

# Evale Group Pty Ltd

**ABN: 72 631 315 261**

**Contact: 0423 790 466 & 0407 736 842**

## Hiring Terms and Conditions

### 1. INSPECTION

The customer has inspected the equipment prior to taking possession of the equipment and:

- 1.1** Is satisfied that the equipment is clean, in good repair and in safe working order
- 1.2** Is aware of the proper use for which the equipment is designed and is satisfied that it is suitable for the purpose required;
- 1.3** Is satisfied with the instructions given in the proper and safe manner of using the equipment and is familiar with its proper and safe use.

### 2. USE OF EQUIPMENT

**2.1** You must:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- (b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
- (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
- (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (e) conduct a job safety analysis prior to using the Equipment;
- (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
- (g) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment

**2.2** You must:

- (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
- (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
- (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;
- (d) not remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when You return the Equipment; and
- (e) arrange for the emptying of any waste tanks and water carts.

**2.3** At all times during the Hire Period, You must store the Equipment safely and securely.

**2.4** Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

**2.5** You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.

### **3. PERIOD OF HIRE**

The period of Hire shall commence from either:-

**3.1** The commencement date and time as shown overleaf; or

**3.2** The time when the equipment is delivered to the Customer at the address contained overleaf, whichever is the earlier; and shall terminate

**3.3** At the time when the equipment is returned to the Owner; or

**3.4** At the time the Customer notifies the Owner that the equipment is ready for collection by the Owner. Such notification will be deemed to have been properly given only when the Customer has received from a member of the office hire control staff of the Owner, an off hire number;

**3.5** This period of hire shall terminate on whichever is the later event of 3.3 or 3.4.

Notification by the Customer that the equipment is ready for collection and the receipt by the Customer of an off hire number shall not relieve the Customer for liability for the equipment until it is collected by the Owner.

### **4. RETURN OF EQUIPMENT AND TERMINATION**

The Customer agrees to return this equipment to the Owner during regular business hours. The Owner may terminate this agreement at its sole discretion and the Customer authorises the Owner and servants to enter upon such land as may be necessary to recover the equipment.

### **5. HIRING CHARGES**

The Customer will pay the hire charges at the rate and in the manner specified during the hire period. The Customer schedule of rates may be subject to alteration by mutual agreement between the Customer and Owner if the agreed period of hire is altered in any way by the Customer.

## **6. LATE RETURN**

If the equipment is not returned at the end of the hire period, the Customer will be charged an additional rate for extra hour or part thereof.

## **7. DELIVERY, INSTALLATION AND COLLECTION**

If the Customer requests the Owner to deliver, install or collect the equipment, the Customer agrees to pay to the Owner all of the Owner's reasonable expenses occurred in complying with this request in addition to the hire charges. These expenses may include costs due to any delay incurred, or additional labour performed due to the Customer's failure to prepare the site.

## **8. LOADING AND UNLOADING EQUIPMENT**

The Customer is responsible for loading and unloading equipment. If an employee of the Owner assists in the loading or unloading of the equipment the Customer agrees to indemnify the Owner for any property damage or personal injuries in relation to this assistance whether or not due to negligence.

## **9. EQUIPMENT MAINTENANCE**

The Customer agrees to:-

- 9.1** Keep and maintain the equipment in a clean condition and good repair and working order;
- 9.2** Service the equipment in a skilful and proper manner and to supply all oil and grease necessary for operation of the equipment at its own expense.
- 9.3** Supply all fuel necessary for the operation of the equipment at its own expense.
- 9.4** Repair or replace damaged tyres.
- 9.5** Give the Owner access to the equipment for inspection at any reasonable time without the Owner giving prior notice.

## **10. EQUIPMENT FAILURE**

In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period the Customer must:

- 10.1** immediately stop using the Equipment and notify Us;
- 10.2** take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

**10.3** take all steps necessary to prevent any further damage to the Equipment itself; and

**10.4** not repair or attempt to repair the Equipment without Our written consent.

## **11. ACCIDENT**

The Customer will immediately notify the Owner of any accident involving its equipment.

## **12. CLEANING AND REPAIR**

If the equipment is not returned in a clean condition or in good repair and working order (fair wear and tear excepted) the Owner may at its absolute discretion charge the Customer for all reasonable costs of cleaning the equipment, restoring it to good repair and working order, or replacement of equipment which cannot reasonably be repaired.

## **13. LOSS**

The Customer will be liable for the cost of replacement of equipment lost or stolen while in its possession. The Customer agrees to advise the Owner immediately of the loss, theft or damage, waiver does not apply to loss or theft.

## **14. DAMAGE WAIVER**

**14.1** Loss Theft Damage Waiver ('LTD Waiver') is not insurance, but is an agreement by Us to limit Your liability in certain circumstances for loss, theft or damage to the Equipment to an amount called the LTD Waiver Excess. The LTD Waiver Excess is explained below in clause 14.5. Note the limitations set out in clause 14.6.

**14.2** Subject to clause 14.3, the LTD Waiver Fee will be automatically charged to You in addition to Your Hire Charges and will be set out in Your Hire Schedule.

**14.3** You are not required to pay the LTD Waiver Fee if You produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the replacement value of the Equipment ('Your Insurance'). You are responsible for any excess and any other costs associated with Your Insurance and You are responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under Your Insurance, including any loss We suffer as a result of not being able to hire the Equipment.

**14.4** Where You have paid the LTD Waiver Fee, We will waive Our right to claim against You for loss, theft or damage to the Equipment if:

(a) for theft, You have promptly reported the incident to the police and provided Us with a written police report;

(b) You have co-operated with Us and provided Us with the details of the incident, including any written or photographic evidence We require;

(c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 15.6; and

(d) You have paid Us the LTD Waiver Excess.

**14.5** The LTD Waiver Excess for each item of Equipment is the amount equal to:

(a) \$500.00 or (if the replacement cost of the Equipment is less than \$500.00) the replacement cost of the Equipment; or

(b) 15% of the cost of the repairs (if the Equipment is partially damaged and can be repaired) OR 15% of the full new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair), whichever is greater.

**14.6** Even if You have paid the LTD Waiver Fee, We will not waive Our rights to claim against You for loss, theft or damage to the Equipment and LTD Waiver will not apply if the loss, theft or damage:

(a) has arisen as a result of Your breach of a clause of this Hire Agreement;

(b) has been caused by Your negligent act or omission;

(c) has arisen as a result of Your use of the Equipment in violation of any laws;

(d) has been caused by Your failure to use the Equipment for its intended purpose or in accordance with Our instructions or the manufacturer's instructions;

(e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;

(f) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment ;

(g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;

(h) has been caused by the overloading of the Equipment or any components thereof;

(i) is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;

(j) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;

(k) is caused by vandalism;

(l) is to tyres or tubes; or

(m) is to windscreens, mirrors, glass, or perspex.

## **15. PAYMENT**

Accounts are due and payable at the end of the Hire period. Hire, delivery, installation and collection charges or other charges where applicable are payable on strictly net cash terms unless otherwise specified.

## **16. LATE PAYMENT**

Interest is payable on any amounts outstanding at the end of the hire period at the rate of 15% per annum.

## **17. COLLECTION COSTS**

The Customer agrees to pay all reasonable costs of collection or legal proceedings brought to recover any amounts outstanding after the end of the hire period.

## **18. PURCHASE ORDER**

The use of your purchase order number on this contract is for your convenience and identification only. Absence of a purchase order number shall not constitute grounds for non payment of rental charges when you have had possession, or the right to possession of the hired equipment.

## **19. SUBLEASE, LOANS OF EQUIPMENT AND ASSIGNMENTS**

The Owner may assign its rights under the contract without the Customer's permission but will remain bound by its terms. The Customer may not sublease or loan the equipment without the Owner's written permission and any purported assignment shall be void.

## **20. EXCLUSION OF WARRANTIES**

This contract contains no express or implied warranties other than those which appear in this agreement. No warranty is given that the equipment is suited for its intended use. The Customer warrants that it has made its own independent inspection and has not relied on any representations by the Owner.

## **21. INDEMNITY**

The Customer agrees to accept full responsibility for all claims in respect of any injury to persons, loss of productivity or loss or damage to property, arising out of the delivery, servicing, storage, possession, use or failure of the equipment during the hire period whether or not due to the negligence of the Owner, its employee or agent or any other person and agrees to indemnify the Owner with respect to these claims. The Customer will not allow any lien to be created over the equipment nor sell, transfer, mortgage or charge the equipment and will indemnify the Owner against any losses or expenses incurred as a result of its loss of possession of the equipment for any of these reasons.

## **22. SEVERABILITY**

The provisions of this contract shall be severable, so that the invalidity, unenforceability, or waiver of any of the provisions shall not affect the remaining provisions.

## **23. JURISDICTION**

The law relating to this agreement shall be the law of the State of Western Australia.

## **24. DEFINITIONS**

In this agreement the following expressions shall have the following meanings:-

**25.1** The “Owner” and the “Company” is Evale Group Pty Ltd;

**25.2** The “Customer” is the person, business or corporation hiring equipment from the Owner;

**25.3** The “Equipment” and the “Hired Goods” means all equipment, plant, tools, accessories, parts and motor vehicles supplied to the Customer.

## **25. CALCULATION OF CHARGES**

**26.1** Charges are based on time out not time used;

**26.2** One day’s hire is for eight (8) hours work in twenty four (24) hours and extra shifts are chargeable.

**26.3** One week is seven (7) consecutive days including weekends and holidays;

**26.4** Extra days are charged at 1/5th of the weekly rate.

## **26. PRIVACY**

**26.1** We will comply with the Australian Privacy Principles in all dealings with You.

**26.2** We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to:

(a) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or exercising Our rights under clause 10;

(b) provide services to You;

(c) prevent theft of Our Equipment;

(d) enter into contracts with You or third parties, and

(e) to market to You and maintain a client relationship with You.

**26.3** You have the right to access the personal information We hold about You.

## 27. Additional Charges

If the above terms and conditions are not adhered to the Customer accepts additional charges, which will be debited directly from the Customer's credit card

The customer must refill the fuel tank upon return of the equipment, if the Customer fails to do so, they will be charged \$3.50 per litre

I (Name) \_\_\_\_\_ hereby agree to the terms and conditions stipulated in this agreement

Signature: \_\_\_\_\_

Date: \_\_\_\_\_