



CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants

Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: _____ REF No. _____

CLIENT'S TRADE NAME: _____

CLIENT'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

_____ State: _____ Postcode: _____

COMMERCIAL CLIENTS ONLY

ABN/ACN Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEE (If a Trust)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

_____ State: _____ Postcode: _____

ID: _____ Date of Birth: _____ ID: _____ Date of Birth: _____
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 2: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 3: _____ Address or A/C No: _____

Phone: _____ Fax: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Yellow Hire Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED (CLIENT): _____ SIGNED (YELLOW HIRE): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

Yellow Hire Pty Ltd – Terms and Conditions of Hire

1. Definitions

- 1.1 "Yellow Hire" means Yellow Hire Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Yellow Hire Pty Ltd.
- 1.2 "Client" means the Client or any person acting on behalf of and with the authority of the Client, as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Equipment" means all Equipment (excluding any tools, accessories, parts, grease guns, hoses or similar electrical cords, welding cables, gas cylinders, pneumatic tools, light globes and other similar accessories, ground engaging tools, tracks (tyres or glass) supplied on hire by Yellow Hire to the Client, at the Client's request from time to time, and:
- (a) where the context so permits shall include any incidental supply of services;
 - (b) the Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Yellow Hire to the Client; and
 - (c) Yellow Hire may, at its sole discretion, decline to supply the Equipment to the Client.
- 1.4 "Hire Term" means the period of hire of the Equipment by the Client, as described on the invoices, quotation, authority to hire, or any other forms as provided by Yellow Hire to the Client.
- 1.5 "Hire Charges" means the cost of the hire of the Equipment as agreed between Yellow Hire and the Client subject to clause 4 of this contract.
- 1.6 "Wet Hire" means where the Equipment is supplied with an operator, who remains an employee of Yellow Hire and operates the Equipment in accordance with the Client's instructions.
- 1.7 "Renter Protection Fee" has the meaning set out in clause 10.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for the Equipment, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with Yellow Hire's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Yellow Hire.
- 2.3 The Client acknowledges:
- (a) references to schedule or clauses are references to such in this contract.
 - (b) words importing the singular shall include the plural, and vice versa, and words importing any gender shall include all other genders.
 - (c) headings are inserted for convenience only, and do not affect the interpretation of this contract.
 - (d) "good working order" means, in respect to the Equipment, that:
 - (i) the Equipment is in good condition and good appearance throughout;
 - (ii) the Equipment has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.
- 2.4 Yellow Hire will provide the Equipment in good working order and, subject to clause 14.1(b), allow the Client exclusive use of the Equipment during the Hire Term.

3. Change in Control

- 3.1 The Client shall give Yellow Hire not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by Yellow Hire as a result of the Client's failure to comply with this clause.

4. Hire Charges and Payment

- 4.1 At Yellow Hire's sole discretion Hire Charges shall be either:
- (a) as indicated on invoices provided by Yellow Hire to the Client in respect of Equipment supplied; or
 - (b) Yellow Hire's current Price, at the date of delivery of the Equipment, according to Yellow Hire's current Price list; or
 - (c) Yellow Hire's quoted Hire Charges (subject to clause 4.2) which shall be binding upon Yellow Hire provided that the Client shall accept in writing Yellow Hire's quotation within thirty (30) days.
- 4.2 Yellow Hire reserves the right to change the Hire Charges:
- (a) if a variation to the Equipment which is to be supplied is requested; or
 - (b) in the case of Wet Hire:
 - (i) if a variation to the services originally scheduled (including any applicable plans or specifications) is requested; or
 - (ii) where additional services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects (unseen obstructions), safety considerations, prerequisite work by any third party not being completed, the unavailability of required site utilities, delays outside the control of Yellow Hire, hard rock barriers below the surface or iron reinforcing rods in concrete, etc.) which are only discovered on commencement of the services; or
- (c) upon one (1) month's written notice to the Client.
- 4.3 At Yellow Hire's sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Yellow Hire, which may be:
- (a) made by instalments in accordance with Yellow Hire's payment schedule; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Yellow Hire.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of two and a half percent (2.5% of the Price) or by any other method as agreed between the Client and Yellow Hire.
- 4.6 Unless otherwise stated the Hire Charges do not include GST. In addition to the Price the Client must pay to Yellow Hire an amount equal to any GST Yellow Hire must pay for any supply of the Equipment by Yellow Hire under this or any other contract for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Hire Charges. In addition the Client must pay any other taxes and duties (including stamp duties, tolls, fines, penalties, levies, freight, government charges arising out of the Client's use of the Equipment, etc.) that may be applicable in addition to the Hire Charges except where they are expressly included therein.

- 4.7 The Client acknowledges and agrees that the Client's obligations to Yellow Hire for the supply of the Equipment shall not cease until:
- (a) the Client has paid Yellow Hire all amounts owing for the hire of the Equipment; and
 - (b) the Client has met all other obligations due by the Client to Yellow Hire in respect of all contracts between Yellow Hire and the Client.

- 4.8 Receipt by Yellow Hire of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Yellow Hire's rights in relation to this contract shall continue.

5. Other Charges

- 5.1 In addition to the Hire Charges, the Client will be required to pay to Yellow Hire, immediately upon request:
- (a) for any consumables, fuel or trade materials supplied to the Client by Yellow Hire;
 - (b) where applicable, the costs of delivering, installing and/or collecting the Equipment (as per clause 7.1);
 - (c) all costs incurred in cleaning and/or repairing the Equipment where the Equipment is not returned in good working order;

- (d) the cost for the provision of any operational guidance and/or training in the use of the Equipment (at rates agreed to between the parties) if requested by the Client. Such services will be subject to the availability of Yellow Hire's staff;
- (e) if Equipment hired on a daily basis is used for more than eight (8) hours in any day or if the Equipment hired for a week is used for more than five (5) days;
- (f) any lost hire fees Yellow Hire would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
- (g) any insurance excess payable in relation to a claim made by either the Client or Yellow Hire in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Yellow Hire's.

6. Hire Term

- 6.1 Hire Charges shall commence from the time the Equipment departs from Yellow Hire's premises and shall continue until (and including) the date on which the Client is issued with a de-hire number from Yellow Hire, or this agreement is terminated in accordance with the terms and conditions herein (whichever is the earlier), unless such de-hire number is issued prior to 9:00am in which case Hire Charges will not be applicable for that day. Any extension to the Hire Term must be agreed to in writing by Yellow Hire.

- 6.2 The Client must return the Equipment to Yellow Hire's address on or before the end of the Hire Term; failure to do so:

- (a) in accordance with this contract, will be subject to a continuance of the hire of the Equipment until return is effected.
- (b) can be considered as criminal theft and may be immediately reported to the Police.

- 6.3 Subject to clauses 6.6 and 6.7, no allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Yellow Hire confirms special prior arrangements in writing. In the event of Equipment breakdown, provided the Client notifies Yellow Hire immediately, Hire Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client. Any Equipment supplied to the Client during the Hire Term as a replacement will be supplied for the unexpired balance of the Hire Term as originally agreed between the Client and Yellow Hire.

- 6.4 The Hire Period shall be completed when the Equipment has been returned to Yellow Hire in the same condition as when it was hired either:
- (a) on or by the date and time specified herein or by any subsequent extension of the Hire Term; or
 - (b) where agreed to by Yellow Hire, on the date agreed for collection by Yellow Hire.

- 6.5 Where Yellow Hire agrees to collect the Equipment:
- (a) Yellow Hire will arrange for collection thereof within a reasonable period after a request to do so, and
 - (b) will issue the Client with a collection number upon request; and
 - (c) the Client agrees to maintain the responsibility for the Equipment whilst it is awaiting collection.

- 6.6 Equipment may only be off-hired subject to the following:
- (a) in the case of breakdown (as per clause 6.3), Public Holiday or RDO, or wet weather (which only applies to Equipment greater than six (6) tonnes), during which hire charges shall not be payable;
 - (b) as per clause 6.7(b);
 - (c) shall not be applicable for Equipment subject to a rental/purchase agreement.

- 6.7 A stand down rate of fifty percent (50%) of the hire charges may apply, subject to the following:
- (a) the availability of the Equipment;
 - (b) notification by the Client to Yellow Hire before 9:00am;
 - (c) the issuance of a stand down number by Yellow Hire;
 - (d) shall not be applicable for Equipment hired at monthly hire charges or rental/purchase agreements.

7. Delivery

- 7.1 Delivery of the Equipment ("Delivery") is taken to occur at the time that the Client, or the Client's nominated carrier, takes possession of the Equipment at Yellow Hire's address. Yellow Hire (or Yellow Hire's nominated carrier) may agree to make delivery and/or collection of the Equipment to and/or from the Client's nominated address, and the Client will pay to Yellow Hire any charges and expenses incurred thereby as per clause 5.1.(b).
- 7.2 Any time or date given by Yellow Hire to the Client is an estimate only. The Client must still accept Delivery, even if late, and Yellow Hire will not be liable for any loss or damage incurred by the Client as a result of Delivery being late.

8. Use, Operation and Maintenance of the Equipment

- 8.1 The Client:
- (a) acknowledges and agrees that the use of the Equipment carries with it dangers and risks of injury, and:
 - (i) in the case of Wet Hire, Yellow Hire shall not be liable for any actions of the operator in following the Client's instructions; and
 - (ii) the Client accepts full responsibility for, and shall keep Yellow Hire indemnified against, all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of Yellow Hire's possession, use, maintenance, repair, storage or transport of the Equipment during the Hire Term and whether or not arising from any misuse, negligence, failure or omission of the Client or any other persons. This indemnity shall not apply where it can be proven to be shown by the Client that such actions, proceedings, claims, etc. have arisen through a negligent act of the operator (in the case of Wet Hire), or that Equipment supplied by Yellow Hire was in a defective state or condition.
 - (b) shall ensure that all persons operating and/or erecting Equipment are suitably instructed in the Equipment's safe and proper use, and where necessary, holds valid proof of training (e.g. a current Certificate of Competency) and/or are fully licensed to operate the Equipment (holding a valid current driver's licence, operating licence or permit valid for the type of Equipment hired), and shall provide evidence of the same to Yellow Hire upon request;
 - (c) will use the Equipment solely for the Client's own work, and shall not permit the Equipment of any part thereof to be used by any other party for any other work, without the express written permission of Yellow Hire;
 - (d) agrees to operate, maintain (in good working order, and ensuring that all safety personnel protection equipment is in place and is fully operational), store and transport the Equipment in a proper manner, with all due care and diligence, and (where required) strictly in accordance with any instruction provided by Yellow Hire. Daily maintenance and care of the Equipment, including but not limited to, checking all fluids (e.g. fuel, oil, water, battery levels, etc.), general tightening of any loose nuts, bolts, belts or fittings, and lubrication of all grease points;
 - (e) agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations in regard to its operation, maintenance and storage, whether supplied by Yellow Hire or posted on the Equipment;
 - (f) agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations;
 - (g) shall ensure that the Equipment is returned to Yellow Hire in good working order and clean of all foreign matters. The Client's failure to adhere to this clause shall incur additional charges as per clause 5.1.(c).

9. Client's Warranties

- 9.1 The Client warrants that:

- (a) by accepting Delivery, the Client is satisfied that the Equipment complies with its description, is clean and in good working condition, and is suitable for the Client's purposes;
- (b) the Client will not conceal, alter or make any additions or alterations to the Equipment, including (but without limitation) tampering, repairing, modifying, defacing or erasing any identifying mark, plate or number on or in the Equipment, or in any other manner interfere with the Equipment, and shall not permit any other person or party to do so;
- (c) the Client's vehicle is suitable for towing the Equipment, if required to do so;
- (d) the Client will not use the Equipment, nor permit it to be used, in such a manner as would permit an insurer to decline any claim (including, but not limited to, using the Equipment for any illegal purpose, etc.);
- (e) the Equipment shall be kept in the Client's own possession and control, and the Client:
 - (i) shall not assign the benefit of this hire contract, nor be entitled to take a lien, or grant any encumbrance over the Equipment; and
 - (ii) will not remove the Equipment from the State without the prior written approval of Yellow Hire.

10. Renter Protection Fee

- 10.1 At Yellow Hire's sole discretion the Client must pay a Renter Protection Fee where the full replacement cost of the Equipment exceeds (as determined by Yellow Hire) two hundred dollars (\$200), and subject to clauses 10.2 and 10.3, the Client's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft is limited to five hundred (\$500.00) dollars or ten percent (10%) of the full replacement cost of the Equipment (if replaced), whichever is the greater.

- 10.2 The liability granted to the Client under clause 10.1:

- (a) in no way entitles the Client to, or implies the availability of, compensation from Yellow Hire for any liability incurred by the Client in relation to the use of the Equipment;
 - (b) will not continue to operate after the expiration of this contract, unless any extension thereof is granted by Yellow Hire in writing and additional hire charges are paid;
 - (c) will not apply to loss or damage which relates to, arises from or is caused by:
 - (i) a breach of this agreement or statutory laws or regulations in connection with the use of the Equipment by the Client;
 - (ii) transporting loading or unloading (except where transported by Yellow Hire);
 - (iii) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment;
 - (iv) artificial electrical current or exposure to any corrosive substance or environment;
 - (v) use of the Equipment in or over water on bridges, vessels or structures of any kind;
 - (vi) improper use or misuse, abuse, or willful, malicious or negligent acts or omissions, and/or reckless use and/or overloading of the Equipment;
 - (vii) lack of lubrication, or non-adherence to other normal maintenance requirements that could reasonably be expected of the Client under this contract;
 - (viii) unexplained disappearances of the Equipment or theft of the Equipment in circumstances where site security is available (including, but not limited to, locked yards, buildings and sheds and/or where proper security is not used by the Client to secure the Equipment whilst it is left unattended, etc.).
- 10.3 The Client must promptly report any theft of the Equipment to the Police and provide Yellow Hire with written evidence verifying that report.

11. Title

- 11.1 The Client acknowledges that Yellow Hire retains title to the Equipment, and the Client:
- (a) has the right to use the Equipment as a mere bailee only;
 - (b) is not authorised to pledge Yellow Hire's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs;
 - (c) must return the Equipment to Yellow Hire upon request to do so;
 - (d) shall not agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let or hire, or otherwise part with, or attempt to part with, personal possession of, or otherwise not to deal with, the Equipment.
- 11.2 Notwithstanding anything else herein contained, Yellow Hire, or any authorised agent of Yellow Hire, may at any time (as the invitee of the Client) enter upon and into any premises where the Equipment is located to exercise any rights they have under this contract or at law, including (if the need arises), the right to disconnect, decommission and/or repossess the Equipment from the relevant premises, without being responsible for any damage thereby caused, in the event the Client is in breach of any obligation (including those relating to payment) under this contract, or where clause 14.1(b) applies and:
- (a) the Client agrees to obtain all necessary consents from Yellow Hire, occupier and other interested parties (such as any mortgagee) of the relevant premises where the Equipment is located to enable Yellow Hire to do this;
 - (b) any costs incurred by Yellow Hire as a result of so repossessing the Equipment shall be charged to the Client;
 - (c) Yellow Hire shall only charge the Client for the Hire Charges up to and including the time of repossession;
 - (d) in addition to Yellow Hire's right to repossess the Equipment, Yellow Hire is entitled, at its sole discretion, following any breach of any provision of this contract by the Client, to terminate this contract and/or sue for recovery of any damages or charges or loss suffered by Yellow Hire, and/or to cancel any insurances effective in respect of the hired Equipment.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause the terms: financing statement, financing change statement, security agreement, and security interest have the meaning given to them by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment and/or collateral (account – being a monetary obligation of the Client to Yellow Hire for services – that have previously been supplied and that will be supplied in the future by Yellow Hire to the Client.
- 12.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Yellow Hire may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Yellow Hire for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Yellow Hire;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of Yellow Hire;
 - (e) not, without giving Yellow Hire fourteen (14) days' prior notice, change their name, ABN or any other identifier required to be recorded on the PPSR in connection with any security interest arising under this contract.

Yellow Hire Pty Ltd – Terms and Conditions of Hire

- 12.4 Yellow Hire and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Yellow Hire, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by Yellow Hire under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Sub-leasing and Security Interests**
- 13.1 Sub-leasing:**
- (a) The Client must not lease, hire, bail or give possession ("Sub-Lease") of the Equipment to any other party ("Sub-lessee") without the prior written consent of Yellow Hire. Any agreed Sub-lease must be in writing, in a form acceptable to Yellow Hire, and must be expressed to be subject to the rights of Yellow Hire under this contract.
- (b) The Client may not vary a Sub-lease without the prior written consent of Yellow Hire.
- (c) The Client must ensure that Yellow Hire is provided, at all times, with up-to-date information about the Sub-lease, including the identity of the Sub-lessee, the terms of and state of accounts and payment under the Sub-lease, and the location and condition of the Equipment.
- 13.2 Security Interests:**
- (a) In this clause the terms: security interest, chattel paper and PMSI have the meaning given to them by the PPSA.
- (b) The Client must:
- (i) not create, purport to create or permit to be created any security interest in the Equipment other than with the express written consent of Yellow Hire;
- (ii) have and maintain a policy in relation to the PPSA (including any registered security interest at the express written consent of Yellow Hire) which is, at least, consistent with the Client's obligations under this contract, which enables the:
- (a) Client to gain (subject always to the rights of Yellow Hire) first priority (or any other priority agreed to by Yellow Hire in writing) for the security interest; and
- (b) Client and Yellow Hire to exercise their respective rights in connection with the security interest.
- (iii) ensure that any lease or hire of the Equipment to the Sub-lessee is not a PPS Lease or, if it is, the Client must comply with sub-clause (d).
- (iv) have the terms on which the Client leases or hires the Equipment to the Sub-lessee approved by Yellow Hire prior to the Client entering into the lease or hire arrangement;
- (v) require the Sub-lessee to acknowledge Yellow Hire's security interest in the Equipment and that the Sub-lessee's interest is subject to, or subordinate to, Yellow Hire's security interest;
- (vi) give Yellow Hire possession of any chattel paper relating to the lease or hire of the Equipment, or ensure that any chattel paper is marked in such a way that no other party could take possession of it without acquiring actual or constructive knowledge of Yellow Hire's security interest; and
- (vii) ensure the Sub-lessee returns the Equipment at the end of the lease or hire.
- (c) In addition to any other security interest arising under or contemplated by this contract, if the Client leases or hires the Equipment to the Sub-lessee, the Client grants a security interest in any chattel paper relating thereto to secure the payment and performance of the Client's obligations under this contract.
- (d) The Client must ensure any security interest that the Client has over the Equipment arising under or in respect of the Sub-lease is enforceable, perfected and otherwise effected under the PPSA, and continuously maintained as such (including perfection as a PMSI).
- (e) Yellow Hire may recover from the Client any costs incurred by Yellow Hire of doing anything under this clause (including but not limited to, registration fees, etc.).
- 14. Security and Charge**
- 14.1** In consideration of Yellow Hire agreeing to supply Equipment:
- (a) the Client:
- (i) charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money); and
- (ii) indemnifies Yellow Hire from and against all Yellow Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Yellow Hire's rights under this clause; and
- (iii) irrevocably appoints Yellow Hire and each director of Yellow Hire as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14, including, but not limited to, signing any document on the Client's behalf.
- (b) the Client acknowledges and agrees:
- (i) Yellow Hire may charge, mortgage or grant a security interest in its interest in this contract and/or the Equipment ("Security") in favour of a third party ("Security Holder") without the Client's consent. The exercise of any rights by the Security Holder under a Security will not constitute a breach or default under this contract or otherwise entitle the Client to terminate, rescind or revoke this contract; and
- (ii) the Client's rights in respect of the Equipment are expressly subject and subordinated to the rights of the Security Holder (whether arising under the Security, at law or otherwise). Nothing in this contract will in any way limit, reduce, vary, or otherwise qualify the rights of a Subject Holder under or in connection with any Security, any other document connected with any Security, or any Equipment, and the Security Holder will be entitled to exercise all of its rights under, or in respect of, the Security to the same extent as if this contract had not been entered into;
- (iii) if a Security becomes enforceable:
- (a) Yellow Hire may, by notice to the Client, terminate this contract, and upon such notice the Client's right to possess and use the Equipment automatically ceases, and the Client must surrender the possession and control of the Equipment to the Security Holder or Yellow Hire, notwithstanding that the Client may not be in breach or default of their obligations under this contract; and
- (b) clause 11.2 may be exercised by Yellow Hire or the Security Holder.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Equipment on Delivery and must within twenty-four (24) hours of such time notify Yellow Hire in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Yellow Hire to inspect/review the Equipment.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 15.3 Yellow Hire acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Yellow Hire makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. Yellow Hire's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Yellow Hire's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Yellow Hire is required to rectify, re-supply, or pay the cost of re-supplying any Equipment under this clause or the CCA, but is unable to do so, then Yellow Hire may refund any money the Client has paid for the hire of the Equipment but only to the extent that such refund shall take into account the value of Equipment which have been provided to the Client which were not defective.
- 15.7 If the Client is not a consumer within the meaning of the CCA, Yellow Hire's liability for any defect or damage in the Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Yellow Hire at Yellow Hire's sole discretion;
- (b) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, Yellow Hire shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client's failure to comply with any of their obligations under this contract;
- (b) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (c) the Client failing to follow any instructions or guidelines provided by Yellow Hire;
- (d) fair wear and tear, any accident, or act of God.
- 16. Loss, Damage or Breakdown of the Equipment**
- 16.1 Subject only to the obligations of Yellow Hire following payment of the Renter Protection Fee by the Client in accordance with clause 10, the Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Yellow Hire for all loss, theft, or damage to the Equipment, howsoever caused (except for fair wear and tear), during the Hire Term, and without limiting the generality of the foregoing, whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 16.2 The Client shall notify Yellow Hire immediately (by telephone) of the full circumstances of any mechanical breakdown, failure or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
- 16.3 Immediately on request by Yellow Hire, the Client will pay the new list price of any Equipment that is, for whatever reason, destroyed, written off or not returned to Yellow Hire.
- 17. Access and Inspection**
- 17.1 Yellow Hire and its representatives have the right to enter the worksite where the Equipment is located at any time upon giving reasonable notice to inspect, maintain and/or repair the Equipment or to repossess the Equipment. The Client must assist Yellow Hire and it representative in exercising its rights under this clause.
- 18. Insurance**
- 18.1 If the Client elects not to pay the Renter Protection Fee (as per clause 10), they must insure, or self-insure, Yellow Hire's interest in the Equipment against physical loss or damage thereto (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) during the Hire Term for not less than the full replacement cost of the Equipment.
- 18.2 The Client, in all instances, will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment of not less than ten (10) million dollars.
- 18.3 Evidence, in the form of a certificate of currency, for such policies (and any renewal thereof) of insurances, as specified in clauses 18.1 and 18.2, must be given to Yellow Hire at its request, and in any event, no later than seven (7) days after the expiry date of the previous certificate of currency (where applicable).
- 19. Cancellation**
- 19.1 Yellow Hire may cancel these terms and conditions or cancel Delivery at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice Yellow Hire shall repay to the Client any sums paid in respect of the Price. Yellow Hire shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by Yellow Hire as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 At Yellow Hire's sole discretion, a cancellation fee may be charged by Yellow Hire where the Equipment has been reserved by booking and the Client cancels the booking without reasonable notice, or fails to take Delivery as per clause 6.1.
- 20. Termination**
- 20.1 Without prejudice to any other remedies Yellow Hire may have against the Client, and notwithstanding the Hire Term, this contract may be terminated by Yellow Hire:
- (a) upon giving the Client seven (7) days written notice of termination at any time during the Hire Term;
- (b) without notice, and all amounts owing to Yellow Hire shall, whether or not due for payment, become immediately payable in the event that:
- (i) any money payable to Yellow Hire becomes overdue, or in Yellow Hire's opinion the Client will be unable to meet its payments as they fall due; or
- (ii) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
- (iv) the Client commits a breach of any part of this contract.
- 21. Default and Consequences of Default**
- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Yellow Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes Yellow Hire any money the Client shall indemnify Yellow Hire from and against all costs and disbursements incurred by Yellow Hire in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Yellow Hire's contract default fee, and bank dishonour fees).
- 21.3 Without prejudice to any other remedies Yellow Hire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire Yellow Hire may repossess the Equipment as per clause 11.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. Yellow Hire will not
- be liable to the Client for any loss or damage the Client suffers because Yellow Hire has exercised its rights under this clause.
- 22. Privacy Act 1988**
- 22.1 The Client agrees for Yellow Hire to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Yellow Hire.
- 22.2 The Client agrees that Yellow Hire may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 22.3 The Client consents to Yellow Hire being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Client agrees that personal credit information provided may be used and retained by Yellow Hire for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 22.5 Yellow Hire may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
- (b) name of the credit provider and that Yellow Hire is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Yellow Hire has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Yellow Hire, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.7 The Client shall have the right to request (by e-mail) from Yellow Hire:
- (a) a copy of the information about the Client retained by Yellow Hire and the right to request that Yellow Hire correct any incorrect information; and
- (b) that Yellow Hire does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8 Yellow Hire will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 22.9 The Client can make a privacy complaint by contacting Yellow Hire via e-mail. Yellow Hire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 23. Force Majeure**
- 23.1 Subject to clause 23.2, neither party shall be responsible for any delays in Delivery, installation or collection due to causes beyond their control (including, but not limited to, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of, or inability to obtain shopping space, or land transportation).
- 23.2 Nothing in clause 23.1 will limit or exclude the Client's responsibility and liability under this contract for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Term, or had broken down, or become unsafe to use as a result of the Client's conduct or negligence.
- 24. General**
- 24.1 The failure by Yellow Hire to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Yellow Hire's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Yellow Hire has its principal place of business, and are subject to the jurisdiction of the Courts in Victoria.
- 24.3 Subject to clause 15, Yellow Hire shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Yellow Hire of these terms and conditions (alternatively Yellow Hire's liability shall be limited to damages which under no circumstances shall exceed the Hire Charges).
- 24.4 Yellow Hire may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 24.5 The Client agrees that Yellow Hire may amend these terms and conditions at any time. If Yellow Hire makes a change to these terms and conditions, then that change will take effect from the date on which Yellow Hire notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Yellow Hire to supply any Equipment to the Client.
- 24.6 The Client warrants that:
- (a) it is not insolvent and that this contract creates binding and valid legal obligations on it; and
- (b) the person signing any document which forms part of this contract for and on behalf of the Client has the power to enter into this contract on the Client's behalf and grant the security interest in connection with it, and has obtained all necessary authorisations to allow it to do so.
- 24.7 The covenants, agreements and obligations contained in this contract will not merge or terminate upon the termination of this contract, and to the extent that they have not been fulfilled or satisfied, or are continuing obligations, they will remain in force and effect.