

STANDARD HIRE AGREEMENT

1. DEFINITIONS

In these conditions

- (a) The “**Owner**” is ALCOCK BROS. PTY LTD trading as Coast Hire ABN 99 631 416 254.
- (b) The “**Hirer**” is the person, firm or corporation hiring Equipment from the Owner and specified on the face of this contract.
- (c) The “**Equipment**” means all goods, articles, machinery or motor vehicles (including tools, accessories and parts) supplied by the Owner to the Hirer pursuant to this contract.
- (d) “**Owners Premises**” is 51-53 Auckland Street, Bega NSW 2550.
- (e) “**Commencement of Hire**” commences when the Equipment is delivered to the Hirer or picked up from the Owner’s premises by the Hirer.
- (f) “**Half day hire**” is 4 hours and late fees will occur.
- (g) “**Full day hire**” is 24 hours and late fees will occur.

2. DURATION OF HIRE

The hire period commences when the Equipment is delivered to the Hirer or picked up from the Owner's premises by the Hirer.

The hire period ceases on the occurrence of any of the following:

- (a) the return of the Equipment to the Owner’s Premises during normal business hours;
- (b) repossession of the Equipment by the Owner pursuant to clause 11;
- (c) when the Owner agrees in writing to accept the return of the Equipment other than at the Owner's premises, then at the end of the day on which the Owner is notified that the Equipment is available for collection, provided that such notification is received prior to 12 noon on that day. If notification is received after 12 noon on any day, then the hire period ceases the following day.

3. DRIVER OF MOTOR VEHICLE

Where the Equipment is a motor vehicle, the Hirer must not permit any person other than the person nominated on this contract to drive the motor vehicle and the Hirer warrants that the nominated driver:

- (a) is over the age of 25 years;
- (b) holds a current motor vehicle drivers licence valid in New South Wales for the class required by law to drive the hired motor vehicle;
- (c) has not been convicted of any offence relating to driving a motor vehicle under the influence of liquor or drugs or with more than the legally prescribed level of blood alcohol content;
- (d) has not been refused any motor vehicle insurance.

The Hirer must pay all fines, penalties and other charges arising out of the use of the motor vehicle.

The Hirer must return all motor vehicles with a full tank of petrol or upon return of the motor vehicle, the Hirer will be charged the sum of \$2.00 per litre for the size of the tank i.e. if the motor vehicle has a tank size of 65 litres, the Hirer will be charged 65 litres x \$2.00= \$130.00 on return of the motor vehicle whether or not the tank is partially full.

4. HIRING CHARGES

- (a) Hiring charges are specified on the face of this contract and will commence from the Commencement of the hire period and will continue until the hire period ceases in accordance with Clause 2.
- (b) The Owner reserves the right to revise the hiring charges and other charges without notice at any time after the expiration of the initial hire period as set out on the face of this contract.
- (c) Hiring charges will be due at the earlier of the end of the period of hire or 30 days from invoice date.

5. DEPOSIT

- (a) A non-refundable deposit of 30% of the total hire price is payable at the time of the booking.
- (b) The Owner will hold the deposit as security for the due performance by the Hirer of its obligations under this contract and may apply the whole or part of the deposit at any time against any moneys due but unpaid under this contract or any expenses, loss or damage incurred by the Owner as a result of a failure by the Hirer to duly perform its obligations under this contract.

6. OTHER CHARGES

The Hirer will pay to the Owner on request:

- (a) In the case of a motor vehicle the hire charges at the time and mileage rates shown on the front of this contract. In the event of the motor vehicle being involved in an accident or breakdown or being abandoned as a result of which the motor vehicle is returned to or recovered by the Owner the mileage involved in such return or recovery will be payable by the Hirer at the mileage charges applicable to the vehicle under this contract. For the purposes of computing distance the odometer or hubometer reading of the motor vehicle will be taken to be final and conclusive PROVIDED HOWEVER that if during the hire period the odometer or hubometer appears to the Owner to be damaged, not functioning reliably or in any way interfered with so as to affect the correct registration of distance driven or ceases to function irrespective of whether or not there is any apparent evidence that the mechanism has been deliberately interfered with or deranged, the Hirer will pay to the Owner the amount shown on the front of this contract for each day of the hire period or part thereof together with the charges applicable for 150 kilometers per day by way of a genuine and reasonable estimate of liquidated damages and not

as a penalty and as consideration in substitute for the payment that the Hirer should have made in relation to the distance charge as stated on the front of this contract.

- (b) Subject to clause 8 the amount of any loss or damage to the Equipment.
- (c) All fines and penalties paid or payable by the Owner with respect to any offence committed by the Hirer or any person nominated or permitted by him or her to drive or use the Equipment.
- (d) All tolls, levies, charges or like charges paid or payable by the Owner to any government authority in respect of the use of the Equipment.
- (e) All freight and other charges whether incurred by the Owner or the Hirer with respect to the delivery and return of the Equipment PROVIDED THAT the Owner will be responsible for freight and other charges incurred where the Equipment is returned due to a breakdown not caused by the Hirer's Negligence or misuse.
- (f) All costs incurred by the Owner in repossessing the Equipment pursuant to clause 10.
- (g) All stamp duty or other statutory charges payable in connection with this contract.
- (h) The cost of all consumable items supplied by the Owner and used by the Hirer or nominated driver during the hire period.

7. PENALTY FOR LATE PAYMENT

If the Hirer fails to pay any of the charges referred to in this contract within the time specified in this contract, the Owner may charge the Hirer interest on the amount overdue at the rate of 18% per annum.

8. DAMAGE/LOSS

If the Hirer suffers any loss or damage or has any claim whatsoever arising from the hiring of the Equipment including delay or inconvenience caused by breakdown or failure of or defects in the Equipment the Owner's liability will be limited to the repair and/or replacement of the Equipment and will not include economic or consequential damages of any nature whatsoever.

9. DAMAGE WAIVER FEE

- (a) If the Hirer has agreed to pay the damage waiver fee on entering this contract and pays the fee then notwithstanding clause 12(h) the Owner waives any right to claim from the Hirer for any loss or damage caused by fire, storm, earthquake, collision or accident for any sum in excess of:
 - i) in respect of any vehicle - \$2,000 or
 - ii) in respect of any other Equipment - 50% of the retail list price of Such Equipment as at the date the hire period commenced.
- (b) The waiver of damage will not apply to party loss or damage in the following circumstances and the Hirer will be responsible for and indemnifies the Owner without limit against any loss or damage
 - i) in the case of all Equipment:
 - (I) arising from overloading, exceeding rated capacity, misuse, abuse or improper servicing or the use or operation of the Equipment in breach of any government regulations, this contract or the manufacturer's specifications,

- (II) to tools or accessories (including batteries, hoses, points, drills, bits, grease guns, electric leads, tyres or tubes) in any circumstances;
 - (III) arising from the Equipment being lost or stolen or otherwise mysteriously disappearing,
 - (IV) arising while the Equipment is located, used, loaded, unloaded or transported on over or adjoining water including but not limited to Equipment located, used, loaded, unloaded, transported over or on wharves, bridges, barges or vessels of any kind;
 - (V) caused by the negligence of the Hirer or any person under his control or the nominated driver;
 - (VI) arising from misappropriation or wrongful conversion by the Hirer or its employees, servants, independent contractors or agents or by any other person to whom the Equipment is entrusted by the Hirer.
- (c) in case of a motor vehicle
- i) to the van body or any motor vehicle above the level of the truck cabin or any damage to any truck mounted loading device;
 - ii) where it is driven by any person other than the nominated driver except in the case of illegal use or theft;
 - iii) where it is used in racing, pace making or any reliability trial speed or hill climbing test or is being tested in preparation for any of the foregoing;
 - iv) where it is used to convey any load in excess of that for which it was constructed or in excess of that allowed by law;
 - v) where it is being driven by or is in charge of any person under the age of 25 years or under the influence of intoxicating liquor or any drug or having more than the legally prescribed level of blood alcohol content;
 - vi) where it is driven or used other than on a formed road or when it is in a damaged or unsafe condition;
 - vii) where it is driven or used for the conveyance of passenger for hire or reward

10. BREAKDOWN AND DAMAGE TO PROPERTY AND INJURY TO THIRD PARTIES

- (a) In respect of all Equipment other than registered motor vehicles the Hirer will, during the hire period, be responsible for any loss or damage to property or personal injury to third parties resulting from or which is incidental to the use or possession of the Equipment or for any other reason whatsoever, including the use of the Equipment on any public road or highway, or if the Hirer or any driver or operator of the Equipment drives or operates that Equipment without a licence required by any statute or regulation or fails to use any prescribed safety apparatus installed in the Equipment, and the Hirer indemnifies the Owner in respect of all such actions, claims, demands or expenses of the Owner or any other person in relation to or arising out of the use of the Equipment under this contract.
- (b) Where the Equipment is a registered motor vehicle the Owner has arranged a policy of insurance for the benefit of the Hirer to cover the liability of the Hirer (including legal costs incurred with the consent of the insurer) in respect of damage to property of third parties in excess of \$2,000 (other than property belonging to or in the physical or legal custody of the Hirer or any nominated driver) and for personal injury to third parties in excess of \$2,000 arising from or incidental to the use or possession of the motor vehicle or for any other reason whatsoever PROVIDED HOWEVER that the Hirer will not be entitled to the benefits of this insurance if:
- i) the Hirer is otherwise indemnified under any other policy of insurance

- ii) the Hirer or any nominated driver has been refused motor vehicle insurance or continuance thereof by any insurer;
- (c) the Hirer does not in his own name and at the request and cost to the Owner or its insurer bring defend enforce or settle all legal proceedings of which the Owner or its insurer or some person appointed by the Owner or its insurer shall have the sole conduct as the agent of the Hirer as the Owner or his insurer may reasonable require;
- (d) the Hirer does not complete and furnish to the Owner or its insurer such statements, information and assistance as the Owner or its insurer may require;
- (e) the Hirer or any nominated driver is under the age of 25 years;
- (f) the Hirer or any nominated driver drove the motor vehicle under the influence of intoxicating liquor or any drug or having more than the legally prescribed level of blood alcohol content;
- (g) the Hirer or any nominated driver drives or operates the motor vehicle without a licence or permit required by any statute or regulation or fails to use any prescribed safety apparatus installed in the vehicle.

11. TERMINATION AND REPOSSESSION

- (a) Notwithstanding that the hire period has not yet expired the Owner may terminate this contract at any time provided the Owner gives 24 hours notice to the Hirer.
- (b) The Owner may terminate this contract immediately without notice if the Hirer:
 - i) breaches the contract or fails to pay the hiring charges or other charges within two days of the due date; or
 - ii) causes or allows anything to be done prejudicing the Owner's right or title with respect to the Equipment.
- (c) This contract will terminate immediately without the need for any notice if the Hirer:
 - i) has a winding up order served against it;
 - ii) enters into voluntary liquidation;
 - iii) commits any act of bankruptcy;
 - iv) has a receiver or receiver and manager appointed to manage its business;
 - v) makes any assignment or compromise for the benefit of its creditors;
 - vi) is placed under official management;
 - vii) ceases to carry on business.
- (d) In order to repossess the Equipment the Owner may enter into or upon any premises where the Equipment may be in order to recover the Equipment from the Hirer. The Hirer indemnifies the Owner with respect to any claims, damages or expenses arising out of any action taken to repossess the Equipment.
- (e) Any repossession by the Owner under this clause will not prejudice the Owner's rights to claim from the Hirer money due to it up until the time of repossession or claim damages for breach of contract as the case may be

12. USE OF EQUIPMENT

- (a) The Hirer must at all times use the Equipment and ensure the Equipment is used:
 - i) in a skilful and proper manner,
- (b) in a manner not in breach of any occupational health and safety legislation or other government or local government requirements and in particular the Hirer will ensure that:

- i) the Equipment is used by suitably trained and qualified persons;
- ii) all safety information supplied with the Equipment will be conveyed to any person using the Equipment; and
- iii) the Hirer will attach and maintain any safety signs supplied with the Equipment and bring them to the attention of the user.
- (c) The Hirer must at its own expense service, clean and maintain the Equipment in good and substantial repair and condition, reasonable wear and tear expected.
- (d) The whole or part of any costs incurred by the Owner arising out of any failure by the Hirer to properly clean the Equipment will be added to the total amount payable under this contract and the Hirer agrees to pay such costs.
- (e) The Hirer must not permit the Equipment to be used outside New South Wales unless prior written consent is given by the Owner.
- (f) The Hirer warrants that he has examined the Equipment and has satisfied himself as to the quality and fitness of the Equipment for the purposes for which it is being hired. If in any way the Equipment is defective or unsuitable for the purposes of the Hirer, the Hirer must:
 - i) return it immediately to the Owner with a written notice of the defect or unsuitability; or
 - ii) notify the Owner who will exchange the Equipment
- (g) The Hirer agrees that he is not relying upon any representations made by or on behalf of the Owner in respect of the Equipment or its performance.
- (h) The Hirer will be liable for any loss of or loss or damage to the Equipment except for loss or damage arising from fair wear and tear or loss or damage to which clause 8 applies and will pay the Owner on demand the cost of repair or replacement of any of the Equipment.
- (i) The Hirer indemnifies the Owner in respect of all action, claims, suits, demands or expenses of the Hirer or any other person in relation to or arising out of the use or possession of the Equipment by the Hirer or any person under his control or the nominated driver during the period of hire.
- (j) The Hirer is responsible for the correct fuels and oils to be used in the Equipment and the Hirer will be liable for any damage caused by any incorrect fuels or oils used in the Equipment.

13. EQUIPMENT BREAKDOWN

- (a) In the event of a breakdown or failure of the Equipment or defect in the Equipment becoming apparent during the hire period, the Hirer must return it immediately or notify the Owner.
- (b) The Hirer must not repair or attempt to repair or cause any repair to be made to the Equipment without the prior consent of the Owner.
- (c) If the breakdown or failure is caused by reasonable wear and tear or a defect in the Equipment at the Commencement of the hire period and is not caused or contributed to by misuse or negligence of the Hirer or any person under his control or the nominated driver, the hire period will cease on return or notification to the Owner and hiring charges will not be payable during the time that the Equipment is not working
- (d) The Owner will not be responsible for any expenditure, damages, delay or inconvenience or loss incurred by the Hirer arising out of any breakdown or failure or defect in the Equipment whether caused by fair wear and tear, lack of repair or negligence or any other reason whatsoever.

14. IMPLIED CONDITIONS

- (a) The Australian Consumer Law may imply certain conditions and warranties into this contract and these conditions are to be read subject to such legislation. No other conditions or warranties will be implied into this contract, and all implied conditions and warranties are excluded to the extent permitted by law.
- (b) The Owner's liability for any breach of any implied condition or warranty will be limited to the replacement or repair of the Equipment the supply of which has resulted in a breach of any implied condition or warranty.

15. WARRANTY OF AUTHORITY

Any person signing this contract for and on behalf of the Hirer warrants that he or she has the authority of the Hirer to make this contract on the Hirer's behalf, and bind the Hirer to this contract. The person signing this contract indemnifies the Owner against all losses and costs incurred by the Owner as a result of such person failing to have such power and/or authority.

16. ASSIGNMENT

The Hirer must not sell transfer or assign this contract or any of the rights or obligations under it without the prior written consent of the Owner.

17. GUARANTOR

- (a) If the Hirer is a Corporation, the Directors of such Corporation guarantees to the Owner the performance by the Hirer of all the Hirer's obligations under this contract, under every extension of it or under any renewal or amendment that is later charged or credited.
- (b) If the Hirer does not pay any money due under this contract, the Guarantor must pay that money to the Owner on demand even if the Owner has not tried to recover payment from the Hirer.

18. INSURANCE

The Hirer must hold a current insurance policy noting the interests of the Owner and covering:-

18.1 Liability to the public in an amount not less than \$20,000,000.00

and must produce to the Owner, on request, the policy and receipt for the last premium.