

TERMS & CONDITIONS OF HIRE

Definitions

Agreement means the agreement between Biondo Rentals and the Customer for the rental of the Equipment described in the Delivery Note and these terms and conditions of hire and any attached schedules.

Commencement Date means the On Hire Date set out in the Delivery Note.

Completion Date means the Off Hire Date set out in the Delivery Note.

Consequential Loss means any consequential loss, indirect, exemplary or punitive loss or damage including direct or indirect loss of actual or anticipated profits or revenues, loss by reason of shutdown or non-operation, increased cost of borrowing capital or financing, or loss of use or productivity whether caused by or contributed to by a breach of contract or statute, breach of warranty (express or implied) tort, strict liability or any other cause whatsoever.

Consumables means all fuel, oil, fuses, light globes, fire extinguishers, fire systems, undercarriage, tyres, hydraulic hoses, brake linings (operational wear), drive and ancillary belts, tools, spare wheel or spare parts carried on the Equipment.

Customer and Customer Details means the customer set out in the Delivery Note and includes the Customer's employees, executors, administrators, agents and representatives.

Customer Maintenance Obligations means the maintenance obligations of the Customer as set out in the schedule attached hereto and headed Customer Maintenance Obligation and/or any maintenance obligations as set out in the Delivery Note.

Delivery Note means the document to which these terms and conditions are attached.

Equipment means the Equipment referred to in the Delivery Note for hire including any and all accessories, tools, attachments, parts, manuals, instructions and packing and transferable materials.

Equipment Maintenance Schedule means the maintenance schedule to which the Equipment must be maintained as set out in the schedule attached to this Agreement headed Equipment Maintenance Schedule and/or in the Delivery Note.

Environmental Laws means any statute regulations or other laws made or issued by regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

Hire charge or Hire charges means the rates and charges payable by you for the hire of the Equipment as noted in the Delivery Note.

Hire period means the period described in the Delivery Note.

PMP is the preventive maintenance programme operated by Biondo Rentals for all equipment. The PMP involves regular attendance to site by our service team, to conduct routine equipment servicing and general maintenance.

PPSA means the Personal Property Securities Act 2009 (*Cth*) (as amended) and any other legislation and regulations in respect of it and the following words have the respective meanings given to them in the PPS Act; collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

We/Us/Our means Biondo Rentals and related companies and their successors and assigns.

You/Your refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring the Equipment from Us and the reference to "You/Your" includes any of your employees, agents and contractors.

Agreement

1. We agree to hire the Equipment to you and will:
 - a. Provide the Equipment to you in good working order; and
 - b. Subject to you complying with these terms and conditions allow you exclusive use of the Equipment during the hire period.
2. The Agreement constitutes the entire Agreement between you and us with respect to the subject matter and supersedes any and all prior negotiations, representations, warranties or agreements signed or not and
3. This agreement may only be varied in writing, when signed by both parties.

The Hire Period

The hire period commences on the earlier of the following

- a) The On Hire Date.
- b) When you take possession of the Equipment; or
- c) If you request delivery and collection of the Equipment, the time we deliver the Equipment to your nominated address as disclosed in the Delivery Note.
- d) The hire period is for a indefinite term and if the Equipment is not returned by the Off Hire Date the hire period will extend until the Equipment is back in our possession or control.
- e) The hire period excludes public holidays. There will be no stand down day(s) of equipment on RDO's. We charge time out, not time used.
- f) A minimum hire period of 1 day will apply to all Equipment. This will be clearly stated in the Delivery Note at the time of hiring. If you return the Equipment to us before the expiration of the minimum hire period, you will still be required to pay all hire charges in respect of the minimum hire period as disclosed in the Delivery Note.

Rental charges & other charges

- a) Rental charges are payable for the hire period from the commencement date until the Equipment is returned to us.
- b) All equipment not returned before 10am will incur an additional days charge.
- c) Unless otherwise stated all weekly prices quoted are based on a 5 day week, extra days are charged out at the weekly rate divided by 5, multiplied by the days used.
- d) Additional Hire Charges apply if the equipment is used for **more than 8 hours per day**.
- e) It is your responsibility to call up and Off hire the equipment. All equipment will be considered still on hire until you call and obtain an off hire number.
- f) You must pay all amounts specified or referred to in the Delivery Note together with:
 - i. the cost of any consumables, if you require us to deliver, collect or install the Equipment, the cost of delivery, collection or installation as detailed in the Delivery Note noting that such charge may include a waiting fee in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by you.
 - ii. If you do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment, any stamp duty or GST arising out of this hire agreement, any other applicable levies, fines, penalties and any other government charges arising out of your use of the Equipment.
 - iii. If you request operational guidance or training on the use of the Equipment and our staff are available to provide this, the cost for the provision of these services will be at rates as agreed between us as detailed in the Delivery Note.

Payment

- a) You must pay all rental charges and other fees, charges and costs that become due and payable under this Agreement within 7 days of the date of invoice or as per your account terms.
- b) If you do not pay the invoice in full by the payment due date, we may charge to you, in addition to any other costs recoverable under this Agreement, interest calculated monthly on the total outstanding balance. The interest rate to be used will be calculated by reference to the 90 day bank bill swap rate published on the first business day of the month the Equipment is due to be returned plus 2% and any costs and expenses including any commission payable to any commercial or mercantile agents and legal costs incurred by us in recovering any unpaid amounts under this Agreement.

Use of Equipment

- a) The Equipment always remains the property of Biondo Rentals and you as Customer, only have the right to use it. Title to the Equipment will at all times remain in Biondo Rentals name unless otherwise expressly stated in the Delivery Note. You as Customer have no option or right to purchase the Equipment.
- b) You as Customer will do everything necessary to protect the interest of Biondo Rentals in the Equipment making it clear to others that the Equipment is owned by Biondo Rentals.
- c) You must immediately inform Biondo Rentals of any repairs required to the Equipment and these repairs must be completed by Biondo Rentals unless agreed in writing otherwise.
- d) You must not remove any identifying plates or marks of ownership on the Equipment.
- e) You must not in any way deface, remove, vary or otherwise erase any identifying marks, plates, numbers, notices or safety information on the Equipment.
- f) You must not disable, interfere or tamper with any electronic monitoring systems attached to the Equipment nor in any way otherwise alter, modify, tamper with, damage or repair the Equipment without the express written consent of Biondo Rentals.
- g) You must not part with possession or control of the Equipment without the express written consent of Biondo Rentals.
- h) Risk in the Equipment passes to you as Customer upon delivery of the Equipment and remains with you until the Equipment is returned and/or collected by Biondo Rentals.
- i) You as Customer bear the risk of any loss or damage (including without limitation, damage to the Equipment caused by vandalism, theft, any force majeure event) whether caused by the Equipment or its operation and all costs incurred with respect to the Equipment including the cost of repairing or replacing the Equipment at full replacement value, salvage costs and rental charges incurred while the Equipment is repaired or replaced during the rental term whether or not the Equipment or you as Customer is insured.
- j) You must ensure that the Equipment is operated by a suitably trained, licensed, experienced and (where necessary) certified operator and is operated in accordance with the Operation & Maintenance Manuals and any instructions provided by Biondo Rentals and all relevant laws, regulations, rules and regulatory guidelines.

- k) You shall keep the Equipment clean, including the removal of excess material in the Equipment's undercarriage, to allow for safe and efficient operation and ensure that the Equipment is not used for any purpose other than for what it is designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
- l) You shall carry out and perform the Customer maintenance obligations as detailed in the attached schedule or in the Delivery Note and ensure that the Equipment is maintained in accordance with the Equipment maintenance schedule or as directed by Biondo Rentals from time to time by making the Equipment available to Biondo Rentals at the relevant times for the carrying out of scheduled maintenance services and pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment including all consumables, fittings and accessories.
- m) You shall at your expense keep the Equipment secure and parked within a lockable compound when not in use.

Ownership of the Equipment

- a) You acknowledge that we own the Equipment and in all circumstances we retain title to the Equipment (even if you go into liquidation or become bankrupt during the hire period). Your rights to use the Equipment are as a Bailee only.
- b) You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- c) In no circumstances will the Equipment be deemed to be a fixture.
- d) You acknowledge that we may hire or lease equipment from a third party if we cannot provide the Equipment to you ("Third Party Owner") and if this occurs, title in the Equipment remains with the Third Party Owner.

PPSA

- a) You acknowledge that we may register any actual or impending security interest (in any manner we consider appropriate) in relation to any security interest contemplated or constituted by this Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
- b) You undertake to do anything that is required by us so that we acquire and maintain one or more perfected security interest under the PPSA in respect of the Equipment and its proceeds and to register a financing statement or financing change statement and to ensure that our security position and rights and obligations are not adversely affected by the PPSA;
- c) You will not register a financing change statement in respect of a security interest contemplated or constituted by this Agreement without our prior written consent; and
- d) You will not create or purport to create any security interest in the Equipment nor 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 our prior written consent.
- e) You further waive your rights under Section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Agreement and further agree that to the extent permitted by the PPSA the following provisions of the PPSA will not apply and are contracted out of namely section 94 (to the extent that it requires the secured party to give notices to the grantor); section 96, section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- f) Further you agree that the following provisions of the PPSA will not apply and you will have no rights under them namely section 127, section 129(2) and 93); section 130 (1); section 132, section 134 (2); section 135; section 136(3), (4) and (5) and section 137.
- g) Unless otherwise agreed and to the extent permitted by the PPSA you and we 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 and to that extent you waive any right you 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.
- h) For the purposes of Section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by us to you from time to time. This Agreement is a security Agreement for the purposes of the PPSA.
- i) You agree to notify us in writing of any change to your details set out in the Delivery Note within 4 days from the date of such change

Access & Inspection

- a) You must provide us with access to the site for the purposes of inspecting the state of repair of the Equipment to perform any maintenance or servicing and to otherwise exercise our rights under this Agreement. Access to be provided during normal business hours and reasonable notice will be given by us to you (except in an emergency when no notice is required).
- b) We may do anything that you should have but have not done under this Agreement and you must reimburse us for all our costs so incurred. Privacy
- c) You agree that we may obtain, disclose or use information including personal information:
 - i. about your credit worthiness or for the purposes of obtaining and maintaining credit information files about you or collecting overdue payments; and
 - ii. About you for the purposes of providing services to you.
- c) In so doing we will ensure that any personal information that we collect, use and transfer in the course of providing goods and services under this Agreement will comply with all applicable laws in Australia including the Australian Privacy Principles in the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) and the Privacy Act 1988 (Cth)

Long Distance Maintenance

- a) The PMP for all equipment located at a Long Distance Location will be subject to a per kilometre charge both to and from the premises nominated by You. There will be no charge for the first 75km.
- b) The PMP for multiple items of Equipment which are located at the same address will only be charged as one call out.
- c) You remain responsible for daily maintenance and care of all equipment, including but not limited to, checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- d) If the equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any other costs payable under the Hire Agreement.

Insurance

- During the hire period you at your own expense must affect, with a reputable insurance company in Australia, the following insurances in the joint name of yourself and us for our respective interests:
- i. Plant and equipment insurance for physical loss of or damage to the Equipment for the insurable value (refer to Delivery Note as to the value of the Equipment)
 - ii. Third party and public liability in respect of bodily injury (including death) and property damage for not less than \$3Million for any one occurrence.
 - iii. Workers' compensation insurance required by law;
 - iv. Such other insurances as we may reasonably require dependent on the use to which you are putting the equipment being used.
- You must provide evidence of the currency of these insurances to us on request.

Loss Theft Damage Waiver

- a) Loss Theft Damage Waiver (LTD Waiver) is not insurance, but is an agreement by Us to limit Your liability **in certain circumstances** for loss, theft or damage to the equipment to an amount called the LTD Waiver Excess.
- b) You are not required to pay the LTD Waiver Fee if You provide a certificate of currency for an appropriate policy of insurance that covers loss, theft and damage to the equipment during the hire period for an amount not less than the replacement value of the equipment. You are responsible for any excess and any other costs associated with any insurance taken out by You under this clause and You are responsible for any shortfall in repair or replacement of the equipment following payment of any amount received under insurance, including any loss We suffer as a result of not being able to hire the equipment.
- c) The LTD Waiver fee of 12.5% will be automatically added to Your contract.
- d) Where You have paid the LTD Waiver Fee. We will waive Our right to claim against You for loss, theft or damage to the equipment if:
 - i) For theft, You have promptly reported the incident to police and provide Us with a written police report, You can show that the machine has been locked and adequately secured and classified as secure by a reputable insurance company. (Temporary fencing not classed as adequate)
 - ii) You have co-operated with Us and have provided Us with the details of the incident, including any written or photographic evidence WE require.
 - iii) You have paid US the LTD Waiver Excess.
- e) The LTD Waiver Excess for each item of equipment is the amount equal to:
 - i) \$2500.00 or (if the replacement cost of the equipment is less than \$2500.00) the replacement cost of

- the equipment.
- ii) 15% of the cost of the repairs + LTD (if the equipment is partially damaged and can be repaired) OR 15% of the full new replacement cost of the equipment + LTD (if the equipment is lost, stolen or damaged beyond repair). Whichever is greater
- f) Even if you have paid the LTD Waiver Fee, We will not waive Our rights to claim against You for loss, theft or damage to the equipment and LTD Waiver **will not apply** if the loss, theft or damage:
- i) has arisen as a result of Your breach of this Hire Agreement.
 - ii) has been caused by Your negligent act or omission
 - iii) has arisen as a result of Your use of the equipment in violation of any laws
 - iv) has been caused by Your failure to use the equipment for its intended purpose or in accordance with Our instructions or manufacturer's instructions.
 - v) has been caused by the overloading of the equipment or any components thereof.
 - vi) is caused by vandalism
 - vii) is to tyres, tubes, windscreen, mirrors, glass or Perspex.

Indemnities

You irrevocably indemnify us against and hold us harmless from:

- i. All loss or destruction of or damage to the Equipment however caused;
 - ii. All costs, charges, expenses, liabilities, losses, damages, claims, fines and penalties (including legal costs on a full indemnity basis) suffered or incurred by us, our offices, directors, employees or agents in connection with:
 - (a) The condition, use, operation, control, maintenance, repair or storage of the Equipment;
 - (b) Any breach or non-compliance with any registration, licence permit, authorisation, statute, regulation or by-law relating to the use of the Equipment; or
 - (c) Any breach of this Agreement by you or us exercising any of its rights under this Agreement.
- You will not be liable under this clause to the extent that the relevant matter was caused or contributed to by our negligent act, error or omission nor in respect of matters for which we are liable under this Agreement. This indemnity will continue after this Agreement expires or terminates.

Limitations of Liability

- (a) To the extent permitted by law, all legal, statutory or equitable liability, conditions or warranties of any type in relation to the Equipment are excluded. Nothing in this Agreement will limit those provisions of the Competition and Consumer Act 2010 (Cth) including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on us which conditions, warranties and obligations cannot, or cannot accept to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent that we are entitled to do so, our liability under those statutory provisions will be limited at our option to:
 - i. In the case of goods:
 - a. The replacement of the goods or the supply of equivalent goods;
 - b. The payment of the cost of replacing the goods or of acquiring equivalent goods;
 - c. The payment of the cost of having the goods repaired; or
 - d. The repair of the goods; and
 - ii. In the case of Services"
 - a. The supply of the services again; or
 - b. The payment of the cost of having the services supplied again.
- (b) Notwithstanding anything to the contrary in this Agreement, we will not be liable for any consequential loss. Further notwithstanding anything to the contrary in this Agreement or elsewhere and to the full extent permitted by law the cumulative liability of us to you under or in connection with this Agreement including any liability for breach, negligence or under any indemnity or law will be limited to the amount paid by you to us under this Agreement for the hire of the Equipment.
- (c) These limitations of liability continue after this Agreement expires or is terminated.

Force Majeure

If our ability to perform our obligations under this Agreement is adversely affected by any cause beyond our reasonable control (Force Majeure Event), then we may if we choose end this Agreement or suspend it for a period of up to 3 months by giving you written notice. We will not be liable for any loss, damage or liability which you incur as a result, whether directly or indirectly.

Severability

If any part of this Agreement 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.



General Provisions

- (a) You agree not to assign this Agreement without our prior written consent.
- (b) You or the person signing this Agreement on your behalf warrants that you are authorised to enter into this Agreement and the person signing the Delivery Note declares, acknowledges and agrees that he/she has authority to do so on your behalf and shall hereby personally guarantee payment to us of any money due to us pursuant to this Agreement.
- (c) No time or indulgence by us will be deemed to be a waiver of our rights.
- (d) Notices and other communications under this Agreement must be in writing sent by mail, email or fax to, or left at the addresses set out in the Delivery Note (or as subsequently advised in writing by the relevant party).
- (e) In this Agreement, the words "including" and "includes" are not words of limitation.
- (f) This Agreement is governed by the laws of the State of Victoria and the parties hereto submit to the non-exclusive jurisdiction of the courts of that State and all courts which may hear appeals therefrom. Each party waives any objection to the venue of any legal proceedings commenced in any court within the State of Victoria on the basis that the proceedings have been brought in an inconvenient form.