

# MAXIpickers Pty Ltd CONDITIONS OF HIRE

## 1. IN THESE CONDITIONS

“The Owner” means MAXIpickers Pty Ltd (ACN 613 099 166) hereinafter.

“The Hirer” means the person or company named/identified on the invoice.

“The Plant” means the equipment, unless the contrary intention appears, includes all goods, articles, or machinery including all tools, accessories and spare parts supplied therewith by the Owner to the Hirer for a fee pursuant to the contract.

2. It is hereby agreed that any individual signing this agreement as a representative or agent or the company with which he is employed, herewith known as the Hirer shall thereby make the said company liable for full payment of all rental charges or any other costs that might be incurred against any Plant hired from MAXIpickers and accepts on the Hirer's behalf the terms and the conditions of this contract.

3. The Hirer shall not in any way part with possession of the Plant, nor assign this hire contract, nor remove the Plant from the state without the prior consent of the Owner.

4. The Hirer shall:

- a) Before using the Plant, examine the Plant and by such examination or by whatever other means maybe appropriate, satisfy him/herself as to the quality and the fitness for the purpose of the Hirer and if in any way the Plant is defective or unsuitable for the purpose of the Hirer it shall be returned immediately to the Owner with written details of such defects or unsuitability and on such return to the Owner, the period of hire shall be terminated.
- b) Acknowledge that he/she is not relying upon any representation made by or on behalf of the Owner in respect of the Plant or its performance.
- c) Supply the necessary operator, who is fully ticketed and holds the correct qualifications for the task at hand and pay his wages.
- d) Use the Plant in a skilful and proper manner and only for the purposes and within the capacity for which it was designed (Truck and EWP Operating Manuals and Specifications in cab of truck).
- e) At his/her own expense service, clean and maintain the Plant, in good and substantial repair and condition, reasonable wear and tear excepted and supply all fuel, oil and grease necessary for operation service and maintenance of the Plant.
- f) Clean the Plant upon completion of the hire period or be charged a cleaning and repainting fee if necessary for any cleaning or repainting by the Owner.
- g) Accept full responsibility for the safe keeping of the Plant and shall indemnify the Owner for all loss of or damage to the Plant caused by the Hirer.
- h) Accept full responsibility for and indemnify the Owner against all claims in respect of any injury to persons or damage to property caused by, or arising from misuse or operator error of the Plant during the hire period.
- i) Pay all hire charges and other charges (in accordance with this contract) as stated on the invoice on a strictly net cash basis within the terms allowed by the Owner.
- j) On request advise the Owner of the current location of the Plant and grant her access to it.

5. Hire charges shall commence from the time the Plant is collected by the Hirer from the Owner's premises until returned to the said premises, but if the Owner agrees to make delivery and collection hire charges will commence from the time the Plant leaves the Owner's Premises. In the event of the Hirer requesting the Owner to transport the Plant to or from the Owner's premises the Hirer shall pay the Owner all charges and expenses properly incurred by the Owner in delivery, installing and/or collecting the Plant in addition to the hire charges. The Hirer shall be responsible for all freight and other charges (properly incurred) whether incurred by the Owner or the Hirer in the respect of the delivery and return of the Plant except when the period of hire is determined and the Plant is returned to the Owner due to a breakdown or a failure caused by reasonable wear and tear and not by the Hirer's negligence or misuse.

6. If the Hirer requires the Owner to make delivery of the Plant the Owner hereby undertakes that it will use its best endeavours to have the Plant delivered by the said time but the Owner will not be liable to the Hirer for late delivery, non-delivery or loss or damage occasioned to the Hirer for such late or non-delivery.

7. Hire rates are based on the following periods of hire and hours of usage:

- a) a day of 8 hours use over a 24 hours period between the hours of 6.00am – 4.00pm.
- b) a week of 40 hours use over a continuous 5 day period.
- c) a month of 160 hours use over a continuous 4 week period.

If the Hirer uses the Plant outside the periods of hours listed above he/she will be liable to pay the Owner the excess on a pro-rated basis at the discretion of the Owner (acting reasonably).

8. Any changes to the hire rates will be submitted by the Owner to the Hirer for acceptance before any changes will occur.

9. Without prejudice to any other remedies the Owner may have against the Hirer and notwithstanding the period of hire mentioned overleaf, this contract may be terminated:

- a) By the owner, upon giving to the Hirer two (2) days written notice of termination at any time during the period of hire.
- b) By the Hirer, upon giving to the Owner two (2) days written notice of termination at any time during the period of hire.
- c) By the Owner, without notice if the Hirer shall have a winding up petition presented against it, or be wound-up or go into voluntary liquidation or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromises for the benefit of its creditors or if its business is placed under official management or if it ceased to carry on business.
- d) By the Owner, without notice if the Hirer shall commit any breach of this hire contract and the Hirer does not remedy that breach within a reasonable time after receiving prior written notice from Owner.

Upon termination the Owner shall be entitled without notice to take possession of the Plant, for which purpose the Hirer hereby irrevocably appoints the Owner as its agent for collection

and licenses the Owner to enter any land premises of the Hirer or under his/her, control upon which the Plant is situated at the time of termination.

Upon termination of the hire for any reason whatsoever should the Owner be unable to gain access to the Plant for any reason hire will continue at the agreed rate until access is available.

10. In no event shall the Owner be responsible or liable for:

- a) Any loss of or damage to property or injury to persons caused by the misuse or operator error of the Plant for any reason whatsoever during the period of Hire.
- b) Any expenditure damages and/or loss incurred by the Hirer caused by or arising out of any breakdown or failure and/or defect in the Plant due to misuse or operator error.

11. Any fault identified in the daily inspection shall be recorded and the Owner notified to arrange servicing and repairs. Faults that can be reasonably expected to compromise safe operation, major components including but not limited to motor, drive train and elevation system must be reported prior to normal operation of the equipment. Including the expiry of any equipment or safety items in or attached to the vehicle.

12. In the event of any failure of the hired Plant of any nature whatsoever the Hirer shall immediately notify the Owner and on no account should the Hirer repair or attempt to repair the Plant without the prior consent of the Owner. In the event that such breakdown failure or defect is caused by reasonable wear and tear or was inherent in the Plant at the time of hire and was not caused or contributed to by misuse or negligence of the Hirer or any other person during the period of hire then the period of hire and charges shall be determined upon such return of the Plant to the Owner.

13. No conditions and warranties other than those expressed herein shall be included or implied in this agreement except to the extent that any condition or warranty maybe included or implied by statute in particular circumstances by a provision which may not be excluded by agreement between the Owner and the Hirer by such circumstances any conditions or provision expressed herein inconsistent therewith to the extent of the inconsistency shall be of no force or effect.

14. The Hirer shall be responsible to repair all damage and incur all cost relating to:

- a) Loss or damage due to misuse, abuse or overloading of the Plant during the period of hire.
- b) Loss or damage of the Plant in contravention of these conditions of hire during the period of hire.
- c) Loss or damage through failure of the Hirer to take reasonable care of the Plant or through the Hirer's negligence during the period of hire.
- d) Loss or damage to the Plant from use or violation of any statutory laws or regulation during the period of hire.
- e) Loss or damage of tools, accessories, tyres and tubes and similar to the Plant during the period of hire.
- f) Loss or damage resulting from lack of lubrication or daily servicing and inspection of the Plant during the period of hire and to the extent this contract places such obligations on the Hirer .

15. If the Hirer agrees to pay the Damage Waiver Fee as stated on the invoice, the Owner agrees to waive its right to claim from the Hirer for any loss of or damage to the Plant which is caused by fire, storm, earthquake, collision, accident or burglary which has been reported to the police. This waiver shall not apply to loss of or damage to Plant in the following circumstances:

- a) Loss or damage resulting from overloading, exceeding rated capacity, misuse, abuse or improper servicing of Plant during the period of hire, to the extent this contract places such obligations on the Hirer.
- b) Loss or damage caused by misappropriation or wrongful conversion by the Hirer or his/her employees or by any person by whom the Plant is entrusted by the Hirer during the period of hire.
- c) Loss or damage caused by the use of operation of Plant in contravention of any of the conditions of this agreement during the period of hire.
- d) Loss or damage caused by the use or operation of Plant or violation of any statute (Commonwealth or State) or any regulation or by-law thereunder during the period of hire.
- e) Loss or damage of tools, accessories, batteries, tyres and tubes and similar to the Plant during the period of hire.
- f) Loss or damage to Plant occurring for any reason whilst located, used, unloaded, loaded, transported on, over or adjoining water including, without limiting the generality thereof whilst located, used, loaded, unloaded or transported over or on wharves, bridges, barges and vessels of all kinds, during the period of hire.

16. The Hirer shall pay the Owner on determination of the hiring period the following:

- a) Subject to clause 16(g), the hiring charge, to the extent those charges have not already been paid by the Hirer.
- b) Any loss or damaged to the Plant as stated in this contract agreement.
- c) The amount of levies, charges or like charges paid or payable by the Owner to any government body in respect of the use of the Plant during the period of hire, but only to the extent those levies and charges have not already been paid by the Hirer.
- d) The retail price of diesel and other fuel required at the completion of the hire to refill the fuel tanks.
- e) Cost of freight and other charges whether incurred by the Owner or the Hirer in respect to delivery or return of the Plant and such charges as stated on the invoice, to the extent those costs and charges have not already been paid by the Hirer.
- f) The cost incurred by the Owner in repossessing the Plant.
- g) In circumstances where this contract is terminated pursuant to clause 9(a) or clause 9(b) or in any other circumstances not due to the fault of the Hirer, the Hirer shall only be liable for the hiring charge for the period of the actual hire prior to termination.

17. Any queries relating to MAXIpickers invoices must be raised in writing by the Hirer within 7 days from the date of the invoice. If no query is raised by the Hirer within this period it will be deemed as having been accepted in full.