

CUTTING EDGE PLANT HIRE PTY LTD ACN 635 258 114

DRY HIRE AGREEMENT – TERMS AND CONDITIONS

1. Acceptance of Terms

- 1.1 These terms and conditions apply to all Equipment supplied by Cutting Edge Plant Hire to the Hirer under the Hire Agreement.
- 1.2 No variation, modification or alteration of any of these Terms is effective unless it is in writing and signed by Cutting Edge Plant Hire.
- 1.3 Cutting Edge Plant Hire can change any of these Terms on the giving of 14 days prior notice (or any longer period required by law).

2. Definitions

The following words appearing in these Terms have the meaning given next to them:

Term	Meaning
Delivery Charges	means the cost of delivering the Equipment to the Hirer and returning the Equipment to Cutting Edge Plant Hire.
Equipment	means all plant, machinery, vehicles, tools, accessories, attachments, parts, manuals, instructions, replacement and substitute items supplied on hire by Cutting Edge Plant Hire to the Hirer.
Cutting Edge Plant Hire	means Cutting Edge Plant Hire Pty Ltd ACN 635 258 114 and its successors and/or assigns.
Hire Agreement	the agreement between the Hirer and Cutting Edge Plant Hire for the Hire of the Equipment subject to these Terms.
Hire Charges	means the amounts payable by the Hirer to hire the Equipment as set out in the Schedule.
Hire Period	has the meaning in clause 3 of these Terms.
Hirer	means the person, firm, organisation, partnership, corporation or other entity (including a trust) hiring the Equipment from Cutting Edge Plant Hire as detailed in the Schedule.
Other Charges	means all amounts which are or may become payable by the Hirer to Cutting Edge Plant Hire under these Terms.
Schedule	means the Schedule to these Terms.
Terms	means these terms and conditions.

3. Hire Period

- 3.1 The Hire Period will commence when the Hirer takes possession of the Equipment and will continue until the Equipment is returned to Cutting Edge Plant Hire or to an address nominated by Cutting Edge Plant Hire.
- 3.2 The Hirer must return the Equipment to Cutting Edge Plant Hire on or before the return date set out in the Schedule.
- 3.3 Any extension of the hire period must be agreed to by Cutting Edge Plant Hire in writing.

4. Payment and Charges

- 4.1 The Hirer agrees to pay the following:
 - (a) the Hire Charges, the Delivery Charges and the Other Charges;
 - (b) a cancellation fee equivalent to the Hire Charges for one days hire if the Hirer gives less than 24 hours notice of the cancellation;
 - (c) interest on any overdue invoice at the rate of 2.5% percent per month which will compound monthly;
 - (d) the costs of cleaning the Equipment;
 - (e) the costs of fuels and consumables provided by Cutting Edge Plant Hire which are not replaced by the Hirer;
 - (f) the costs of repair of any damage to the Equipment caused by, or deemed to be caused by, the Hirer;
 - (g) the costs of replacement of any accessories lost, or deemed to be lost, by the Hirer;
 - (h) the costs of fixing the Equipment if the Hirer fails to follow the correct shut down procedure;
 - (i) any GST, duties, taxes, fines, penalties, tolls and other government charges arising from the Hirer using the Equipment;
 - (j) any costs incurred by Cutting Edge Plant Hire due to the Hirer not complying with its obligations under these Terms.

4.2 For any Hire Period less than a month:

- (a) Cutting Edge Plant Hire will issue the Hirer a tax invoice prior to the commencement of the Hire Period; and
- (b) the tax invoice and demand of Other Charges must be paid immediately before possession of the Equipment is given to the Hirer.

4.3 For any Hire Period over a month:-

- (a) Cutting Edge Plant Hire will issue the Hirer a tax invoice each month; and
- (b) all tax invoices and demands of Other Charges must be paid within 14 days of receipt by the Hirer.

4.4 All tax invoices and demand for Other Charges must be paid within 14 days of receipt.

4.5 For any Hire Period, the minimum Hire Charge will be 1 days hire.

5. Rights and Obligations

- 5.1 The Hirer will:
 - (a) upon delivery of the Equipment inspect the Equipment and satisfy itself as to its condition and suitability for the purpose for which it is hired;
 - (b) upon delivery of the Equipment take good quality photographs of the Equipment including the front, right side, left side, back and the cabin and especially of any damage or defects to the

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Equipment and provide those to Cutting Edge Plant Hire;

- (c) keep the Equipment in its own possession and control;
- (d) at its own expense clean, fuel and lubricate the Equipment and keep it in good repair and condition having regard to its condition at delivery;
- (e) operate, maintain and store the Equipment with due care and diligence, only for its intended use and strictly in accordance with any instructions provided by Cutting Edge Plant Hire and in accordance with any manufacturer's operations manual whether supplied by Cutting Edge Plant Hire or posted on the Equipment;
- (f) shut down the Equipment strictly in accordance with any instructions provided by Cutting Edge Plant Hire and in accordance with any manufacturer's operations manual;
- (g) ensure that all persons operating the Equipment are competent, suitably qualified, trained and experienced and where necessary are fully certified and/or are fully licensed;
- (h) not allow any person to operate the Equipment who is affected by drugs or alcohol or who is not suitably licenced or certified;
- (i) provide all operators of the Equipment with appropriate safety clothing and other equipment;
- (j) not modify or permit any modification of the Equipment in any way including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with or modify the Equipment;
- (k) notify Cutting Edge Plant Hire immediately by telephone of the full circumstances of any mechanical breakdown or accident;
- (l) comply at its own expense with all occupational health and safety laws and any other laws relating to the Equipment and its operation during the Hire Period;
- (m) at the end of the Hire Period, return the Equipment with a full tank of fuel (if applicable), clean, complete with all parts, accessories and consumables and in good repair and condition (fair wear and tear excepted) to Cutting Edge Plant Hire.

5.2 Cutting Edge Plant Hire may inspect the Equipment at any time without notice and the Hirer grants an irrevocable authority to Cutting Edge Plant Hire to enter the property where the Equipment is located.

6. Risk

- 6.1 The Hirer acknowledges that the use of the Equipment carries with it dangers and risk of injury.
- 6.2 The Equipment is at the risk of the Hirer during the Hire Period.
- 6.3 The Hirer will assume all risks and liabilities for and in respect of the Equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the Hirer's possession, use, maintenance, repair or storage of the Equipment.

7. Insurance

- 7.1 The Hirer must obtain and maintain all appropriate and prudent insurance policies:
 - (a) that cover loss, theft or damage to the Equipment during the Hire Period for an amount not less than the full new replacement value of the Equipment;
 - (b) for third party public liability risks in respect of the hire or use of the Equipment by the Hirer in an amount not less than \$20 million.
- 7.2 The Hirer must provide Cutting Edge Plant Hire with copies of the certificates of currency of insurance upon request.

8. Defects

- 8.1 The Hirer must notify Cutting Edge Plant Hire of any alleged defect or damage to the Equipment within 24 hours of delivery.
- 8.2 Cutting Edge Plant Hire is entitled to inspect the Equipment within a reasonable time following delivery if the Hirer believes the Equipment is defective in any way.
- 8.3 If the Hirer fails to comply with these provisions the Equipment is deemed to be free from any defect or damage.

9. Loss and Damage

- 9.1 The Hirer will be responsible for any loss or damage to the Equipment and accessories irrespective of how the loss or damage occurred (fair wear and tear excepted) during the Hire Period.
- 9.2 If there is a breakdown or failure of the Equipment, then the Hirer must immediately stop using the Equipment and notify Cutting Edge Plant Hire.
- 9.3 The Hirer must not repair or make any attempt to repair the Equipment.

10. Warranties, Indemnity and Liability

- 10.1 Where the Australian Consumer Law applies, the Hirer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 10.2 To the extent permitted by law, any guarantee under the Australian Consumer Law is limited to the replacement or repair of the Equipment.
- 10.3 To the extent permitted by law, Cutting Edge Plant Hire disclaims all liability for and does not give any warranties to the Hirer in respect of the condition of the Equipment or its fitness for any particular purpose.
- 10.4 The Hirer warrants that:
 - (a) it will comply with its obligations under these Terms;
 - (b) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (c) the Hirer and any person operating the Equipment holds a valid current driver's licence, certificate, operation licence or permit for the type of Equipment hired;
 - (d) the Equipment will not be used for any illegal purpose;

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- (e) the Equipment complies with its description, is in merchantable condition and is fit for the Hirer's purpose.
- 10.5 To the full extent permitted by law, the Hirer releases, discharges and indemnifies Cutting Edge Plant Hire from all actions, claims or demands of any kind whatsoever relating to the use or misuse of the Equipment during the Hire Period.
- 11. Default**
- 11.1 If the Hirer breaches the Hire Agreement and does not remedy that breach within a reasonable time or becomes bankrupt, insolvent or ceases business then Cutting Edge Plant Hire can:
- (a) terminate this Hire Agreement; and/or
- (b) sue for recovery of all monies owing by the Hirer; and/or
- (c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so).
- 11.2 The Hirer indemnifies Cutting Edge Plant Hire in respect of any damages, costs or loss, to the extent caused or contributed to by the Hirer as a result of the breach by the Hirer of this Hire Agreement.
- 12. Title**
- 12.1 The Equipment is and will at all time remain the absolute property of Cutting Edge Plant Hire.
- 12.2 The Hirer must not deal with the Equipment in any way which is inconsistent with the rights of Cutting Edge Plant Hire and must not sell, sub-let, assign, mortgage, hire, transfer, loan or create any form of security over the Equipment.
- 13. PPSA**
- 13.1 For the purposes of this clause PPSA means the Personal Property Securities Act 2009 (Cth), including any amendments, replacement and successor legislation, and all terms used herein have the same meaning as set out in that Act unless otherwise defined.
- 13.2 The Hirer acknowledges and agrees that Clause 13 applies to the extent that this Agreement provides for a "security interest" for the purposes of the PPSA and as such Cutting Edge Plant Hire is granted a Security Interest in the Equipment and their Proceeds.
- 13.3 The Hirer further agrees that:
- (a) the Equipment supplied by Cutting Edge Plant Hire secures the payment of the Price of the Equipment and any other Equipment supplied by Cutting Edge Plant Hire;
- (b) it will not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Hire Agreement without Cutting Edge Plant Hire's prior written consent;
- (c) it will not register or permit to be registered a Financing Statement or Financing Change Statement in relation to the Equipment in favour of a third party without Cutting Edge Plant Hire's prior written consent;
- (d) the Equipment provided under this Agreement is collateral for the purposes of the PPSA;
- (e) that this Agreement is a Security Agreement for the purposes of the PPSA;
- (f) it will do all the things necessary including providing all information Cutting Edge Plant Hire requires to register a Financing Statement or Financing Change Statement (as defined under the PPSA) on the PPS Register ('PPSR') as a Security Interest pursuant to the PPSA;
- (g) it will not change its name, ACN or ABN or other details required on the PPSR, without first notifying Cutting Edge Plant Hire;
- (h) it waives its rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these terms and conditions;
- (i) unless otherwise agreed in writing, the parties hereto agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any interested person, or any other person requested by an interested person and the Hirer waives any right it may have but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information; and
- (j) in the event that an Agreement is not executed by the Hirer, the delivery and use of the Equipment by the Hirer will constitute adoption or acceptance by the Hirer of the terms and conditions set out in the proposed Agreement.
- 13.4 The Hirer consents to Cutting Edge Plant Hire affecting and maintaining a registration on the Register (in any manner it considers 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.
- 13.5 The Hirer agrees to sign any documents and provide all assistance and information to Cutting Edge Plant Hire required to facilitate the registration and maintenance of any Security Interest.
- 14. General**
- 14.1 No provision of these Terms merges after completion or termination.
- 14.2 These terms contain the entire agreement between the parties with respect to their subject matter.
- 14.3 The failure of a party at any time to require performance of any obligation under or in connection with this Agreement is not a waiver of that party's right to claim damages for breach of that obligation and at any other time to require performance of that or any other obligations under this Agreement, unless written notice is given to that effect.
- 14.4 No waiver of any right under this Agreement is effective unless it is in writing and signed by the party giving it.
- 14.5 If any provision of this Agreement is void, voidable, invalid, unenforceable or illegal:
- (a) then that provision will be read down, modified or omitted to the extent necessary to prevent it being void, voidable, invalid, unenforceable or illegal; and
- (b) the remainder of this Agreement will remain in full force and effect.

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- 14.6 The law of Queensland governs this Agreement.
- 14.7 The parties submit to the jurisdiction of the Courts of Queensland and the Federal Court of Australia exercising jurisdiction with respect to matters concerning this Agreement.

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SCHEDULE

HIRER DETAILS	
Name	
Address	
Phone	
Email	
DELIVERY ADDRESS	
Address	
Contact	
Phone	
OPERATOR DETAILS	
Name	
Licence No	
Phone	
Name	
Licence No	
Phone	
HIRE PERIOD	
Commencement Date	
Return Date	
EQUIPMENT DETAILS	
Machine	
Accessories	
Hourly Rate	

Acceptance of Terms

The Hirer has read and understood these Terms (consisting of all terms and conditions listed in pages 1 to 5 inclusive) and agrees to enter the Hire Agreement with Cutting Edge Plant Hire and be bound by these Terms (consisting of all terms and conditions listed in pages 1 to 5 inclusive).

Name: _____

Signature: _____

Date: / /2021

Name: Cutting Edge Plant Hire Pty Ltd ACN 635 258 114

Signature:

Date: / /2021