

# Flexihire Conditions of Hire and Supply

## The Hire Period

- 1)
  - a) The hire period shall commence from the time the plant is collected by the Hirer from Flexihire's premises. Should the item of plant be delivered to the Hirer by Flexihire at the Hirer's request then the hire period shall commence from the time the plant leaves Flexihire's premises;
  - b) The hire period is for an indefinite term irrespective of any expected off-hire dates as listed on the initial contract;
  - c) The hire period shall cease when the equipment is back in our custody at our premises;
  - d) For the benefit of doubt, during the hire period you are responsible for the equipment security and liability, irrespective of any off-hire periods or stand down periods that Flexihire may grant (see Hire Charges).

## Hire Charges

- 2)
  - a) You will pay Flexihire for the hire charges as detailed in the hire contract;
  - b) Hire charges commence from the time the plant is collected by the Hirer from Flexihire's premises. Should the item of plant be delivered to the Hirer by Flexihire at the Hirer's request then the hire period shall commence from the time the plant leaves Flexihire's premises;
  - c) Hire charges shall cease when the equipment is back in our custody at our premises.
- 3)
  - a) Flexihire under certain circumstances and at its sole discretion may issue stand downs when requested in line with our stand down policy;
  - b) Flexihire under certain circumstances and at its sole discretion may off-hire the equipment when requested and providing the equipment is available for collection;
  - c) When requesting stand downs or requesting equipment to be off-hired you must request a stand down number of Off-hire number.
- 4) Hire charges shall not impact the hire period – see The Hire Period.
- 5)
  - a) Hire charges (daily or weekly) are based on an 8 hour day only and any usage above this rate may result in additional charges;
  - b) Plant should not be used in excess of the 8 hours per day without the express authority of Flexihire in writing.
- 6) Notwithstanding any other condition, in the event of any plant not being returned to Flexihire by the Hirer before 9am the day following the expiration of the hire period then the Hirer shall be deemed to have rehired the plant for a further period of one day.
- 7) The Hirer shall notify Flexihire of any breakdown to any plant within twenty-four hours of same having occurred and from such notification the period of hire shall cease unless the breakdown is a result of misuse or negligence on the part of the Hirer.

## Other Hire Conditions

- 8) Flexihire shall:
  - a) Make the plant available to the Hirer at Flexihire's premises or if so requested deliver the plant to the site nominated by the Hirer;
  - b) Be responsible for all repairs and replacements required to the plant and which arise from fair wear and tear, provided that these shall be at the expense of the Hirer if caused by negligence or misuse on the part of attributable to the Hirer as determined by Flexihire.
- 9) The Hirer shall:
  - a) Maintain and use the plant in a skillful and workmanlike manner and at his own expense service, clean and generally maintain the plant so that it will remain in good repair and condition (fair wear and tear excepted) and supply all oils, grease and fuels necessary for operation;
  - b) Return the plant in a clean condition at the expiration of the hire. Breach of this condition will make the Hirer liable to the relative cleaning charges;
  - c) Be responsible for the safe keeping of the plant and tools or accessories supplied therewith and indemnify Flexihire for any loss suffered in this regard through misuse, theft or otherwise;
  - d) Pay the relative hire to Flexihire at the rates prescribed hereon as and when requested by Flexihire;
  - e) Pay on request the relative delivery and collection charges and cleaning charges and sundry charges in accordance with the current Flexihire rate schedule;
  - f) Keep Flexihire indemnified against any injury or loss suffered by any person operating the plant by reason of misuse or otherwise;
  - g) Supply the operator and pay the operator's wages;
  - h) Subject to Condition 10, be responsible for and indemnify Flexihire against all loss of or damage to the plant during the hire howsoever caused (other than directly due to fair wear and tear);
  - i) Prior to the use of the plant determine the condition and suitability of the plant hired for the purpose required;
  - j) Ensure that all safety information supplied with the plant will be conveyed to any person using the plant;
  - k) Attach to the plant and maintain any safety signs supplied with the plant and bring them to the attention of any person using the plant and ensure that they are clearly legible by the operator of the plant;
  - l) Ensure that all safety and operating instructions and notices are observed and not defaced or removed from the plant;
  - m) Ensure that all operators of the plant wear suitable clothing and any protective equipment required or recommended by the manufacturers safety and operating instructions or as recommended by the Owner;
  - n) Not perform work with the plant, no cause, permit, allow, or employ and person to perform work with the plant, in an occupation prescribed under the Workplace Health and Safety Act, unless the Hirer or such person is the holder of a current certificate of competency, permit, or authority to operate the plant issued for that occupation under such Act.

- 10) The Hirer shall pay damage waiver to Flexihire and an additional 12% of the total hire charges and in return therefore shall be released from liability, other than the Damage Waiver Excess as explained in clause 24, for damage to (as distinct from loss of) the plant caused other than by willful or grossly neglected acts of omissions of the Hirer but this waiver does not exclude liability in respect of:
- 11) Damage occurring whilst the plant is stolen or in the possession of any person unlawfully or in the course of being stolen or unlawfully taken or in the course of recovery from being stolen or unlawfully possessed;
  - a) Damage occasioned directly or indirectly by breach of these conditions;
  - b) Damage to tools, accessories, electric cords, welding cable, water pump hose, steels, blades, liquid fuel tanks, drill bits, and similar items;
  - c) Damage resulting from lack of lubrication or other normal maintenance for which the Hirer is liable hereunder;
  - d) Damage to motor or electrical appliances or devices by overloading or artificial electric current.
- 12) This contract shall not be transferable to any person or party nor the plant removed from the State of Queensland.
- 13) Flexihire shall be permitted to affix any sign or advertising device or identification marks to the plant as it shall determine.
- 14) Notwithstanding anything to the contrary herein contained, Flexihire may terminate the within Agreement by giving the Hirer one days verbal notice, such termination to be effective on the expiration of that notice.
- 15) If the Hirer shall commit any act of bankruptcy or be made bankrupt or being a company having a wind up petition presented against it or be wound up or go into voluntary administration or commit any breach of this Agreement, Flexihire shall thereupon be entitled to terminate the Agreement without notice and or to take possession of the plant or equipment hired for which purpose the Hirer hereby irrevocably authorized Flexihire and its agents to enter any land or premises of the Hirer or under his control. Upon Termination as aforesaid or upon Flexihire taking possession of the plant or equipment, this Agreement shall be at an end except the Hirer shall be liable for any prior breach thereof and shall indemnify Flexihire in respect of any claims, damages and expenses arising out of any action taken under this condition.
- 16) Any warranty, condition, description or representation whether express or implied as to the state, quality or fitness of the plant for the purpose for which the same is let on hire is excluded except for any conditions or warranties which may be implied in this Agreement by the Trade Practices Act or other Legislation.
- 17) Flexihire shall not be responsible or liable to the Hirer whether on the ground of breach of contractual duty or on the ground of negligence for any loss or damage to property, person, business, or otherwise directly or indirectly suffered or sustained by the Hirer and arising from defects in or malfunction, breakdown or failure of performance of the plant or otherwise and the Hirer exonerates and releases Flexihire from all claims and demands in respect thereof.
- 18) Unless otherwise agreed where the Hirer requests delivery by Flexihire, Flexihire undertakes to deliver plant only to the kerb alignment adjacent to the address specified by the Hirer. The delivery vehicle will only enter that address or job area or private property at the absolute discretion of the driver and at the Hirer's risk and responsibility without Flexihire being liable in any way for any loss or damage caused as a result of such entry of such vehicle however caused whether by negligence or otherwise.
- 19) Flexihire reserves the right to revise schedule of hire rates and related charges without notice.
- 20) Flexihire shall be entitled to charge interest on all amounts not paid by the Hirer by the due date at the rate specified in section 1 (b) in the Conditions of Trade.
- 21) Title and property to any goods sold shall not pass to the customer until payment in full for the product has been received by Flexihire. Notwithstanding the aforementioned reservation of ownership clause, the risk of any loss or damage to or deterioration in any product from whatever cause shall pass to the customer at the time of delivery.
- 22) The Hirer agrees that Flexihire may obtain from and provide to third parties information about the Hirer's creditworthiness and payment record.
  - a) The Hirer agrees that Flexihire may use any personal information held on the Hirer for any purposes that is within the law;
  - b) Flexihire advises the Hirer that any personal information is generally collected for the primary purposes of:
    - i) Maintaining customer records, delivery, supply of goods and services, account keeping, invoicing, debt collection, locating and/or retrieving Flexihire Equipment, credit reference checking, credit listing and for the secondary purposes of;
    - ii) Marketing Activities, marketing planning, product development, customer and market research, product recalls.
  - c) A Hirer's personal information may be disclosed to Flexihire's agents, distributors, contractors, and related entities to facilitate the primary and secondary purposes mentioned above, or as otherwise required by law.
- 23) Any machine registered with conditional registration must be operated in accordance with the guideline requirements, these can be found at the following locations
  - a) <http://www.flexihire.com.au>
  - b) <http://www.tmr.qld.gov.au>
- 24) Damage Waiver Excess is payable in certain circumstances where Damage Waiver has been paid as explained in clause 10 and 11 which shall be equal to 50% of the cost of repairs, as determined by Flexihire acting reasonably, up to a maximum of \$5,000.  
The above conditions of hire and supply must be read in conjunction with the conditions of trade as outlined on the Flexihire website



# Flexihire Conditions of Trade

The only contractual terms which are binding upon the Supplier are those set forth herein, those imposed by law as hereinafter mentioned and those otherwise agreed to in writing by the Supplier and all other conditions and warranties whether expressed or implied and all representations, statements or obligations which would otherwise be binding upon the Supplier, are to the extent permitted by law, hereby expressly excluded and negated.

## 1. Payment Terms

- (a) All accounts are payable within 30 days from EOM.
- (b) Interest shall be payable by the Applicant on the total amount of the debt from time to time outstanding calculated 30 days from EOM until the actual date of the payment at (the current rate of interest for overdraft plus 3%) per annum compounded monthly. Specified on the CBA website as the current overdraft rate.
- (c) All payments are to be made to the Supplier care of the address shown on the Supplier's invoice.

## 2. Jurisdiction of Courts

The Applicant hereby submits to the jurisdiction of the appropriate Court as selected by the Supplier (or in default thereof the State of Queensland) should it be necessary to decide any matter, claim or issue arising out of this Agreement, goods sold and/or delivered and/or services rendered or any other matter whatsoever between the Supplier and the Applicant.

## 3. Legal and Recovery Costs

- (a) All legal costs and/or any other expenses whatsoever incurred by the Supplier in respect of this Agreement, personal guarantees or otherwise including collection costs (including commissions), dishonored cheque fees and/or expenses associated with the enforcement or attempted enforcement of any rights of the Supplier pursuant to this Agreement shall be paid by the Applicant immediately upon demand.
- (b) In any action, proceeding or claim brought or made against the Guarantor/s pursuant to this Agreement, a certificate signed by either the Credit Manager or a Director of the Supplier shall be prima facie evidence of the outstanding amount owed by the Applicant and also of the amount owed by the Guarantor/s.
- (c) There shall be no obligation upon the Supplier to first make demand upon or proceed against the Applicant before making demand upon and proceeding against the Guarantor/s.

## 4. Order of Payment

All monies and credits received by the Supplier shall be applied as follows:

- (a) Firstly, towards payment of any costs, charges, expenses and/or outgoings incurred by or paid by the Supplier and payable by the Applicant; and
- (b) Secondly, in or towards payment of any interest due or payable by the Applicant to the Supplier; and
- (c) Thirdly, in or towards payment of the debt.

## 5. Liability to Improper Exercise of Powers

The Supplier shall be not liable in any way for any loss or damage to the Applicant or any other person whether direct or consequential, which loss or damage arises directly or indirectly in any way from or in connection with the Supplier's use or attempted use of its powers pursuant to this agreement. This clause shall apply even though the use of the said powers may be unsuccessful or unjustified on any grounds whatsoever. Where such loss or damage occurs to a third party the Applicant hereby indemnified the Supplier against all liability thereof to the fullest extent permitted by law.

## 6. Waiver and Variation

The Supplier shall not be deemed to have waived any terms or conditions of this agreement or agreed to any variation thereof unless it has done so expressly in writing.

## 7. Withdrawal of Credit

The Supplier at its absolute discretion whether or not the Applicant is in default may stop credit.

Other Hire Conditions

## 8. Security

In the event of the Supplier allowing credit, the Applicant hereby charges, as a separate and additional obligation, with payment of any monies owing under this agreement all he has currently and or in the future in: -

- (a) Land or other property;
- (b) Any/all Trusts of whatsoever nature;
- (c) Any/all Wills, estates of whatsoever nature;
- (d) Any/all Superannuation funds of whatsoever nature;
- (e) Any/all Life and/or Death policies of insurance and/or Life Annuities of whatsoever nature;

and hereby appoints the Supplier and or its nominated representative (and/or its duly authorised attorney) to sign all documents (including mortgages/transfers) on its behalf to record that charge over the Applicant's property, and if necessary to sell same to repay the debt owing under this agreement. This charge shall only come into operation if the Applicant defaults.

The Supplier may register any security interest created in these terms and conditions and may give any notification in connection with a security interest. The Applicant must do anything the Supplier asks and considers necessary for the purposes of ensuring that a security interest created under these terms and conditions is registrable, enforceable, perfected and otherwise effective (such as providing information, obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed). The Supplier need not give any notice under the Personal Property Securities Act 2009 ("PPSA") (including a notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.

The Supplier need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded. The Applicant may not exercise rights under section 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.

#### **9. Identity of Applicant**

Should the identity/particulars of the Applicant be found to be incorrect (in the Supplier's opinion) then the person/s signing on behalf of the Applicant shall be deemed to be personally liable and stand in place of the Applicant and agrees to be personally bound by the Terms and Conditions thereof.

#### **10. Price and Quotations**

The Supplier reserves the right to alter prices without notice. The Applicant agrees to pay any GST and any other government duties, levies or taxes payable on services provided by the Supplier without deduction to the monies invoiced by the Supplier.

#### **11. Limitation of Liability**

The Supplier hereby limits the amount of its liability for goods sold and/or delivered and/or services rendered and/or goods supplied at the Supplier's option to: -

- (a) In the case of goods, any 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;
  - (iv) The payment of the cost of having the goods repaired; or.
- (b) In the case of services: -
  - (i) The supplying of the services again; or
  - (ii) The payment of the cost of having the services supplied again.

Subject to the above, under no circumstances will the Supplier be liable for any loss or damage to persons or property of any nature as a result, direct or indirect, of any defect, deficiency or discrepancy in goods sold and/ or delivered and/or services rendered sold or supplied by the Supplier. It is the Applicant's sole responsibility to ensure that the goods sold and/or delivered and/or services rendered supplied are sufficient and suitable for the purposes of the Applicant.

#### **12. Defences**

- (a) The Applicant agrees that should the Supplier commence legal action against it for monies outstanding that it will not raise the following Defence/s:-
  - (i) Action commenced in wrong jurisdiction and/or state
  - (ii) Counter Claim for alleged damages
  - (iii) Set-off for monies allegedly owing

#### **13. Interpretation**

In this Agreement, unless a contrary intention appears, a reference to:-

- (a) The singular includes the plural and vice versa;
- (b) Any gender includes all other genders;
- (c) A person includes a corporation and an association whether incorporated or not and vice versa.



**FLEXIHIRE**  
EQUIPMENT HIRE SPECIALISTS