

## Ealwin Pty Ltd Standard Terms and Conditions

The following Standard Conditions form part of the Plant Hire Agreement entered into with the Hirer only by the express agreement of the Hirer will the following conditions not apply.

### The Parties

1. The parties, on the one hand, is Ealwin Pty Ltd identified in the particulars of hire ("the Hirer") and, on the other hand, the party to whom a Machine(s) is hired ("the Client"). In these Terms and Conditions:-
  - 1.1 Ealwin Pty Ltd means EA Hire, EA Hire Equipment, Excavators Australia, EA and such other entities introduced from time to time as members of Ealwin Pty Ltd.
  - 1.2 Dry Hire Attachments means those chargeable attachments that are provided in addition to the included Tilt Bucket and GP Bucket.
  - 1.3 GET or Ground Engaging Tools means ripper boots/shin guards, teeth, cutting edges, scraper flights, moils, chisels, wear bushes, diamond segments, tool retainers, compactor feet, tyres, brooms, header drums, drill heads, crusher jaws, picks, teeth, clips, washers, tooth adapters, sleeves, tool holders and like items.
  - 1.4 The Hirer also includes references to "we", "us" and "our".
  - 1.5 Client also includes references to "you" and "your".
  - 1.6 Particulars of hire means any document evidencing the hire of Machine(s) by the Hirer to the Client.

### Pricing and Payment

2. Machines are hired out on the following conditions:-
  - (a) Dry hire rates are based on an agreed flat daily rate per calendar day or a weekly or monthly rate and pro-rata thereafter for excess hours;
  - (b) Wet hire rates are based on 8 hour minimum machine rates per shift. In case of inclement weather and if the Hirer is notified in writing prior to 5am on the day the shift commences no charges shall apply. Failure to so notify the Hirer will mean that the 8 hour minimum charge is payable.
  - (c) Standard working hours for Wet hire are:

Monday – Friday	6.30am – 6.00pm
Saturdays	6.30am – 2.00pm

Unless otherwise specifically agreed to, work undertaken outside of these standard hours and work undertaken on public holidays and Sundays will be subject to [additional] overtime rates of \$28.00 per hour (or such other charge as may be determined by the Hirer from time to time.
  - (d) the Hire Period will commence:-
    - (i) in the case of dry hire on delivery of the Machine to the site or when the Client otherwise takes possession of the Machine; and
    - (ii) in the case of wet hire, on delivery of the Machine and attendance of an operator at the site, and ends when:-
      - (iii) the Machine has been returned to the Hirer; or
      - (iv) when the Hirer has issued the Client with a written off hire confirmation; and
  - (e) Unless otherwise agreed to in writing by the Hirer, a Machine worked on more than one shift per day will be charged for the additional shift(s) at the flat daily rate per shift plus 25% loading
  - (f) Fuel is based on the TGP (terminal gate price) in the capital city that the hire relates to at the time of pricing wet hire and is subject to escalation if the TGP varies more than 10% from the date of quotation
3. The Machine hire rates do not include:-
  - (a) attachments and GPS system will be the subject to a separate charge whilst on hire at either the flat daily, weekly or monthly charge;
  - (b) the usage of GET in the Hire Period. The Client is required to pay separately for usage and or replacement (and fitting if applicable) of GET during the Hire Period;
  - (c) fuel, insurances, hoses, ripper boots, additional suction seals (Vaclift), electrical, minor repairs, greasing, daily checks and fluid top ups. These are the Clients sole responsibility. A refuelling charge of \$2.80 per litre (or such other amount as may be determined by the Hirer from time to time) will be charged to the Client if the Machine is not returned with a full tank of fuel;
  - (d) cleaning, should the Machine not be returned in the same condition as it was at the commencement of the Hire Period, the Client will be charged cleaning costs;
  - (e) Vaclift attachments include one set of suction seals at the size requested by the Client in the pricing. Additional sets of suction seals will be charged at the standard rate then charged by the Hirer for such items.
  - (f) environmental levy (costs of obtaining weed and seed certificate) will be the Client's responsibility; and
  - (g) unless other arrangements are made to the contrary, mobilisation and demobilisation costs, namely, at cost plus twenty per cent (20%).
4. The Price includes fair wear and tear to tyres, tracks, blades, buckets and body. Excessive wear and tear and damage will be the responsibility of the Client.
5. A condition report for the Machine (which will also identify GET) will be provided at the start of the Hire Period. If the Client does not dispute the condition report within twenty four (24) hours of the start of the Hire Period or on receipt of the condition report, whichever is the later, the Client will be deemed to have accepted the accuracy of the condition report. At the end of the Hire Period the Hirer will undertake a condition report for the Machine (and GET) which will, inter alia, determine usage of GET (being the difference between percentage use at the commencement of the Hire Period and the percentage remaining at the end of the Hire Period). Without limitation to other provisions of the Agreement, the Client is responsible for payment of usage of GET in the Hire Period.
6. No set offs or deductions whatsoever shall be made to any payment due under the Plant Hire Agreement.

### GST

7. Any amounts payable under this Agreement are exclusive of GST and those amounts will be increased by the GST and will be payable as part of the invoice.

### Security

8. The Client will ensure that the Machine is stored in a secure safe place and will use all reasonable endeavours to protect the Machine against theft or damage.

### Excavators

9. All excavators are hired out with a GP and Tilt Mud Bucket up to 50t, vandal covers, hammer screen, two-way radio, flashing light. Any additional site requirements for conformance will be at the Client's cost.

### Equipment Use

10. The Machine must be used only by a person who has sufficient current training and skills to operate Machine in a safe and competent manner. This includes having the appropriate certification and tickets as required under the relevant State's legislation where the machine is in use. The client is to also ensure that any person operating the Machine has undertaken the required site induction.
11. Prior to the use of the Machine at any site the Client will conduct a site hazard inspection and at all times will ensure that the Machine is not operated in any way that is reasonably likely to cause damage to the Machine or any person or property.
12. The Hirer gives no warranty or other representation as to the suitability, condition or fitness for the purpose of the Machine and the Client must make its own enquiries and investigations and satisfy itself in relation to those matters.
13. Unless otherwise agreed to in writing by the Hirer, a Machine must not be cross-hired out to any third party entity.

### Insurance

14. The Hirer discloses that Machines are insured only for theft, fire and accidental damage.
15. The Client will not do any act or thing which might in anyway invalidate any insurance.

### Indemnities and Exclusion of Liabilities

16. Except as expressly stated herein the Hirer accepts no other responsibility or liability and save for the warranties implied by legislation which cannot be excluded, the Hirer gives no further warranties or representations relating to the Machine including parts or components with regard to condition, quality, suitability or fitness for ordinary or special use or purpose and in relation to operators supplied by the Hirer.

Except as expressly stated herein, the Hirer is not liable to the Client and the Client may not recover from the Hirer in respect of loss or damage of any kind (including but not limited to economic, indirect or consequential loss or damage) or death or injury which may result directly or indirectly in connection with the Machine, any parts or components or use of them or as a consequence of the supply of the operator of the Machine or otherwise arising out of this Agreement.
17. If the Hirer is found to be liable to the Client for any loss or damage at any time (including after termination):-
  - (a) that liability is limited in contract and in tort (including negligence) under statute or otherwise to the aggregate damages (including interest and costs) in the amount being the amount actually paid by the Client to the Hirer under the relevant plant hire agreement; and
  - (b) if any other persons or entities have also contributed to that loss or damage, the Hirer's liability to the Client will be several and not joint with such others and shall be limited to the Hirer's fair share of that total loss or damage which is agreed or determined by a court or tribunal of component jurisdiction based on the Client's contribution to the loss or damage relative to the other's contributions.
18. The Client indemnifies the Hirer against all claims, actions, loss or damage and any other liability arising out of or in connection with the hire of a Machine(s) by the Client and resulting from:-

- (a) any loss of, loss of use of, or any destruction of or damage to any real or personal property;
- (b) personal injury to, or death of, any person, or the loss of or damage to any real or personal property;
- (c) except to the extent that the Hirer or any employee, agent, contractor or consultant engaged by the Hirer contributed to the loss or damage.

**Repairs and Maintenance**

- 19. No maintenance or repairs are to be carried out to the Machine by the Client or any other person unless expressly directed by the Hirer in writing.
- 20. Should the Machine breakdown, meet with any accident, fail to function properly, require repair or become unsafe to use, the Client will:
  - (a) immediately stop using the Machine and notify the Hirer;
  - (b) do all things necessary to prevent entry to persons or damage to property including any further damage to the Machine; and
  - (c) make no attempt to repair the Machine without the Hirer's express authorisation in writing.
- 21. Where the Machine breaks down, fails to function properly, requires repair or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Client, the Hirer will at its own costs and as soon as reasonably possible after being notified by the Client repair the Machine or provide a suitable substitute.  
The Client acknowledges that the Hirer will require access to the Machine in order to meet its repairs and maintenance obligations including regular inspections and, in certain instances, out of hours access may be required for servicing and maintenance purposes.
- 22. The Hirer may, at its option, undertake repairs as soon as reasonably possible and, in the event that the repairs are the Client's responsibility, the Hirer may immediately recover those costs from the Client.

**Wet Hire**

This clause applies if the particulars state that the Machine(s) is to be supplied on a wet hire basis.

- 23. The Hirer is responsible for:-
  - (a) providing a duly qualified operator to operate the Machine(s):-
    - (i) in accordance with the manufacturer's specifications;
    - (ii) in a diligent and productive manner; and
    - (iii) with reasonable skill and care so as to minimise downtime and damage to the Machine, other plant, persons or property.
  - (b) provide the following:-
    - (i) a site specific induction course;
    - (ii) pre-employment drug and alcohol testing; and
    - (iii) licences, permits and authorisations required to operate the Machine.
  - (c) provision of clothing and safety equipment for operators including:-
    - (i) hard hat;
    - (ii) safety boots;
    - (iii) high visibility vests;
    - (iv) safety glasses; and
    - (v) protective gloves, if appropriate; operators working outdoors will also be provided with UV protected eyewear and sunscreen lotion.
  - (d) loss or damage to person or property caused by any act or omission on the part of the operator.
- 24. The Hirer will pay for operator's:-
  - (a) salaries and wages;
  - (b) superannuation;
  - (c) payroll tax and workers compensation.
- 25. The Hirer warrants that operators are experienced, competent, licensed and appropriately authorised to operate the Machine. The Hirer will, if requested by the Client, for any reason whatsoever, replace the operator.
- 26. The Hirer will ensure that the operator:-
  - (a) attends the morning prestart at the designated site start time and toolbox meetings and any onsite emergency response drills. These sessions will be charged to the Client at the standard hourly labour rate of \$65.00 per hour (or such other charges as may be determined by the Hirer from time to time);
  - (b) completes daily inspections of Machine and maintains the Machine in a clean and tidy condition; and
  - (c) reports all incidents and injuries immediately to the Client and participates in any incident investigation.
- 27. The Hirer will, upon request, provide a representative to participate in workplace inspections, audits, management reviews and meetings. Without limitation of the forgoing, the Hirer will comply with industrial relations laws and regulations as well as other requirements or applicable government authorities and industry agreements applicable to the hire of the Machine and any of the operators.
- 28. The Client will ensure that:-
  - (a) an authorised Client representative is available to sign the Hirer's daily docket books on a daily basis. This is used as the primary documentation for the invoicing of hiring of machines.

**Default and Termination**

- 29. The Client will be in default and the Hirer may terminate immediately by notice to the Client if:-
  - (a) the Client breaches any term or condition hereof; or
  - (b) the Client commits any act of bankruptcy or being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally, or has a receiver or manager or administrator appointed over all or parts of its assets, or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due, or passes a resolution for winding up or a partition is presented for its winding up; or
  - (c) a warranty or representation made by the Client is incorrect or misleading.
- 30. The Hirer may terminate for any other reason at its sole discretion by giving the Client 7 days notice.
- 31. On termination:-
  - (a) all Machines and associated parts or components must be returned to the Hirer at the Client's costs;
  - (b) on failure to return any Machine or part of it within a reasonable time (determined in the sole discretion of the Hirer), the Hirer may take whatever steps it considers appropriate to recover the Machine which may include but is not limited to entry by the Hirer on to any site where the Machine is located for the purpose of immediate removal of the Machine;
  - (c) all costs incurred by the Hirer associated with recovery of the Machine, and any other costs of recovery of outstanding moneys due pursuant to this agreement including legal costs on a solicitor/client basis, any agency fees, any other costs, damages or outlays or loss incurred by the Hirer in connection with the agreement will be immediately due and payable by the Client.

**Supervision**

- 32. In wet hire circumstances, the Client is solely responsible for the supervision of and directions given to operators.

**Personal Property Security Act 2009 (Cth)**

**Definitions**

Words and phrases used in these Terms and Conditions which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in these Terms and Conditions.

- 33. **Grant of Security Interest**  
The parties acknowledge that this agreement may constitute a security interest in favour of the Hirer. If so, the Client grants to the Hirer a security interest in the Machine.
- 34. **Subordination**  
The Hirer gives notice that its security interest is to be subordinated to that of the security interest held by Cape Hunting Pty. Ltd. atf Cape Hunting Trust or Excavators Australia Plant Hire Pty. Ltd. atf Ealwin Plant Hire Trust as the case may be in the collateral.
- 35. **Prohibition and Notice**  
The Client will not create liens in relation to the Machine and must give to any third party notice of the existence of the prohibition against creation of liens in respect of the Machine.
- 36. **Livery**  
The Hirer's livery and insignia must remain displayed on the Equipment at all times.
- 37. **Governing Law**  
This Agreement is governed by the laws of Victoria and each party submits to the exclusive jurisdiction of the courts of Victoria.

Name: \_\_\_\_\_ Position: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_