

# TERMS & CONDITIONS OF HIRE

## OVERVIEW

- 1. THE HIRER MUST READ & UNDERSTAND ALL OPERATORS MANUALS SUPPLIED (INCLUDING THE FULL HAZARD & RISK ASSESSMENT) PRIOR TO OPERATION OF EQUIPMENT.**
2. The Hirer understands & agrees to the full TERMS & CONDITIONS OF HIRE.
3. The Hirer agrees that the unit is in good and serviceable condition.
4. The Hirer agrees to insure their own property against damage and loss.
5. The Hirer agrees NOT to sub-let the unit.
6. The Hirer accepts that a "Standby Rate" may apply in special circumstances and only when specifically agreed to in writing by both parties. Hiring charges at the rates outlined in this contract shall otherwise apply for the complete Period of Hire.
7. The Hirer agrees to secure all property or goods within the unit.
8. The Hirer accepts a late fee may be charged if the unit is not returned on time.
9. The Hirer accepts that an Operator may be supplied with the Equipment if requested at an additional cost.
10. The Hirer understands that full payment is required 30 days from date of invoice.

- 1.0 DEFINITIONS – In these conditions of hire:
  - 1.01 The “Owner” is Uptrack PTY LTD
  - 1.02 The “Hirer” is the person or company identified within the hire contract
  - 1.03 The “Equipment” includes all machinery, vehicles or goods supplied by the Owner to the Hirer for a fee pursuant to this contract.
  
- 2.0 PERIOD OF HIRE – “The Period of Hire”, unless specified to the contrary in writing by both parties shall:
  - 2.01 COMMENCE from the date upon which the Equipment is dispatched from the Owner’s premises, however where circumstances beyond the Owner’s control exist and dispatch of goods is delayed by the Hirer, commencement date will be the later of the goods required by date specified in the contract, or the ex-works availability date.
  - 2.02 CEASE upon the date at which the Equipment is returned to the Owner’s premises, or upon the date at which the Owner repossesses the Equipment pursuant to Clause 9.0 of these Conditions of Hire. Unless specified otherwise, the location of the Owner’s premises shall be **U1/19 Paw Paw St, Brooklyn.**
  
- 3.0 FREIGHT – The Hirer shall be responsible for freight and other charges whether incurred by the Owner or Hirer in respect of the delivery and return of the Equipment.
  
- 4.0 USE OF EQUIPMENT
  - 4.01 The Hirer shall at all times use the Equipment in the proper manner, and shall at his own expense, service, clean and maintain the Equipment in good repair and condition with reference to the Plant Pre-Start Checklist. Reasonable wear and tear will be accepted.
  - 4.02 Before using the Equipment, the Hirer shall examine the Equipment to satisfy himself as to the quality and fitness of use for the purpose of the Equipment. If the Equipment is in any way defective or unsuitable the Hirer must notify the Owner immediately in writing outlining the defect or unsuitability.
  - 4.03 The Hirer acknowledges that he is not relying upon any representations made by or on behalf of the Owner in respect of the Equipment or its performance.
  
- 5.0 DAMAGE TO EQUIPMENT AND LOSS OF EQUIPMENT
  - 5.01 During the Period of Hire, the Hirer shall be responsible for any loss or damage to the Equipment, whether such loss is caused by the negligence of the Hirer or any person under his control.
  - 5.02 Where the Hirer is responsible for loss or damage to the Equipment, the whole or any part of, a new replacement or repair will be added to the invoice total.
  - 5.03 Where Equipment is not returned to the Owner by the Hirer, the Owner shall be at liberty to immediately notify the police of the circumstances and may take civil or criminal action as it deems necessary for the recovery of possession of the Equipment or for the new replacement value of the Equipment. The Owner shall not be responsible to the Hirer for any loss or damage, injury, fines or costs incurred or sustained by the Hirer arising from such actions.
  - 5.04 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, during the Period of Hire.
  
- 6.0 PURCHASE ORDER – The use of a purchase order on this contract is for the Hirer’s identification only. Absence of a purchase order number shall not constitute grounds for non-payment of rental charges when possession or right to possession of the Equipment has been undertaken by the Hirer.
  
- 7.0 ASSIGNMENT – The Hirer shall not sell, transfer, assign, part with possession, mortgage, and charge or encumber any right or obligation under these Conditions of Hire without prior written consent of the Owner.

- 8.0 BREAKDOWN & DAMAGE TO PROPERTY OR INJURY TO THIRD PARTIES – In respect of all Equipment, the Hirer shall, during the Period of Hire, be responsible for any loss or damage to property of, 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; or if the Hirer or any driver or operator of the Equipment drives or operates the Equipment without a license required by any statute or regulation or fails to use any prescribed safety apparatus installed in the Equipment. The Hirer shall indemnify and keep indemnified the Owner in respect of all such actions, claims, demands of expenses of the Owner or any other person in relation to or arising out of the use of the Equipment under this contract.
- 8.01 In the event of a breakdown or failure of Equipment during the Period of Hire, the Hirer shall immediately return it or notify the Owner in writing. The Hirer shall not repair or attempt to repair or cause any repair to be made to the Equipment without prior consent of the Owner. If the failure or breakdown is caused by reasonable wear and tear or a defect in the Equipment at the commencement of hire, and was not caused or contributed to by misuse or negligence of the Hirer or any person under his control, the Period of Hire shall cease on return of the Equipment or notification to the Owner.
- 8.02 8.2 In no event shall the Owner be responsible for any expenditure, damages, sum for delay, inconvenience or loss incurred by the Hirer arising out of any breakdown or failure and/or defect in the Equipment whether caused by fair wear and tear, lack of repair, negligence or any other reason whatsoever.
- 8.03 8.3 No conditions or warranties shall be implied in these Conditions of Hire except to the extent that any condition or warranty may be implied by statute and may not be excluded by agreement. Any condition or warranty shall be of no force and effect to the extent of that inconsistency.
- 9.0 TERMINATION BY THE OWNER – The Owner may notwithstanding the specified Period of Hire or any waiver of some previous default by the Hirer, terminate this Agreement and repossess the Equipment if the Hirer fails to pay any hiring charges within thirty days of the due date; or if the Hirer does or persists in any act or thing to be done with the Equipment by way of which the Owner's right in the Equipment may be prejudiced; or if the Hirer shall become or is made insolvent or bankrupt or makes any arrangement or composition with his creditor or should any order be made or resolution passed for its winding up. The Owner may terminate this agreement if the Hirer commits any breach of these Conditions of Hire.
- 9.01 For the purposes of repossessing the Equipment, the Owner may enter into or upon any premises where the Equipment may be to recover the Equipment from the Hirer, without any prejudice to the rights of the Owner and recover from the Hirer in respect of any claim, damages, and expenses arising out of any action taken under this clause.
- 9.02 On the Owner repossessing the Equipment the determination for the Period of Hire shall be without prejudice to any claim or demand the Owner may have against the Hirer in respect of any matter or thing arising out of the hire of the Equipment and the Hirer shall pay the Owner hiring charges at the rate for the Period of Hire up to the time of repossession.
- 10.0 PAYMENT OF CHARGES – The Hirer shall pay the Owner on determination of the Period of Hire the following: The Equipment Hiring Charges; the amount of any loss or damage to the Equipment subject to these Conditions of Hire; the amount of tolls, levies, charges or like charges paid or payable by the Owner to any government body in respect of use of the Equipment; the retail price of petrol, diesel, hydraulic oil, engine oil or any fuel required at the completion of the Period of Hire to refill the fuel tanks, oil reservoirs or sumps; the cost of freight and other charges incurred by the Owner or Hirer in respect to delivery and return of the Equipment; any costs incurred by the Owner in repossessing the Equipment in accordance with the Conditions of Hire.