

# GENERAL TERMS AND CONDITIONS OF HIRE

## 1. DEFINITIONS

- 1) the 'Company' is Licojo Pty Ltd - ACN 137 209 584 - ABN 81 105 915 470 trading as - Quick Access Rental and Training
- 2) the 'Hirer' is the person firm, entity or corporation that engages the services of the Company for the purpose of hiring plant and equipment.
- 3) The "Plant and Equipment" is all plant and equipment including too, accessories, parts and machinery of any type supplied to the Hirer. The Plant and Equipment shall be deemed to be owned by the Company whether owned by the Company or not.
- 4) "PPS Act" means the Personal Properties Security Act 2009 (Cth) (as amended)

## 2. HIRE AGREEMENT

- a) These General Terms and Conditions of Hire, together with:
- b) Application for Credit completed by the Hirer and submitted to the company;
- c) each Hire Contract provided to the hirer by the Company, whether signed or not;
- d) and Special Terms specific to the type of Plant and Equipment hired to the Hirer and attached to the Hire Contract and
- e) any specific Terms and Conditions of Hire agreed to by both parties in writing. Make up the entire Hire Contract between the Hirer and the Company. The provision or acceptance of a Hire Contract shall not form a separate agreement between the parties, but shall constitute part of this Hire Contract.

## 3. CONSTRUCTION

In these General Terms and Conditions, unless context otherwise requires or states:

- a) words importing:
  - b) the singular include the plural and vice versa.
  - c) any gender includes the other gender;
- b. An obligation of two (2) or more parties binds them jointly and severally
- c. if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- d. A reference to;

- (i) a person includes a corporation, statutory body, the Crown and any other entity to defined;
- (ii) a person includes the legal representatives, employees, successors and assignees of that person;
- (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

#### **4. TITLE**

- a. The Hirer acknowledges that in all circumstances the Company retains title to the Plant and Equipment (even if the Hirer enters liquidation, administration, receivership or becomes bankrupt during the hire period and in no circumstance will it be deemed to be a fixture). The rights of the Hirer to use the Plant and Equipment are as bailee only.
- b. The Hirer is not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant and Equipment in any way which is inconsistent with the rights of the Company as owner of the Plant Equipment at all times.

#### **5. PERSONAL PROPERTY SECURITIES ACT**

- a. The Hirer acknowledges and agrees that to the extent the Hire Contract (governed by these Terms and Conditions of Hire) creates a PPS lease, as defined in the PPS Act, the company has a security interest in the Plant and Equipment for the purposes of the PPS Act and to the extent applicable the PPS Act applies.
- b. The Hirer acknowledges that the Company may take all reasonable steps, including but limited to registering any security interest which the Company has over the Plant and Equipment on the Personal Properties Security Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirements of the PPS Act. You agree without charge to provide all information and do all things reasonable to assist the Company in complying with the matters outlined in this Section 5 of the Terms and Conditions of Hire. You waive pursuant to s.157(3)(b) of the PPS Act in the right to receive notice of verification statement in relation to any registration on the register.
- c. The Hirer and the Company agree that the security interest the Company has over the Plant and equipment is a PPS lease as defined in the PPS Act, which does not secure payment or performance of an obligation, and accordingly that chapter 4 of the PPS Act does not apply.

## 6. TERMS OF PAYMENT

- a. Hire is charged for the time the Plant and Equipment is out of possession of the Company at the Hirer's request (inclusive of weekends and public holidays), not only the time in which the Plant and Equipment is used.
- b. Payment in full for all hiring charges and any other amounts payable in accordance with these Terms and Conditions is required 30 days from the date of invoice. No claims for credit will be recognised after 14 days from the date of invoice.
- c. The Company may charge interest on all amounts not paid by the Hirer by the due date at the rate of 2% per month thereof, compounding monthly. In addition, without limiting the above, the Hirer will be liable to indemnify the Company for all expenses incurred by the company recovering any amounts which the hirer fails to pay by the payment due date (including commission payable to any commercial or mercantile agent and legal costs).

## 7. HIRE PERIODS

- a. The Daily Hire Rate is based upon the Plant and Equipment being hired for a maximum of 8 hours in any one day.
- b. The Weekly Hire Rate is based upon the Plant Equipment being hired for a maximum of 5 days unless specified or varied in writing.

## 8. LATE RETURN

- a. In respect to Hire, hiring commences from the time the Plant and Equipment is collected by the Hirer from the Company's premises. In the event that the Hirer requires the Plant and Equipment to be delivered, where no authorised person is available to sign for the received Plant and Equipment, the person requesting the Plant and Equipment by phone agrees to the Company's General Terms and Conditions of Hire which will be emailed to the Hirer. In the event that the hirer fails to return the Plant and Equipment by the close of business on the day that the Hire was due to conclude, the Hirer will be charged an additional one half day's hire if the Plant and Equipment is returned before 12:00 noon on the following day, or an additional full day's hire if the Plant and Equipment is returned after 12:00 noon but before the days close of business on the following day. Further hire charges will likewise apply for each additional day that the Hirer fails to return the Plant and Equipment.
- b. Should the company agree with the hirer to deliver and collect the Plant and Equipment, hire charges commence from the time the Plant and equipment leaves the Company's premises until the Company is notified by the Hirer the Plant and Equipment is available for collection, at which time the Company will provide an "OFF-HIRE" number as verification that such notification has

been received. The notification must be given by the Hirer in time for the Plant and Equipment to be picked up and returned to the Company's premises within normal business hours on the day of cessation of hire. In the event of insufficient notice being provided to the Company, the Hirer will be responsible for the safekeeping of the Plant and Equipment until collected the following day. The Hirer may be charged an extra day at the Company's discretion.

## **9. BREAKDOWN**

a. The Hirer must notify the Company immediately of any breakdown. Such notification does not absolve the Hirer from its requirement to safeguard the Plant and Equipment and in the event of a breakdown the Hirer must not repair or attempt to repair the Plant and Equipment without the prior consent of the Company. If the Plant and Equipment breaks down or becomes unsafe, the Hirer must immediately stop using the Plant and Equipment and take all responsible steps to prevent injury to any persons or damage to property as a result of the condition of the Plant and Equipment. The Company will not be liable for any expenditure, damages loss or inconvenience incurred by the Hirer arising out of any breakdown in the Plant and Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of the Company or any other reason whatsoever. If any Plant and Equipment breaks down or is damaged due to the Hirers negligence or misuse the Company may at its discretion, continue hire charges until the Plant and Equipment has been repaired or replaced.

b. In the event the Plant and Equipment

## **10. HIRERS OBLIGATIONS**

a. The Hirer must:

(i) Prior to the use of the Plant and Equipment determine the condition and suitability of the Plant and Equipment hired for the purpose required.

(ii) Use the Plant and Equipment in a skillful and workman like manner and only for the purposes and within the capacity which it was designed, acknowledging that the Company can give no warranty as to the said capacity.

(iii) Ensure that the Plant and Equipment is operated by a suitably certified, trained or licensed operator, who will work entirely in accordance with the Plant and Equipment Operators Manual.

(iv) At its own expense clean, fuel, lubricate and maintain the Plant and Equipment in good substantial condition, except for scheduled servicing and inspections, which will be carried out by the Company or a representative during normal business hours, by prior arrangement and agreement with the Hirer.

(v) Accept full responsibility for all flat and/or damage to tyres while the Plant and Equipment is on hire.

(vi) Clean the Plant and Equipment thoroughly upon completion of the hire or be charged at the absolute discretion of the Company, a cleaning fee at a rate to be nominated by the Company for the cleaning required to be performed by the Company or a representative.

(vii) Accept full responsibility for the safekeeping and insuring of the Plant and Equipment, and except as specified hereafter, indemnify the Company for all loss, theft or damage to the Plant and Equipment however caused and without limiting the generality of foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer.

(viii) Not claim any lien over the Plant and Equipment nor sell, transfer or encumber in any way the Plant and Equipment, without the Company's prior written consent, part with possession of the Plant and Equipment nor assign the benefit of the Hire Agreement.

(ix) Not remove the Plant or Equipment or allow it to be removed from the State which it has been hired without the Company's written consent.

(x) Not alter, make any addition to, deface, or erase any identifying mark, plate or number on or in the Plant and Equipment, or in any other manner interfere with the Plant and Equipment.

(xi) Pay the Company all hire related charges and other costs as stipulated in accordance with the Company's Terms of Payment.

(xii) Accept responsibility and fully reimburse the Company for the cost of freight and other charges to retrieve the Plant and Equipment for any reason.

(xiii) Ensure that all safety information supplied with the Plant and Equipment will be conveyed to any person using the Plant and Equipment.

(xiv) Attach to the Plant and Equipment and maintain any safety signs supplied with the Plant and Equipment and bring them to the attention of any person using the Plant and Equipment, and ensure that they are clearly legible by the operator of the Plant and Equipment.

(xv) Ensure that all safety and operating instructions and notices are observed and are not defaced or removed from Plant and Equipment.

(xvi) Ensure that all operators of the Plant and Equipment wear suitable clothing and any protective equipment required or recommended by the manufacturers safety and operating instructions, or as recommended by the Company.

(xvii) Promptly pay all fines, penalties and other charges (where applicable), arising out of the use of the plant and Equipment.

b. The Company may inspect the Plant and Equipment from time to time during the hire period and the Hirer will permit or procure admission for the Company's Representatives to the premises upon which the Plant and Equipment is suited for that purpose.

## 11. TERMINATION OF HIRE

a. Without prejudice to any other remedies available to the Company and notwithstanding any period of hire specified, the Company may terminate the Hire Agreement.

(i) At any time by giving the Hirer 24 Hour notice of its intention to so terminate, such termination to be effective as of the expiry of 24 hours: and

(ii) Without notice, if the Hirer commits any breach of the Hire Agreement, or do or permit to be done any act or thing whereby the Company's rights in or to the Plant and Equipment may be prejudiced, or have winding up petition presented against it or be wound up, or enter voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.

b. Upon termination of the Hire Agreement, the Company is entitled to take possession of the Plant and Equipment and for this purpose the Hirer irrevocably appoints the Company as its agent and authorises the Company to enter on any land or premises upon which the Plant and Equipment is situated and agrees to indemnify the Company in respect of any claims, damages and expenses arising out of any action taken under this condition.

## 12. REFUND POLICY

Refunds are made at the discretion of Company Management, via Credit Card or Electronic Funds Transfer only.

## 13. LOSS, THEFT & DAMAGE WAIVER OPTION

a. The Hirer is responsible for any loss, theft or damage to the Plant and Equipment whilst on hire and the costs of replacement or repairs to such will be charged to the Hirer.

b. The Loss, Theft and Damage Waiver is not an insurance but where the LOSS, THEFT AND DAMAGE WAIVER OPTION has been charged to the Hirer, the Company agrees upon certain requirements as listed below, to limit the Hirers liability in certain circumstances, for loss, theft and damage to the Plant and Equipment to an amount called a Loss, Theft and Damage Waiver Excess and the Company will waive its right to claim against the Hirer for the loss, theft or damage to the Plant and Equipment.

c. Where the Loss, Theft and Damage Waiver option has not been exercised, the Hirer is required to provide to the Company a Certificate of Currency for an appropriate insurance policy to cover the loss, theft or damage to the Plant and Equipment for an amount not less than the full new replacement value for the duration of the hire.

d. Where the Hirer has paid the fee for Loss, Theft and Damage Waiver, the Company will waive its right to claim against the Hirer for Loss, Theft and Damage to the Plant and Equipment if the following conditions are met:

- (i) The Hirer has promptly reported the incident to the Police (where appropriate) and provide the Company with the written police report;
- (ii) The Hirer has co-operated with the Company in providing details of the incident, and evidence as required.
- (iii) The Loss, Theft, and Damage does not fall into one of the circumstances set out in clause 12(f).

e. The Loss, Theft and Damage Waiver Excess per item of Plant and Equipment is the amount equal to \$1000.00 or 1% of the value of the Plant and Equipment on hire, (whichever is the greater).

f. Even where the Hirer has paid the fee for the Loss, Theft and Damage Waiver, the Company **will not waive** its rights to claim against the Hirer for Loss, Theft and Damage to the Plant and Equipment and the waiver excess **will not apply** if the Loss, Theft or Damage is the result caused by one of the following:

- (i) Damage due to misuse, abuse or overloading of the Plat and Equipment
- (ii) The Hirer has not taken adequate precautions to safeguard the Plant and Equipment;
- (iii) The Loss, Theft or Damage was due to the Hirers omission, negligence or recklessness;
- (iv) Damage in contravention to the terms and conditions of the Hire Agreement;
- (v) Damage from use in violation of any statutory laws and regulations;
- (vi) Damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels ad other similar accessories
- (vii) Damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Plant and Equipment;
- (viii) Glass breakage
- (ix) Damage relating to lubrication or other normal servicing of Plant and Equipment;
- (x) Damage to the Plant and Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (xi) Damage to motors or other electrical appliances or devises caused by overloading or artificial current, including use of under-rated or excessive length of extension leads on electrical powered machines;
- (xii) Damage caused by the exposure to any corrosive substances e.g. caustic, salt water, acid, paints, solvents etc.
- (xiii) Damage during transport, except where transported by the Company;
- (xiv) Damage to items on which the Loss, Theft or Damage Waiver Option is not charged;

- (xv) Damage caused by vandalism;

#### **14. EXCLUSION OF CONDITIONS AND WARRANTIES**

a. Certain conditions and warranties may be implied into the Agreement by the Competition and Consumer Act 2010 (as amended) and State legislation and these conditions are to be read subject to legislation, but no other conditions or warranties will be accepted as conditions of hire.

#### **15. EXCLUSION OF LIABILITY**

a. The Company and the Hirer agree that in the event of the Hirer suffering any damage or claim howsoever arising as a result of hiring the Plant and Equipment, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant and Equipment, the liability of the Company is limited to the repair or replacement of the Plant and Equipment and is not to include economic or consequential damages of any nature whatsoever.

#### **16. MISCELLANEOUS**

a. The person signing this agreement for and on behalf of the Hirer hereby covenants with the Company that he has the authority of the Hirer to make this agreement on the Hirers behalf and is empowered by the Hirer to bind the Hirer to this agreement and hereby indemnifies the Company against all losses and costs incurred by the Company arising out of the person so signing this agreement not in fact having such power and/or authority.

b. Termination of the hire period will not affect any of the conditions that are expressed or implied to operate or have effect after termination.

c. Time is to be of the essence of all obligations of the Hirer in the conditions.

#### **17. PROVISIONS SEVERABLE**

a. It is hereby agreed as a term of this agreement that is any provision of this agreement is unenforceable, such unenforceability will not affect any other part of such provision hereof.

#### **18. LAW AND JURISTITION**

a. These Terms and Conditions are to be governed and construed by the laws of the State or Territory in which this Agreement is executed.



b. Any proceeding in respect of any matter or thing with respect to the Hirer must be instituted or carried on the State or Territory in which this Agreement was duly executed.

## 19. PRIVACY

a. The Company will comply with the Privacy Act (1988) and Australian Privacy Principles in its dealing with the Hirer.

b. The Company may need to collect personal information about the Hirer, including but not limited to identification and contact details, credit or business history. The Hirer consents to the Company using the Hirers personal and credit information in order to:

- (i) Carry out functions associated with the hire of Plant and Equipment to the Hirer;
- (ii) Assess the credit capacity of the Hirer;
- (iii) Exercise the Company's rights under clause 5 of this Agreement;
- (iv) Market and provide services to the Hirer;
- (v) Enable the Company to improve on the quality of its goods and services;
- (vi) Enter into Agreements with the Hirer and third parties;
- (vii) Carry out their administrative functions in the course of its daily business; and
- (viii) Maintain a client relationship with the Hirer.

c. The Hirer consents to the Company disclosing the Hirers personal and credit information:

- (i) To other credit providers or credit reporting bodies for the purpose of obtaining information on the Hirers commercial credit history, standing, or activities; and
- (ii) To the Company's affiliated bodies, contractors and service providers from time to time, where necessary, in the course of its daily function.