

WesTrac Rental Terms & Conditions

(Last updated 11 October 2007)

1. DEFINITIONS AND INTERPRETATION

1.1 The following terms shall have the following meanings:

Date Out means the date on which the Equipment is rented as specified in the Rental Agreement.

Dealer means the Dealer specified in the Rental Agreement and includes its officers, employees, agents, successors and related parties.

Equipment means the Equipment rented by the Dealer to the Renter under the Rental Agreement and includes any and all accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials, substitute and replacement Equipment, unless indicated to the contrary in the Rental Agreement.

Location means the Location of the Equipment as specified in the Rental Agreement or such other location as agreed by the Dealer.

Quotation means the document preceding these terms and conditions identified as the Quotation.

Renter means the Renter identified in the Rental Agreement and includes the Renter's employees, executors, administrators and representatives.

Rental Account Application means the application identified as the Rental Account Application.

Rental Agreement has the meaning specified in clause 2.1.

Rental Charges means the charges specified in the Quotation and/or charged by the Dealer to the Renter under the Rental Agreement as identified in the invoice provided to the Renter by the Dealer.

Rental Period means the period specified in the Rental Agreement or (where the Equipment is held over in accordance with clause 5) the period from the Date Out until the return of the Equipment to the Dealer, or if the Dealer agrees, collection of the Equipment by the Dealer.

Renter Protection means an amount paid by the Renter to reduce the Renter's financial liability in the event of loss or damage to the Equipment as specified in Clause 10.

1.2 Where there is more than one Renter then a reference to the Renter herein includes all Renters jointly and severally.

1.3 Words importing the singular include the plural and vice versa and each gender includes any other gender.

1.4 Reference to a monetary currency shall mean Australian dollars unless otherwise specified.

2. AGREEMENT

2.1 The Dealer rents the Equipment to the Renter on the Rental Terms stated in the Quotation, the WesTrac Rental Terms & Conditions and, where applicable, the Rental Account Application (collectively, the "Rental Agreement").

2.2 The Rental Agreement constitutes the entire agreement between the parties. The Renter acknowledges that the Dealer (nor any person acting on the Dealer's behalf) has not made any representation or other inducement to it to enter into the Rental Agreement and that it has not entered into the Rental Agreement in reliance on any representations or inducements (including in relation to the use and suitability of the Equipment) except for those representations or inducements contained herein.

2.3 The Dealer may at any time vary the Rental Agreement by giving written notice to the Renter.

3. TITLE TO EQUIPMENT

3.1 The Renter acknowledges that in all circumstances the Dealer retains title to the Equipment and the rights of the Renter to use the Equipment are as a bailee only.

3.2 The Renter is not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Equipment in any way which is inconsistent with the rights of the Dealer as owner of the Equipment.

3.3 The Equipment is a chattel and shall not be affixed to any land.

4. RENTAL CHARGES AND OTHER CHARGES

4.1 Rental Charges:

4.1.1 Rental Charges will be incurred for the Rental Period or from the Date Out until the Rental Agreement is terminated in accordance with clause 12, whichever is the earlier.

4.1.2 If the Equipment is returned before 8am there will be no Rental Charge for that day; if the Equipment is returned on or after 8am but before 12pm, half the daily Rental Charge will apply; and if the Equipment is returned on or after 12pm, full daily Rental Charges will apply.

4.1.3 Additional Rental Charges will apply if the Equipment rented on a daily basis is used for more than 8 hours in any day and if the Equipment rented on a weekly basis is used for more than 40 hours in any week. An excess hire charge is payable by the Customer where the Customer uses the Equipment in excess of the number of hours specified in the Hire Contract. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.

4.2 Consumables:

4.2.1 During the Rental Period, the Renter must pay all Equipment operating and consumable costs (including fuels, oils and lubricants).

4.3 Taxes and Government Charges:

4.3.1 The Renter shall be liable for goods and services tax (GST) and all other applicable taxes, duties, levies, tolls, penalties, traffic infringements and any other government charges imposed in connection with the Rental Agreement.

4.3.2 The Renter must pay a sum equal to the amount of any GST payable by the Dealer on any supplies made by the Dealer under or in connection with the Rental Agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate.

4.4 Credit Card Payments:

4.4.1 The Renter acknowledges that the Dealer may impose a charge for accepting payments by credit card.

4.5 Delivery:

4.5.1 If the Renter requires the Dealer to deliver, collect or install the Equipment, the Renter shall be liable for the cost of delivery, collection or installation.

4.6 Payment:

4.6.1 The Renter must pay all amounts owing under the Rental Agreement within 30 days from the date of invoice free from all deductions and offsets.

4.6.2 Where any amount payable under the Rental Agreement becomes overdue, all outstanding amounts whether due to the Dealer under the terms of the Rental Agreement or under any other Rental Agreement between the Dealer and the Renter will become immediately due and payable by the Renter to the Dealer.

4.6.3 The Dealer may charge the Renter interest calculated on a daily basis and compounded monthly on overdue amounts from the date of payment to the date of actual receipt of payment at an interest rate which is 4% greater than the rate published by the Commonwealth Bank of Australia or its successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment.

4.6.4 The Renter remains primarily responsible for all payments and charges payable under the Rental Agreement and if the Renter has directed billings for such payments and charges to be transferred to another person, firm or corporation, which upon so being billed has failed to make payment within 30 days, then the Renter shall upon demand promptly pay such payments and charges to the Dealer.

4.7 Legal Costs and Expenses:

4.7.1 The Renter must pay any costs or expenses reasonably incurred by the Dealer in enforcing the Rental Agreement, as a result of the Renter's breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out (including any cleaning costs).

4.8 Renter Protection:

4.8.1 The Renter must pay any Renter Protection payable under clause 10.

5. HOLDING OVER

5.1 Upon expiration of the Rental Agreement the Renter may continue renting the Equipment upon the same terms and conditions as the Rental Agreement except that:

5.1.1 The Rental Agreement will be deemed an agreement for month to month rental;

5.1.2 The Dealer may demand the return to the Equipment at any time;

5.1.3 The Renter may return the Equipment at any time on the condition the Renter pays the full month's Rental Charge.

6. RENTER'S OBLIGATIONS

6.1 Lost Stolen or Damaged Equipment:

6.1.1 Risk in the Equipment passes to the Renter upon collection or delivery of the Equipment and remains with the Renter until the Equipment is collected by or returned to the Dealer.

6.1.2 Subject to clause 10, the Renter is liable to the Dealer for any and all loss or damage to, or caused by, the Equipment or its operation and all costs incurred in respect of the Equipment including the cost of repairing or replacing the Equipment at the full new replacement cost, salvage costs and Rental Charges incurred while the equipment is repaired or replaced.

6.2 Possession and Use by the Renter:

6.2.1 The Rental Agreement is personal to the Renter and the Renter will not allow any other person or entity to use or have possession of the Equipment at any time during the Rental Period.

6.3 Operation of Equipment:

6.3.1 The Renter warrants that at all times it will: (a) comply with all statutory laws and regulations and all common laws with respect to use of the Equipment and will not permit the Equipment to be used for any illegal purpose or in any manner that would amount to a breach of any statute or any other law; (b) operate the Equipment safely, only for its intended use and in accordance with the manufacturer's instructions; (c) ensure persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use the Equipment; (d) ensure that the Equipment is not operated by any person under the influence of alcohol and/or drugs; (e) ensure that the Equipment is used only for the general purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment; (f) ensure that the Equipment is not used or permitted to be used or operated in violation of the terms of the Rental Agreement.

6.4 Safety:

6.4.1 The Renter warrants that it will: (a) at all times ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment; (b) at all times maintain any safety signs supplied by the Dealer and ensure they are clearly legible and brought to the attention of any person using the Equipment; (c) at all times ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment; (d) at all times ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by the Dealer or the safety and operating instructions; (e) conduct a site hazard assessment prior to using the Equipment at a site.

6.5 Demonstrator Operator:

6.5.1 Any person provided by the Dealer to demonstrate the operation of the Equipment shall be under the sole direction and control of the Renter. The Renter is responsible for any and all claims, loss or damages whatsoever arising in connection with the operation of the Equipment by that person. Where a demonstrator operator is provided by the Dealer, no other person shall operate the Equipment without the Dealer's prior written consent.

6.6 Cleaning and Maintenance:

6.6.1 The Renter must clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the Dealer's instructions and the operator's manual.

6.7 Storage and Location:

6.7.1 The Renter must ensure that the Equipment is at all times stored safely and protected from theft, loss or damage.

6.7.2 The Renter must not remove the Equipment from the State in which it was hired without the Company's written consent.

6.7.3 The Renter must notify the Dealer immediately in writing of any change in the Location.

6.8 Alteration and Identifying Marks:

6.8.1 The Renter must not alter, deface or erase any identifying mark, plate or number on the Equipment.

6.8.2 The Renter must not in any way alter, affix or attach any thing to, modify, tamper with, damage or repair the Equipment without the Dealer's written consent.

6.9 Access and Inspection:

6.9.1 The Renter consents to the Dealer inspecting the Equipment from time to time during the Rental Period.

6.9.2 The Dealer and its representatives have the right to enter the Location at any time upon giving prior reasonable notice to inspect, maintain and/or repair the Equipment or to repossess the Equipment. The Renter must assist the Dealer and its representatives in exercising its rights under this clause.

6.10 Safe Loading:

6.10.1 The Renter will safely secure all Equipment (or items loaded in or on the Equipment) loaded in or on any vehicle owned by the Renter.

6.11 Return of Equipment:

6.11.1 Unless agreed otherwise, the Renter must return the Equipment to the Dealer.

6.11.2 When returning the Equipment the Renter must return it to the Dealer premises from where it was collected by the Renter on the Date Out.

6.11.3 The Renter must ensure that the Equipment is returned to the Dealer in the same condition as the Date Out (except for normal wear and tear) and returned with a full tank of fuel or the Renter will pay the Dealer the cost of filling that tank.

6.11.4 If the Renter fails to return the Equipment when required by the Rental Agreement or within 24 hours of oral or written demand to the Renter, the Renter will be deemed to be in unlawful possession of the Equipment without the Dealer's consent.

7. SUITABILITY

The Renter is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Equipment unless the Dealer is otherwise notified within 24 hours of the commencement of the Rental Period.

8. AUTHORITY

The Renter hereby irrevocably authorizes the Dealer to use the name of the Renter and to act on behalf of the Renter in exercising any rights or instituting, carrying on or enforcing any legal proceedings which the Dealer believes necessary to protect the rights of the Dealer and the Equipment.

9. EQUIPMENT BREAKDOWN

9.1 If the Equipment breaks down or becomes unsafe to operate, the Renter shall immediately stop using the Equipment, ensure it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.

9.2 The Renter must not repair or attempt to repair the Equipment without the Dealer's prior written consent.

9.3 The Renter must immediately notify and provide full details to the Dealer of any loss, theft, breakdown or damage to the Equipment. After receiving such notification, subject to clause 16, the Dealer will use reasonable endeavours to repair or replace

- the Equipment at the Dealers discretion and at the Renter's expense. Any Equipment supplied as a replacement will be supplied for the unexpired balance of the Rental Period on the terms of the Rental Agreement.
10. **RENTER PROTECTION**
- 10.1 The Renter Protection must be paid by the Renter where the full new replacement cost of the Equipment as determined by the Dealer exceeds \$200 unless the Dealer has waived this requirement in writing. For the purpose of this clause, the term Equipment does not include any tools, accessories, parts, grease guns, hoses or similar electrical cords, welding cables, gas cylinders, pneumatic tools, light globes and other similar accessories, ground engaging tools, tracks, tyres or glass.
- 10.2 If the Renter has acquired Renter Protection then, subject to this clause, the Renter's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft, is limited to \$200 or 10% of the repair cost of the equipment (if repaired) or 10% of the full new replacement cost of the Equipment (if replaced), whichever is the greater.
- 10.3 The Renter's liability will not be limited in accordance with clause 10.2 if, in the Dealer's reasonable opinion, the loss or damage to the Equipment arises from or is caused by:
- 10.3.1 A breach of the Rental Agreement;
- 10.3.2 Improper use of the Equipment;
- 10.3.3 Transporting, loading or unloading;
- 10.3.4 Lack of lubrication or other normal servicing of the Equipment;
- 10.3.5 Overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment;
- 10.3.6 Artificial electrical current or exposure to any corrosive substance or environment;
- 10.3.7 Use or location of the Equipment in, on or over water, on bridges, vessels or structures of any kind;
- 10.3.8 Negligent acts or omissions of the Renter.
11. **INSURANCE**
- 11.1 The Renter agrees to:
- 11.1.2 As an alternative to Renter Protection, insure and keep the Equipment insured with a reputable and solvent insurer in the names of the Dealer and the Renter for the full new replacement value against fire, accident, theft, damage and transport and such other risks as the Dealer may require;
- 11.1.3 Pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorizes the Dealer to receive all insurance monies;
- 11.1.4 Not to do or permit or allow to be done anything which might or could prejudice any insurance of the Equipment;
- 11.1.5 Maintain policies of insurance for third party and public liability indemnity cover of not less than 10 million dollars.
12. **TERMINATION**
- 12.1 Subject to clause 12.2 the Rental Agreement will terminate upon expiration of the Rental Period.
- 12.2 The Dealer may terminate the Rental Agreement by written notice to the Renter if the Renter is in breach of the Agreement or is in "Default" pursuant to clause 12.3 and fails to remedy that breach or Default within 7 days of receiving notice requiring the Renter to do so.
- 12.3 The Renter is in Default where during the Rental Period:
- 12.3.1 The Renter fails to pay the Rental Charges as required by the Rental Agreement;
- 12.3.2 The Renter fails to rectify within 7 days a breach or breaches of the Rental Agreement after written notice of the breach is served by the Dealer;
- 12.3.3 Any execution or other process of any Court or authority is issued against the Renter or the Renter's assets;
- 12.3.4 A receiver, receiver manager, administrator or controller is appointed to the Renter;
- 12.3.5 The Renter ceases or threatens to cease to carry on its business;
- 12.3.6 Any insurance renewal or insurance proposal made by the Renter in respect of the Equipment is declined;
- 12.3.7 Any insurance policy in respect of the Equipment lapses or is cancelled;
- 12.3.8 The Renter commits an act of insolvency or is otherwise unable to pay its debts as they fall due.
- 12.4 Upon giving the Renter a notice of termination the Dealer may:
- 12.4.1 Recover possession of the Equipment; and/or
- 12.4.2 Enforce performance of the Rental Agreement; and/or
- 12.4.3 Recover damages for breach of the Rental Agreement.
- 12.5 The Dealer may take any or all of the actions set forth in clause 12.2 notwithstanding that the Dealer may have waived any previous breaches or Defaults by the Renter.
13. **RIGHTS ON TERMINATION**
- 13.1 At the expiration of the Rental Period or where the Dealer exercises its right of termination pursuant to clause 12.2, the Renter shall at its own expense forthwith return the Equipment to the Dealer.
- 13.2 The Dealer shall be entitled to recover from the Renter without demand:
- 13.2.1 Any payment of the Rental Charges or other monies becoming payable to the Dealer under the Rental Agreement;
- 13.2.2 The cost of any renovations or repairs performed by the Dealer to return the Equipment to good order and repair, fair wear and tear excepted;
- 13.3 The Dealer acknowledges that the Renter shall not be required to mitigate its loss by sale of the Equipment or account to the Renter for any proceeds of sale in the event the Equipment is sold by the Dealer.
14. **REPOSSESSION OF EQUIPMENT**
- 14.1 If the Renter is in breach of the Rental Agreement or if the Dealer has terminated the Rental Agreement pursuant to clause 12.2, the Dealer may take all steps necessary (including legal action) to repossess the Equipment, including entering the Renter's premises to do so.
- 14.2 The Renter irrevocably appoints the Dealer as its agent and authorizes and licenses the Dealer to enter the Location and repossess the Equipment and the Renter hereby indemnifies the Dealer against any and all actions, claims, suits or demands for damage that may arise from such entry, severance or removal of the Equipment.
- 14.3 Where the Dealer exercises the right to re-possess the Equipment pursuant to clause 14.1, the Renter's obligation to pay the Rental Charges shall continue for the Rental Period until termination of this Agreement by the Dealer or the re-hiring of the Equipment.
- 14.4 The Dealer may recover from the Renter as a debt due and owing without demand:
- 14.4.1 All costs incurred by the Dealer in re-taking possession of the Equipment;
- 14.4.2 Any storage fees paid in respect of the Equipment;
- 14.4.3 Any transportation costs in respect of the re-possession of the Equipment;
- 14.4.4 Any costs of renovation, repair or maintenance of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted.
15. **CLAIMS AND PROCEEDINGS**
- 15.1 Where use of Equipment by the Renter results in any claim, accident, damage or loss, the Renter:
- 15.1.1 Will immediately report such incident to the police station nearest to the scene of the incident and in writing to the Dealer within 24 hours;
- 15.1.2 Will not, without the Dealer's written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability;
- 15.1.3 Agrees the Dealer or its insurer may at its own cost bring, defend, enforce, or settle any legal proceedings against third parties; and
- 15.1.4 Will immediately complete and return the Dealer's accident report and furnish to the Dealer within 48 hours any statements, information or assistance which the Dealer or its insurer may reasonably require, including attending at lawyer's offices and at court to give evidence.
- 15.2 The Renter's liability under the Rental Agreement shall not merge in any judgment obtained by the Dealer in respect of any breach or default by the Renter under the Rental Agreement.
- 15.3 The Renter hereby irrevocably authorizes the Dealer to use the name of the Renter and to act on behalf of the Renter in exercising any rights or instituting, carrying on or enforcing any legal proceedings which the Dealer believes necessary to protect the rights of the Dealer and the Equipment.
16. **INDEMNITIES AND LIABILITY**
- 16.1 As far as the law permits, the Dealer excludes all warranties, conditions, rights and remedies the Renter would otherwise be entitled to by law.
- 16.2 The Dealer's liability for loss or damage (including consequential loss or loss of profit) incurred by the Renter or a person making a claim against the Renter is excluded as far as the law permits. To the extent it cannot be excluded, it is limited as far as the law permits to the repair or replacement of the Equipment.
- 16.3 The Dealer shall not be under any liability to the Renter for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or the Rental Agreement.
- 16.4 The Renter is liable for and indemnifies the Dealer against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/ client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Company) arising from or incurred in connection with the Renter's hire and use of the Equipment or its breach of the Rental Agreement.
- 16.5 Each indemnity in the Rental Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the Rental Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by the Rental Agreement. The Renter must pay on demand any amount it must pay under an indemnity in the Rental Agreement.
- 16.6 For the purposes of clauses 16.2 to 16.4, use of Equipment operated by a demonstrator operator supplied by the Dealer will be use of the Equipment by the Renter.
17. **WARRANTIES**
- 17.1 The Renter shall have the benefit of any manufacturer's warranty with respect to the Equipment during the Rental Period provided the Renter is not in default under the Rental Agreement.
18. **NOTICE**
- 18.1 Any notice to be given may be given by posting the notice to the address of the parties specified in the Rental Agreement and shall be deemed received 3 days after posting by ordinary prepaid post.
- 18.2 Any notice to be given may be given by facsimile to the parties' facsimile address specified in the Rental Agreement and shall be deemed received on the date and time after transmission shown on the transmission report produced by the facsimile machine for the party transmitting the facsimile.
- 18.3 Any notice to be given may be given by email to the address of the parties specified in the Rental Agreement and shall be deemed received at the time notified on the transmitter's computer terminal that the email has been received by the other party's computer.
19. **JURISDICTION**
- 19.1 The Rental Agreement is governed by the laws of the States or Territories of Australia in which it is signed.
20. **SEVERABILITY**
- 20.1 If any part of the Rental Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
21. **PRIVACY**
- 21.1 The Renter agrees that the Dealer may obtain, disclose and use information:
- 21.1.1 About the Renter's credit worthiness or for the purpose of obtaining and maintaining credit information file about the Renter or collecting overdue payments;
- 21.1.2 About the Renter for the purpose of providing services to the Renter, including sharing information with the Dealer's related companies.
22. **MISCELLANEOUS**
- 22.1 The expiry or termination of the Rental Agreement does not affect the rights, which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.
- 22.2 Time is of the essence of all obligations of the Renter under the Rental Agreement.
- 22.3 The Dealer may assign or subcontract all or any of its rights under the Rental Agreement. The Renter must not assign or subcontract all or any of its rights under the Rental Agreement.
- 22.4 No delay or omission to exercise any right, power or remedy accruing to the Dealer upon any continuing breach or Default under the Rental Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any right of the Dealer to take action or make a claim in respect of a continuing breach or Default or to be acquiescence to it.
- 22.5 A statement in writing made up from the books of the Dealer and signed by any director, secretary or credit manager of the Dealer of the amount due or owing by the Renter to the Dealer as at the date mentioned in such statement shall be prima facie evidence that such amount is due and owing without it being necessary to produce any books or vouchers to verify the same.
- 22.6 Any credit accommodation granted by the Dealer to the Renter may be withdrawn at any time and for any reason without notice and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.