

Koala Forklifts
Sales & Hire Department
ABN: 38 002 195 824
A: 186 Newton Rd
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SALES – HIRE – SERVICE – SPARES

STANDARD HIRE TERMS & CONDITIONS

1. DEFINITIONS

Business Day	Means a day that is not a Saturday, Sunday or Public Holiday in New South Wales between 7am and 4pm.
Cancellation Payment	Means 75% of the value of rental due under the remaining term of the hire period. Number of weeks remaining under hire period x Hire Rate x 75% = Cancellation Fee.
Commencement Date	Means the date on which the equipment is dispatched from owners location.
Consumables	Means all materials or other items which are consumed in the normal operation of the plant including fuel.
Rate	Is the amount payable by the Hirer in respect of the Hiring of the equipment, plus GST.
Fair Wear and Tear	Means the normal wear associated with the proper use of the equipment, provided the equipment has been operated in accordance to manufacturers recommendations and AITA guidelines
Hirer	Means the person listed as the Hirer in the schedule and is hiring the equipment and includes any contractor, sub-contractor, and employee and agent of the hirer.
Hire Payment	Means the amount calculated for the Hire Period by applying the rate.
Hire Period	Means the term of hire referred to in the Schedule and extended pursuant to clause 4 of these Terms and Conditions.
Insolvency Event	Means any of the following events concerning a party:- A) if an Administrator, liquidator, receiver or receiver and manager (as defined in the Corporation Act) is appointed. B) if a party becomes bankrupt C) if a controlling Trustee is appointed to or over the Hirer or any of its property. D) the party or the parties property becomes subject to a personal insolvency arrangement under the Bankruptcy Act or a debt agreement under that Act. E) if the parties aren't able to pay its debts when they are due and payable. F) if the party ceases to carry on business
Operating Manual	Means the manual created by the original Manufacturer of the equipment for its operation and maintenance.
Equipment	Means any item of equipment and or accessories supplied by the owner to the Hirer.
Site	Means the site set out in the Hire Order or such other location approved by the Owner to which the equipment will be delivered.
Return Date	Means the date on which the equipment is to be returned to the Owners Location as set out in the Hire Order.
Transport Costs	Means the cost of Transport of each item of equipment from the Owners Location to the Site and from the Site to the initial nominated Owners Location

2. TERMS OF PAYMENT

- 2.1. The Hirer will hire the equipment from the Owner during the Hire Period as stated on the invoice. The Hirer will pay to the owner the Rate as set out in the invoice plus GST.
- 2.2. The Owner will issue an invoice each month or period (whichever is sooner) to the Hirer detailing the rate, charges & amount payable for the term of the hire.
- 2.3. Payment of Invoices issued to the Hirer are payable prior to delivery or if issued after delivery within 14 days of the date of the invoice.
- 2.4. The Hirer must pay rent in advance at the commencement of this Agreement. The Hirer must remain in advance of all payments during the term of this Agreement. Any failure to comply with payment Terms may result in cancellation of Agreement by the Owner, wherein the Hirer shall be liable for the Cancellation Payment.
- 2.5. In addition to the Hire Payment Fee the Hirer must pay the following amounts to the Owner:-
 - 2.5.1. any cleaning costs incurred by the Owner in relation to the equipment;
 - 2.5.2. any Tax, GST, Duty, Levy charge or any other expense that has been paid or is payable by the Owner in respect of the use of the equipment by the Hirer;
 - 2.5.3. any expenses incurred by the Owner as a result of a breach of the Agreement by the Hirer.
- 2.6. Interest is payable by the Hirer to the Owner at the rate of 2% per month on any overdue amount owing to the Owner.

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- 2.7. Should the Hirer default in payment for any payment, without notice, the Owner by its servants or agents may and is hereby irrevocably authorized to enter the Hirer's premises (or any premises under control of the Hirer) as agent of the Hirer and to use reasonable force to take possession of the equipment. The Owner shall not be liable to the Hirer (whether for negligence or otherwise) for any damage allegedly caused or arising out of the taken by the Owner of possession of the equipment as aforesaid and the Hirer hereby indemnifies the Owner in respect to any such claims brought by any third party.
3. HIRE OF THE EQUIPMENT
- 3.1. The Hirer must:-
- 3.1.1. obtain all permits and authorisations for the use of the equipment;
 - 3.1.2. ensure that the equipment is used in a skillful, proper and safe manner and for the purpose of which the equipment was designed;
 - 3.1.3. ensure that the equipment is operated and serviced by trained, certified, and competent operators who have all relevant training and permits;
 - 3.1.4. clean the equipment thoroughly upon completion of the Hire Period, failing which a cleaning fee will be payable by the Hirer to the Owner and charged at the discretion of the Owner;
 - 3.1.5. be responsible for the safe keeping of the equipment during the Hire Period and ensure the equipment is safely and securely stored when not in use;
 - 3.1.6. not operate the equipment if it has become defective, damaged or in a dangerous state;
 - 3.1.7. ensure the equipment remains at the site and is not removed or relocated without the prior written permission of the Owner;
 - 3.1.8. not sub hire the equipment. The Hirer has no right, entitlement or interest in the equipment other than as Hirer and must not sublet, sub-hire, transfer, dispose of or mortgage or deal with the equipment in any way.
 - 3.1.9. pay the Owner all hire and relating charges within 14 days of the date of invoice;
 - 3.1.10. be liable for any breach of these terms & conditions committed by the Hirers servants or agents;
 - 3.1.11. Indemnify the Owner for any loss (including Legal costs) incurred in relation to any breach of this Agreement and any liability arising of from such breach;
 - 3.1.12. comply with any legislation relevant or applicable to the equipment and its use, and including the Workplace Health and Safety Act NSW and its regulations, and ensure all safety information supplied with the equipment is displayed and followed at all times;
 - 3.1.13. ensure that the supplies of battery, water and lubricants are maintained at correct levels;
 - 3.1.14. ensure the equipment is available to the Owner for routine service at prearranged times during standard business hours;
 - 3.1.15. the Hirer must insure the equipment whilst in the Hirers possession during the term of the Hire Period and supply the Owner with the policy number and Certificate of Currency for the equipment. The Certificate of Currency will have the Owner listed as an interested party on such insurance policy for the said equipment. Accept full responsibility for and indemnify the Owner against all claims in respect of any injury or death of persons or damage to property arising from the use of the equipment whilst in the possession of or under the control of the Hirer during the Hire Period, including from the time of dispatch from the Owners premises;
 - 3.1.16. notify the Owner immediately of any loss, damage, breakdown or malfunction and not continue to use the equipment or attend to repair the equipment or have it repaired without the Owners prior written consent;
 - 3.1.17. pay any excess usage fees, taxes and all costs arising from misuse or negligence attributable to the Hirer;
 - 3.1.18. ensure the equipment is operated at all times within the limits and guidelines set out by the original manufacturer;
- 3.2. If the equipment breaks down, and/or becomes unsafe to use, the Hirer must:-
- 3.2.1. take all steps required and necessary to prevent an injury occurring to any person or property;
 - 3.2.2. prevent other people operating the equipment or servicing the equipment without the prior written consent of the Owner;
- 3.3. In addition to any other remedy that may be available to the Owner, if the Equipment breakdown is due to the Hirers negligence, is involved in an accident or is lost, stolen or damaged, the Hirer will pay to the Owner the following amounts:
- 3.3.1. any costs or expenses incurred by the Owner in locating, recovering, repairing or replacing the Equipment (including any third party costs or expenses);
 - 3.3.2. all Hire Payments due under the agreement;
 - 3.3.3. any other costs that may be incurred by the owner as a result of the damage to or loss of the Equipment;
 - 3.3.4. the Hirer will bare the risk of loss, damage and or destruction of the equipment from the Commencement Date until the Return Date, except for where such extent of loss, damage or destruction is caused by the Owner;
4. HIRE PERIOD
- 4.1. The Hire Period commencement commences on the Commencement Date and ends on the Return Date.

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- 4.2. Both parties agree that the Hire Rate or Rental Rate reflects the spirit of a long term relationship.
- 4.3. The Hire period shall be for the initial period stated in the invoice. The term of hire shall be automatically be extended for further periods of similar to the initial period unless terminated by either party giving written notice to the other party within 30 days prior to the end of the initial term of hire or any renewed or extended term of hire.
- 4.4. If the equipment is stolen or damaged beyond repair, the date on which the insurance company pays for the loss of equipment or provides equipment as replacement to the acceptance of the Owner.
5. **MAINTENANCE AND INSPECTIONS**
 - 5.1. Prior to the commencement of the Hire Period, an inspection of the equipment shall be conducted for the purposes of identifying the condition of the equipment(s) prior to its use by the Hirer;
 - 5.2. a record of the condition of the equipment will be completed in writing and signed by the parties confirming the condition of the equipment at the time of commencement of hire;
 - 5.3. unless otherwise specified in this terms & conditions the Hirer is responsible for maintaining the equipment during the Hire Period at its own costs and in accordance with the operating manual supplied by the original manufacturer;
 - 5.4. regular maintenance to be carried out in accordance with manufacturers requirements and records provided to the Owner evidencing such maintenance;
 - 5.5. the Owner will supply one (1) set of tyres per year, or as required, in any 12 month period;
 - 5.6. battery water and lubricants are to be maintained by the Hirer at correct levels as set by the original manufacturer.
6. **OPERATION**
 - 6.1. The Owner shall have the right to determine the type of operation of, or in which the equipment may reasonably be employed and the suitability of the equipment for the work to be done should major change to the Hirers existing operation be encountered;
 - 6.2. the operation of equipment will be limited to 20 hours per normal business week. The Hirer agrees to pay to the Owner an additional fee of \$6.00 per hour for each hour or part thereof which exceeds 20 hours for any given week.
 - 6.3. the Hirer will provide to the Owner evidence establishing the amount of hours the equipment has operated for that week. Payment of the additional fees will be in accordance within the Terms of payment as set out in this Agreement.
7. **NO WARRANTY**
 - 7.1. To the extent permitted by law, the owner is not bound by or subject to an condition, guarantee or warranty or obligation that includes no liability of any kind (including liability for negligence) in connection with this document or any connection with or any way relating to the equipment.
 - 7.2. The Owner does not warrant the equipment is suitable for the use and purpose by the Hirer. The Hirer has satisfied itself as to the limits and capability of the equipment and cannot make any claim against the Owner for any loss sustained or incurred. In the event that any law was to establish any owner liability, such liability is to be limited to the replacing of equipment or supply of equipment of equivalent value.
8. **HIRE ACKNOWLEDGEMENT**
 - 8.1. The Hirer acknowledges that it has satisfied itself that the Equipment is suitable for its purpose and that it has not relied upon any express or implied warranty or representation from the Owner concerning the equipment.
 - 8.2. The Hirer warrants that it is not bankrupt, had an Administrator, liquidator, receiver or manager appointed or that is not unable to pay its debts when they become due and payable and continues to carry on a business.
9. **INDEMINITY**
 - 9.1. The Hirer will indemnify the Owner from and against all actions, suits, claims, demands, proceedings, losses, liability, costs, interests and any charges and expenses incurred by the Owner as a result of any breach of this terms & conditions by the Hirer or the Hirers employees, agents, consultants, contractors AND any error or omission of the Hirer employees, agents or contractors in relation to the Hirers obligations under this terms & conditions.
 - 9.2. The Hirer shall not indemnify the Owner with respect to loss, damage or destruction to personal property and any personal injury, illness or death of a persons in such circumstances where such actions, suits, demand, proceeds, loss, liability, damages, costs, charges or expense were caused by the Owner.
 - 9.3. The Owner or its officers, employees or agents are not liable to the Hirer for any indirect, special or incidental or consequent loss or damage, loss of profits, labour cost, capital costs, loss of business reputation whether or not such liability arises out of contract, tort or any other cause of action sustained by the Hirer or its officers or employees.
 - 9.4. The Owner is not liable for any loss sustained to the Hirer as a result of the Owner breaching any term of this terms & conditions.
10. **TERMINATION**
 - 10.1. The Owner may terminate this Agreement by providing Notice to the Hirer:-
 - 10.1.1. at any time giving one months Notice of its intention to Terminate;

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- 10.1.2. in the event that the Hirer is in breach of this Agreement and is unable or unwilling to remedy such breach within fourteen days
- 10.1.3. the Hirer is insolvent, unable to pay its debts due or enters into a scheme or arrangement with creditors or bankruptcy.
- 10.1.4. if the Hirer defaults in any payments due under this Agreement whereupon this termination of Agreement, the Owner shall at their discretion, be entitled to serve a notice of intention to terminate upon the hirer. In the event the Owner terminates the agreement, the Cancellation payment is to be paid by the Hirer to the Owner within fourteen days, the Owner to the Hirer of Notice of Intention to Terminate within 14 days.
- 10.1.5. In the event that the Hirer is unable to complete the Hire Term, the Cancellation Payment is to be paid by the Hirer to the Owner within 14 days.
- 10.2. If the Owner does not fulfill its obligations under this Agreement, the Hirer may terminate this Agreement with one months written Notice in writing.
11. DISPUTE RESOLUTION
 - 11.1. The parties agree that any dispute or difference whatsoever arising out or in connection to this Agreement must be submitted to mediation.
12. PPSA
 - 12.1. Parties agree that the supply of the hired equipment in this Agreement Constitutes a security interest pursuant to the Personal Property Security Act 2009 (CTH) (PPSA) and that security interest is in favour of the Owner. Personal Property Security Act 2009 (CTH) (PPSA) and that security interest is in favour of the Owner.
 - 12.2. The Hirer agrees to do all such things necessary as to ensure the security interest is enforceable and to enable the Owner to apply for registration of the security interest.
 - 12.3. Owner to apply for registration of the security interest.
 - 12.4. The Owner is not required to provide any notice whatsoever to the Hirer, and the Hirer agrees to waive any right to receive any Notice under the PPSA unless such Notice is required by PPSA to be given to the Hirer.
13. GST
 - 13.1. The hire of equipment to the Hirer constitutes a Taxable Supply and upon the Owner providing to the supplier a Tax Invoice, the Hirer shall pay the Hire Rate plus GST as applicable from time to time.