

Terms Of Hire

Definitions

Equipment - means any item of plant, equipment or motor vehicle listed in the Hire Schedule.

Hire Agreement - is the hire agreement between the Hirer and the Owner and is made up of these Terms Of Hire and each Hire Schedule provided by the Owner to the Hirer, whether signed or not, together with any credit application, guarantee, indemnity or charge that has been provided to the Owner by the Hirer. Each Hire Schedule is not a separate contract but constitutes part of the Hire Agreement.

Hire Fee - means the fee set out in the Hire Schedule.

Hire Period - means the period shown on the Hire Schedule.

Hire Schedule - means a document provided by the Owner to the Hirer which outlines important information, including but not limited to, the Equipment being hired, the Hire Period and the Hire Fee.

Hirer - means the party hiring the Equipment from the Owner as named in the Hire Schedule and includes any employees, agents and contractors.

Motor Vehicle - means a car, utility or truck but not any other equipment such as a scissor lift, trailer or bobcat.

Owner - means Northumberland Handyman Supplies Pty Ltd (ABN 26 002 194 523).

Terms and Conditions

1 Hire of equipment

- 1.1 The Owner agrees to hire the Equipment to the Hirer on the terms of the Hire Agreement. If the Hirer wishes to hire the Equipment the Hirer must sign (or otherwise accept in a manner required by the Owner) a Hire Schedule and such other documents as the Owner may require. The Owner may in its absolute discretion decline to hire Equipment to the Hirer at any time.
- 1.2 These Terms Of Hire may be changed by the Owner from time to time by the Owner giving written notice of the change to the Hirer. Notice is deemed to be given (whether or not actually received) when the Owner:
 - (a) sends notice of the change to the Hirer at any address (including an email address) supplied by the Hirer;
 - (b) publishes the amended terms on its website www.easynhs.com.au; or
 - (c) displays the amended terms at premises from which the Owner conducts hire operations.
- 1.3 The Hirer may hire the Equipment for the Hire Period. Any extension of the Hire Period must be agreed by the Owner in writing. Subject to clause 1.6, the Hirer must return the Equipment to the Owner before the expiry of the Hire Period. The Hirer must pay an additional day of Hire Fee for the Equipment for each day or part day that the Equipment is late in being returned past the expiry of the Hire Period.
- 1.4 The Hirer acknowledges that failure to return the Equipment before the expiry of the Hire Period can be criminal theft and may be immediately reported to the police.
- 1.5 The Hirer is responsible for pick-up of the Equipment from the Owner unless the Hire Schedule details that the Equipment will be delivered and the delivery address. The Owner will not be liable to the Hirer for late delivery, non-delivery or any associated loss or damage caused or contributed to by the late delivery or non-delivery.
- 1.6 If the Hire Schedule details that the Equipment will be collected by the Owner, the Owner will provide the Hirer with an Off-Hire Number when the Hirer advises the Owner that the Equipment is no longer required and is available for collection. The Hirer must pay an additional day of Hire Fee for the Equipment for each day or part day past the expiry of the Hire Period until an Off-Hire Number has been issued.
- 1.7 The Owner reserves the right to charge a minimum period of hire for certain types of Equipment, as detailed in the Hire Schedule.
- 1.8 The Owner reserves the right to charge usage and/or excess usage fees for certain types of Equipment, as detailed in the Hire Schedule.
- 1.9 The Hirer will be responsible for any installation and/or erection of the Equipment unless the Hire Schedule details that installation and/or erection is provided.
- 1.10 The Owner may vary the hire charges from time to time. However any variation to the hire charges does not apply to a completed Hire Schedule unless the Hire Schedule details a variation.

2 Payment and security

- 2.1 Prior to the commencement of the Hire Period (or as otherwise specifically agreed with the Owner) the Hirer must pay the Owner the Hire Fee plus any applicable GST.
- 2.2 In addition the Hirer must pay to the Owner:
 - (a) all stamp duties, GST, any other taxes or duties, all tolls, fines, penalties, levies or charges payable in respect of the Hire Agreement or arising from the Owner's supply or the Hirer's use of the Equipment;
 - (b) all costs, charges and expenses incurred by the Owner in delivery, installation, and/or collection;
 - (c) any additional Hire Fee in accordance with clauses 1.3 and 1.6;
 - (d) any usage and/or excess usages fees in accordance with clause 1.8;
 - (e) the cost of fuels and any other consumables provided by the Owner and not returned by the Hirer;
 - (f) all costs of repairing or replacing tyres, including road service;
 - (g) all costs incurred in cleaning the Equipment;
 - (h) the full cost of repairing any damage to the Equipment, unless expressly agreed otherwise in the Hire Agreement;
 - (i) the full new replacement cost of any Equipment which is for whatever reason not returned to the Owner, unless expressly agreed otherwise in the Hire Agreement;
 - (j) any cancellation fee detailed in the Hire Schedule where Equipment has been booked and the Hirer cancels the booking without giving the Owner the required notice or fails to take delivery of the Equipment;
 - (k) any fee charged by the Owner for payment by credit card.;
 - (l) any amounts for which the Hirer is liable, as set out in the Hire Agreement, when the damage waiver and/or theft waiver applies;
 - (m) any environmental charge in relation to the Equipment detailed in the Hire Schedule;
 - (n) a late payment fee calculated daily at 10% per month on all amounts owing by the Hirer not paid on time; and
 - (o) without limiting any other clause of the Hire Agreement:
 - (i) any expenses and legal costs incurred by the Owner in enforcing the Hire Agreement; and
 - (ii) any expenses incurred by the Owner in recovering possession of the Equipment.
- 2.3 Without limiting the ability of the Owner to recover all amounts owing to it, the Hirer authorises the Owner to charge, at any time in the future, any amounts owing by the Hirer under the Hire Agreement to any credit card or account details that have been provided to the Owner.
- 2.4 The Owner may require the Hirer to provide a security deposit in connection with the hire of the Equipment. If the Owner requires a security deposit the Hirer must pay the security deposit on or before the commencement of the Hire Period. The Owner may, at its discretion, use the security deposit to pay any amounts owing by the Hirer under the Hire Agreement. The Hirer must immediately replace any amount used by the Owner. When the Equipment is returned in accordance with the requirements of the Hire Agreement the Owner will refund to the Hirer the amount of the security deposit (less any amount used in accordance with this clause).

3 Damage Waiver

- 3.1 A Damage Waiver is included in the Hire Fee so that the Hirer's liability for damage to the Equipment can be limited, in some circumstances only, to the Damage Waiver Excess.
- 3.2 Where the Damage Waiver Excess for the Equipment is shown on the Schedule, the Damage Waiver Excess shall be that amount. Where the Damage Waiver Excess is not shown on the Schedule, the Damage Waiver Excess shall be the lesser of:
 - (a) The actual recovery and repair cost of the Equipment; and
 - (b) 10% of the full new replacement cost of the Equipment.
- 3.3 The Damage Waiver will **not** apply and will **not** limit the Hirer's liability in the following circumstances:
 - (a) where the Equipment is lost or stolen;
 - (b) where the damage has been caused by the Hirer's negligent act or omission;
 - (c) where the Hirer has used the Equipment in violation of any laws;
 - (d) where the Hirer has breached any clause of the Hire Agreement;
 - (e) where the Hirer has used the Equipment, in the Owner's opinion, in any way whatsoever other than for its intended

purpose or failed to follow the Owner's instructions or the manufacturer's instructions;

- (f) from any misuse, abuse, vandalism, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Equipment or any of its components;
- (g) the theft, loss or damage by whatever cause to tools and/or accessories supplied with the Equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
- (h) from lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the Hirer under the Hire Agreement;
- (i) when loading or off-loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of Equipment on any wharf or bridge or over any body of water;
- (j) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance; or
- (k) Where the damage:
 - (i) is to or caused by a truck mounted loading device;
 - (ii) is to tyres;
 - (iii) is to glass;
 - (iv) is caused by exposure to any corrosive or caustic substances;
 - (v) is caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with electrical Equipment; or
 - (vi) is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road.

4 Theft Waiver

- 4.1 The Owner may offer the Hirer a Theft Waiver for an additional fee for some types of Equipment, as determined by the Owner from time to time.
- 4.2 Where the Hirer has paid the Theft Waiver, as shown on the Schedule, the Hirer's liability for theft of the Equipment can be limited, in some circumstances only, to the Theft Waiver Excess. Where Theft Waiver is not shown on the Schedule, the Hirer's liability for theft of the Equipment will not be limited.
- 4.3 The Theft Waiver Excess will be shown on the Schedule. The Damage Waiver Excess will continue to be calculated in accordance with clause 3.2.
- 4.4 The Theft Waiver will **not** apply and will **not** limit the Hirer's liability in the following circumstances:
 - (a) in the case of a Motor Vehicle, the Hirer has failed to properly secure or lock the Motor Vehicle or in the case of other Equipment, the Hirer has failed to keep the Equipment in a securely locked compound;
 - (b) where the theft has been caused by the negligence or omission of the Hirer;
 - (c) where the Hirer has breached any clause of the Hire Agreement; or
 - (d) where the Hirer has failed to submit to the Owner a written police report on the theft within 7 days of the theft allegedly occurring.

5 Use, operation and maintenance

- 5.1 The Hirer agrees that the use of the Equipment carries with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.
- 5.2 The Owner makes no representation and gives no guarantee or warranty that the Equipment is suitable for the Hirer's intended purpose.
- 5.3 The Equipment shall not be used by anyone other than the Hirer without the written permission of the Owner.
- 5.4 The Hirer will ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where required hold a current Certificate of Competency and/or are fully licensed.
- 5.5 The Hirer must operate, maintain, store and transport the Equipment in a safe and proper manner and strictly in accordance with any instruction provided by the Owner and with due care and diligence.
- 5.6 The Hirer must comply with any manufacturer's instructions and recommendations whether supplied by the Owner or posted on the Equipment in regard to its operation, maintenance, storage and transportation.
- 5.7 If the Hirer does not return the Equipment clean it must pay all costs incurred in cleaning the Equipment.

- 5.8 The Hirer is responsible for the cost of fuels or other consumables used in connection with use of the Equipment.
- 5.9 The Hirer must clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and the Owner's instructions at the Hirer's cost until the Equipment is returned to the Owner.
- 5.10 The Hirer is responsible for all costs of repairing or replacing tyres, including road service.
- 5.11 The Hirer is responsible for arranging any re-testing and re-tagging of electrical Equipment during the Hire Period (as extended in accordance with clause 1.3) at the Hirer's cost.
- 5.12 If, at the Hirer's request, the Owner supplies an operator to operate the Equipment ("Operator"):
 - (a) The Operator will be under the Hirer's direction and control during the Hire Period (as extended in accordance with clause 1.3) and will comply with the Hirer's reasonable directions;
 - (b) The Owner will not be liable to the Hirer for any acts or omissions of the Operator where they are acting under the Hirer's direction and control; and
 - (c) The Hirer will not allow any other person to operate the Equipment without the Owner's prior consent.

6 Hirer's Warranties

- 6.1 The Hirer warrants that:
 - (a) before accepting the Equipment the Hirer has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment for the job the Hirer intends to use it for;
 - (b) the Equipment has been received by the Hirer clean and in good repair, condition and working order unless the Hirer has notified the Owner to the contrary, such notice being given as soon as the Hirer becomes aware of it and in any event within one business day of the commencement of the Hire Period;
 - (c) the Hirer will return the Equipment to the Owner clean and in good repair, condition and working order when it is due back;
 - (d) the Hirer will store the Equipment safely and securely and protected from theft, seizure, loss or damage until it is back in the Owner's possession;
 - (e) the Equipment will be operated, maintained, stored and transported in accordance with the conditions in these Terms Of Hire and in the Hire Schedule;
 - (f) the Equipment will only be used for its intended purpose and not for any other purpose;
 - (g) the particulars in the Hire Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (h) the Hirer holds a valid current driver's licence, operating licence or permit valid for the type of Equipment hired;
 - (i) the Hirer will not permit any person to operate the Equipment if they cannot legally do so or if they fall into a category of prohibited operators as shown on the Hire Schedule;
 - (j) the Hirer will conduct a thorough hazard and risk assessment before using the Equipment and comply with all safety laws relating to the Equipment, its use and associated operations;
 - (k) the Equipment will not be used for or in connection with any illegal or prohibited purpose;
 - (l) the Equipment will not, without the prior written consent of the Owner, be exposed to any dangerous substance, including asbestos;
 - (m) the Equipment will not be loaded beyond any recommended or legal capacity limits;
 - (n) the Hirer's vehicle is suitable for towing the Equipment if required;
 - (o) the Hirer will not, without the prior written consent of the Owner, tamper with, repair or modify the Equipment in any way, or permit another to do so;
 - (p) the Hirer will not rely upon any representation relating to the Equipment or its operation other than those contained in the Hire Agreement;
 - (q) the Hirer will comply with all environmental laws and immediately rectify, at its own cost, any breach of those laws caused by the use of the Equipment;
 - (r) any person collecting or taking delivery of Equipment on behalf of the Hirer is authorised by the Hirer to do so;
 - (s) the Hirer's employees, contractors and agents are authorised to sign any document which forms part of the Hire Agreement on its behalf;

- (t) the Hirer will not in any way part with possession of the Equipment, nor assign the Hire Agreement, nor remove the Equipment from NSW without the prior written approval of the Owner; and
- (u) the Hirer will only use the Equipment at the site described in the Hire Schedule unless otherwise agreed by the Owner in writing.

7 Release, Indemnity, Exclusion and Limit of Liability

- 7.1 To the full extent permitted by law, the Hirer releases the Owner and agrees that the Owner is not liable for any action, demand, liability, loss, damage or cost arising directly or indirectly in connection with the use of the Equipment or in respect of the Hire Agreement.
- 7.2 The Hirer is liable for and unconditionally and irrevocably indemnifies the Owner and its employees, contractors and agents against all actions, demands, liability, loss, damage or costs (including legal costs on a full indemnity basis) incurred or suffered directly or indirectly by the Owner or its employees, contractors or agents in connection with:
- (a) the use, storage or transport of the Equipment by the Hirer or its employees, contractors and agents; or
 - (b) the Hirer's breach of the Hire Agreement.
- 7.3 To the extent permitted by law, the Owner excludes all express or implied warranties, guarantees and conditions under statute or general law in connection with the hire of the Equipment. However, in some instances these warranties and guarantees cannot be excluded. Where such express or implied warranties, guarantees and conditions cannot be excluded the Owner's liability for breach is limited to the following remedies (the choice of which is to be at our sole discretion):
- (a) in the case of goods one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
 - (b) in the case of services one or more of the following:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

NB: This clause does not affect any rights the Hirer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not lawfully be excluded or modified under the Hire Agreement.

8 Lost, stolen or damaged Equipment

- 8.1 If the Equipment is lost or stolen or not returned to the Owner for any other reason, the Hirer will be liable for the full new replacement cost of the Equipment, unless expressly agreed otherwise in the Hire Agreement.
- 8.2 If the Equipment is damaged, the Hirer will be liable for the cost of repairing any damage to the Equipment, unless expressly agreed otherwise in the Hire Agreement. The Hirer must provide full details of any accident or damage to the Equipment to the Owner within 2 business days of the accident or damage occurring.

9 Breakdown of Equipment

- 9.1 In the event that the Equipment breaks down or becomes unsafe to use the Hirer must:
- (a) immediately stop using the Equipment and notify the Owner;
 - (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - (c) take all steps necessary to prevent any further damage to the Equipment; and
 - (d) not repair or attempt to repair the Equipment without the Owner's written consent.

10 Termination

- 10.1 Without prejudice to any other remedies the Owner may have against the Hirer and notwithstanding the Hire Period, the Hire Agreement may be terminated by the Owner as follows:
- (a) Upon giving the Hirer two days written notice of termination at any time during the Hire Period;
 - (b) Without notice if the Hirer has a winding-up petition presented against it, or is wound up, or goes into voluntary liquidation, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business;

- (c) Without notice if the Hirer commits a breach of any part of the Hire Agreement.

11 Title to equipment

The Hirer acknowledges that the Owner retains title to the Equipment and that the Hirer has rights to use the Equipment as a mere bailee only. The Hirer agrees that the Hirer has no rights to pledge the Owner's credit in connection with the Equipment. The Hirer grants the Owner a licence to access any premises where the Equipment is located for the purpose of inspecting, disconnecting, decommissioning, collecting and recovering the Equipment.

12 Repossession and other remedies on default

Notwithstanding any other clause in the Hire Agreement, the Owner may retake possession of the Equipment if the Hirer breaches any provision of the Hire Agreement, the Hire Agreement is terminated or the Hirer does not pay any moneys owing under the Hire Agreement or any other agreement between the Hirer and the Owner by the due date. All costs incurred by the Owner in repossessing the Equipment due to a breach are to be paid by the Hirer.

13 PPS

- 13.1 This clause applies to the extent that the Hire Agreement provides for a "security interest" for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in the Hire Agreement include references to amendment, replacement and successor provisions of that legislation. References to a "security interest" in that clause has the same meaning as in the PPS Law.
- 13.2 If at the commencement of the Hire Period, the Owner does not have PPS Law registration ensuring a perfected first priority security interest in the Equipment then the Hire Period (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Hirer has substantially uninterrupted possession of the Equipment) may not despite anything else in these Terms Of Hire or any Hire Schedule be longer than:
- (a) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
 - (b) a year in any other case.
- 13.3 The Owner may register its security interest. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:
- (a) ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and
 - (c) enabling the Owner to exercise rights in connection with the security interest.
- 13.4 The rights of the Owner under the Hire Agreement are in addition to, and not in substitution for the Owner's rights under any other law (including, without limitation, the PPS Law) and the Owner may choose whether or not to exercise rights under the Hire Agreement, and/or under such other law as it sees fit. To avoid any doubt about it, the Owner's security interest will attach to proceeds.
- 13.5 To the extent that Chapter 4 of the PPS Law applies to any security interest under the Hire Agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of the Hire Agreement in respect of all goods to which this section can be applied: section 95 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 13.6 The following provisions of the PPS Law; section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal of purchase); and section 134(1) (retention of collateral) confer rights on the Owner. The Hirer agrees that in addition to those rights, the Owner shall, if there is default by the Hirer have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under the Hire Agreement and the Hirer agrees that the

Owner may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- 13.7 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 13.8 The Owner and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub clause is made solely for the purpose of allowing to the Owner the benefit of section 275(6)(a) and the Owner shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub clause.
- 13.9 The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any security interest in the Equipment other than with the express written consent of the Owner.
- 13.10 The Hirer must not lease, hire, bail or give possession ("Sub Hire") of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such Sub Hire must be in writing in a form acceptable to the Owner and must be subject to the rights of the Owner under the Hire Agreement. The Hirer must not vary the Sub Hire without the prior written consent of the Owner (which may be withheld in its absolute discretion).
- 13.11 The Hirer must ensure that the Owner is provided at all times with up to date information about the Sub-Hire including the identity of the Sub-Hirer, the terms of and the state of accounts and payment under the Sub-Hire and the location and condition of the Equipment.
- 13.12 The Hirer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any security interest arising under or in respect of the Sub Hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed by the Owner in writing) for the security interest; and
 - (c) enabling the Owner and the Hirer to exercise their respective rights in connection with the security interest.
- 13.13 To assure performance of its obligations under the Hire Agreement, the Hirer hereby gives the Owner an irrevocable power of attorney to do anything that the Owner considers the Hirer should do under the Hire Agreement. The Owner may recover from the Hirer the cost of doing anything under this clause 13, including registration fees.

14 Non-merger

The covenants, agreements and obligations contained in the Hire Agreement will not merge or terminate upon the termination of the Hire Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

15 Severance

If any provision of the Hire Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, the Hire Agreement must be construed as if that provision or part of a provision had been severed from the Hire Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

16 Governing law

This agreement is governed by the laws of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales.

17 Privacy policy

The Owner will comply with the National Privacy Principles in all dealings with Hirers. Information on our privacy policy is available on request.