1. The Hirer must pay all stamp duty, and other government imposts payable on or in connection with the Hire Agreement, (excluding registration costs in respect of clause 11).

19. Notices

19.1. Any notices required to be given under the Hire Agreement must be given in writing to the other party at the addresses set out above, or by email to the last known email address.

19.2. Subject to clause 12.9, the Hirer must notify the Supplier immediately in writing of any change of the Hirer's address or email address.

20. Confidentiality

20.1. Each party must keep confidential the existence and terms of:

20. 1.a the Hire Agreement (and any draft of the Hire Agreement); and

20. 1.b all negotiations in connection with it.

21. Jurisdiction

21.1. The Hirer acknowledges and agrees that the Hire Agreement shall be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.

21.2. The parties to the Hire Agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

22. General

22.1. If this document is inconsistent with the terms of another document which sets out the terms of a Hire agreement, the terms of this document override that said document. This document is to be read and is part of DMB Equipment's Standard Terms & Conditions.

22.2. This Agreement overrides the provisions and terms of any purchase order, purchasing terms and conditions or any other similar standard contract or document of the Hirer to the extent of any inconsistency, and by signing this Agreement, the Hirer agrees that any provision asserting priority to any such document of the Hirer shall be rendered null and void.

23. Option to Purchase Equipment

23.1. The Customer may purchase the equipment provided on a rental basis under this contract. The customer may exercise this option at any time during the period of the Hire Contract, including any extensions hereto.

23.2. Except for final payment and transfer of title to the Customer, the rental portion becomes complete and rental charges shall be discontinued on the day immediately preceding the effective date of purchase.

23.3. The purchase conversion cost of the equipment shall be computed as of the effective date specified in paragraph 23.2 of this clause, on the basis of the purchase price set forth in this contract, minus the total purchase option credits accumulated during the period of rental, calculated by the formula contained elsewhere in this contract.

The Hirer hereby acknowledges and accepts these Terms and Conditions of Hire.

I hereby warrant that i am authorised to sign this Terms of Hire Conditions on behalf of the Hirer, and the information given is true and correct to the best of my knowledge.

Name (Print)

Witness Name (Print)

Signature

Signature

Position

Date

Date

CUST #

OFFICE USE ONLY

CUST CODE

OFFICE USE ONLY