

1. Definitions

In these Conditions of Hire:-

- (a) The "Owner" is Kawana Equipment Hire.
- (b) The "Hirer" is the person or company identified on the front hereof.
- (c) The "Equipment" unless a contrary intention appears, includes all goods, articles, machinery or motor vehicles supplied by the Owner to the Hirer for a fee pursuant to this Contract.
- (d) "Off Hire No." Is the number given to the Hirer when the Hirer notifies the Owner in writing or by phone that the Equipment is available for return and the location at which it shall be available.
- (e) The "Period of Hire" shall:-
 - (i) commence from
 - (a) the commencement date and time as shown overleaf, or
 - (b) the time the Equipment is delivered to the Hirer, whichever is the latter; and
 - (ii) Cease:-
 - (a) when the Equipment is returned to the Owner (either on the date and at the time specified overleaf or 24 hours from the date of commencement of the Period of Hire); or
 - (b) at the time a "pickup" number is given; or
 - (c) on the Owner repossessing the Equipment pursuant to Condition 8 of these Conditions of Hire.

2. Freight/

Delivery The Hirer shall be responsible for freight and other charges whether incurred by the Owner or the Hirer in respect of the delivery and return of the Equipment PROVIDED THAT the Owner shall be responsible for freight and other charges in respect of the Equipment where it is returned due to a breakdown or failure and not by the Hirer's negligence or misuse.

3. Damage to the Equipment and / or Loss of Equipment

- (a) During the period of Hire the Hirer shall be responsible for any loss or damage to the Equipment whether such loss is caused by the negligence of the Hirer or any person under his control or the Nominated Driver or for any other reason whatsoever. Where a "pickup" number has been given the Hirer's responsibility shall continue until the Owner picks up the Equipment.
- (b) Where the Hirer is responsible for damage to the Equipment the whole or any part of the cost of replacement or repair to the Equipment will be added to the invoice total.
- (c) Where Equipment is not returned to the Owner by the Hirer, or a "Pickup" number is not sought from the Owner within 2 days of the expiration for the Period of Hire the Owner may forfeit the Deposit and shall be at liberty to immediately notify the police of the circumstances and may take any civil or criminal action as it deems necessary for the recovery of possession of the Equipment or for the value of the Equipment at the commencement of the Period of Hire. The Owner shall not be responsible to, the Hirer for any loss or damage, injury, fines or costs incurred or sustained by the Hirer in respect of any costs, losses or damages arising from such actions.

(d) The Hirer indemnifies the Owner in respect of all action, claims, suits, demands or expenses of the Hirer or any other person in relation to or arising out of the use or possession of the Equipment by the Hirer or any person under his control or the Nominated Driver during the Period of Hire.

4. Hiring Charges

Hiring charges at the rate specified overleaf shall commence from the commencement of Period of Hire and shall continue until the Period of Hire ceases.

5. Breakdown and Damage to Property of and injury to Third Parties

(a) In respect of all equipment the Hirer shall, during the Period of Hire of the Equipment hired, be responsible for any loss or damage to property of, or personal injury to, third parties resulting from or which is incidental to the use or possession of the Equipment or for any other reason whatsoever, including the use of the Equipment on any public road or highway, or if the Hirer or any driver or operator of the Equipment drives or operates that Equipment without a licence required by any statute or regulation or fails to use any prescribed safety apparatus installed in the Equipment, and the Hirer shall indemnify and keep indemnified the Owner in respect of all such actions, claims, demands or expenses of the Owner or any other person in relation to or arising out of the use of the Equipment under this Contract;

(b) (i) In the event of a breakdown or failure of equipment or defect in the Equipment becoming apparent during the Period of Hire, the Hirer shall return it immediately or notify the Owner.

(i) The Hirer shall not repair or attempt to repair or cause any repair to be made to the Equipment without the prior consent of the Owner.

(c) In no event shall the Owner be responsible for any expenditure, damages, sum for delay, inconvenience or loss incurred by the Hirer arising out of any breakdown or failure and or defect in the Equipment whether caused by fair wear and tear, lack of repair, negligence or any other reason whatsoever.

(d) No conditions or warranties maybe included or be implied by statute and may not be excluded by agreement. Any condition or provision inconsistent with such implied condition or warranty shall be of no force and effect to the extent of that inconsistency.

6. Termination by the Owner

(a) The Owner may not with standing the specified Period of Hire or any waiver of some previous default by the Hirer terminate this Agreement and repossess the Equipment:-

(i) If the Hirer shall fail to pay any hiring charges within two days of the due date; or

(ii) If the Hirer does or permits any act or thing to be done to the Equipment by way of which the Owner's right in the Equipment may be prejudiced; or

(iii) If the Hirer should become or is made insolvent or bankrupt or makes any arrangement or composition with his creditor or should any order be made or resolution passed for its winding up.

(iv) If the Hirer commits any breach of these Conditions of Use.

7. Assignment

The Hirer shall not sell, transfer, assign, part with possession, mortgage, charge or encumber any right or obligation under those Conditions of Hire without the prior written consent of the Owner.

8. Use of Equipment

(a) (i) The Hirer shall at all times use the Equipment in a skilful and proper manner and shall at his own expense service, clean and maintain the Equipment in good and substantial repair and condition, reasonable wear and tear excepted.

(ii) The whole of any part of the cost incurred by the Owner arising out of any failure by the Hirer to properly clean the Equipment will be added to the invoice total.

(iii) The Hirer shall not permit the Equipment to be used out side of Queensland.

(b) Before using the Equipment the Hirer shall examine the Equipment and satisfy himself as to the quality of fitness for the purpose of the Equipment. If in any way, the Equipment is defective or unsuitable for the purpose of the Hirer.-

(ii) shall be returned immediately to the Owner with written notice of the defect or unsuitability; or

(iii) The Hirer shall notify the Owner who shall exchange the Equipment.

9. Damage Waiver

(a) The Hire charge may have included damage waiver charge.

(b) In the event of damage to the plant \$100.00 per item or 10% of the cost of repairs to the Plant (whichever is the greater). This waiver shall not apply to damage to Equipment in the following circumstances and the Hirer shall be responsible for and indemnify the Owner without limit against any loss or damage where: -

In the case of all Equipment

(i) Damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment;

(ii) Damage caused by misappropriation or wrongful conversion by the Hirer or its employees, servants, independent contractors or agents or by any other person to whom the Equipment is entrusted by the Hirer;

(iii) Damage caused by the use of operation of Equipment in contravention of any of these Conditions of Hire;

(iv) Damage caused by the use of operation of Equipment in violation of any statute (Commonwealth or State)or any regulation or by law thereunder;

(v) Damage to tools or accessories;

(vi) Damage to tyres or tubes;

(vii) Damage to batteries;

(viii) Damage to Equipment occurring for any reasons whilst located, used, unloaded, transported on, over or adjoining water including, without limiting the generality hereof whilst located, used,loaded or transported over or on wharfs, bridges,barges and vessels of all kinds;

(ix) The equipment is lost or stolen; .

(x) The damage or loss is caused by the negligence of the Hirer or any person under his control or the Nominated Driver including in the case of a motor vehicle any damage caused by the vehicle being driven without adequate water, engine oil,brake fluid or tyre air pressure;

(xi) The equipment is used for a purpose for which it was not designed.

10. Payment of Charges

(a) The Hirer shall pay the Owner on determination of the Hiring Period the following:-

(i) in the case of all other equipment the Hiring Charge;. . . .

(ii) the amount of any loss or damage to the Equipment, subject to these Conditions of Hire

(iii) The amount of tolls, levies, charges or like charges paid or payable by the Owner to any government body in respect of use of the Equipment; . .

(iv) The cost of petrol, diesel and other fuel required at the completion of the Hire to refill the fuel tanks.

(v) The cost of freight and other charges incurred by the Owner or the Hirer in respect of delivery or return of the Equipment;

(vi) Any costs incurred by the Owner in repossessing the Equipment in accordance with these Conditions of Hire;

(vii) The amount of any fines or penalties paid or payable by the Owner in respect of any traffic, parking or other offences committed by the Hirer or the Nominated Driver.

11. Any previous negotiations, understandings, written or oral representation, warranties, memorandum or commitments in relation to the Equipment are superseded by these conditions and no amendment to these conditions shall bind the parties unless in writing and executed by or on behalf of the Owner. Any duplicate or replacement of the Invoice and Conditions of Hire issued to the Hirer after 14 days from the date of this Invoice to respect of the hire of the Equipment shall be deemed to be signed by the Hirer.