

# MINIDIG HIRE TERMS AND CONDITIONS OF HIRE

The whole of the Agreement between Minidig Hire as Trustee for M S Dixon Family Trust ("Minidig") and the Hirer referred to in this Form ("the Hirer") is the agreement set out in these Terms and Conditions and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By accepting an order or by delivery and receipt of all or portion of the Equipment, the Hirer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

These Terms may change from time to time and you must review them every time you hire Equipment, extend or renew your contract with Minidig.

## Definitions:

"Equipment" shall mean all and each item of plant and/or equipment to be supplied by Minidig under these Terms and all additions, alterations and replacement to that plant and/or equipment;

"Hire Charge" means Minidig's charges for the provision of Equipment and/or services to the Hirer;

"Long Term Hire" means an agreed hire period of 5 days or longer.

"GST" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*

## 1. Charges and Payment

1.1. The Hirer must pay hire charges for the entire hire period on each article of the Equipment named in the Schedule and at the rate therein stipulated.

The Hirer must pay the hire charge in full plus GST upon signing of this Agreement. Any delivery and pick-up charges for the Equipment as set out in the Schedule of Rates for hire of the Equipment will be charged in addition to the hire charges payable by the Hirer.

1.2 Unless otherwise agreed by the parties:

(a) **Daily hire charges** provided in the Schedule are based on a 10-hour operating day ("Daily Hire Period").

Daily hire charges are not subject to any deductions for any non-working time during the hire period and must be paid for each calendar day.

The Hirer will be charged an extra ten (10) percent of the daily hire charges for every hour or part thereof after the end of the Daily Hire Period until the Equipment is returned to Minidig in the required condition.

(b) **Weekend hire charges** provided in the Schedule are based on an operating period of 36 hours ("Weekly Hire Period").

Weekend hire charges include both Saturday and Sunday and no deductions will be made for a single day hire.

Weekend hire charges are not subject to any deductions for any non-working time during the hire period.

The Hirer will be charged an extra ten (10) percent of the Weekend hire charge for every hour or part thereof after the end of the Weekend Hire Period until the Equipment is returned to Minidig in the required condition.

(c) **Weekly hire charges** provided in the Schedule are based on an operating period of 5 days per week. Weekly hire charges are not subject to any deductions for any non-working time during the hire period. If the hire period is greater than 5 days, the hirer will be charged at the weekly hire charge for each day of the hire period that is in addition to 5 days. .

d) **Hourly hire charges** are not subject to any deductions and shall be paid for each hour of hire or part thereof until the Equipment is returned to Minidig in the required condition regardless of any non-operating time. The Hirer will be charged a minimum hire charge equal to the charge that would be payable for hiring the Equipment for 5 hours (and notwithstanding that the actual period of the hire may be less than 5 hours).

1.3 The Hire charges provided in the Schedule are inclusive of GST. The Hirer must pay to Minidig the amount equivalent to the GST payable by Minidig on this supply.

The Hirer agrees to pay any other amounts set out on the front of this form calculated in accordance with the Schedule and any duties, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this Agreement.

1.4 Unless otherwise agreed in writing by the parties, the stand-down (off-hire) of any or all of the Equipment during the Hire period will only take place in the event, for the period of, and to the extent that mechanical failure of the Equipment (in the course of ordinary and reasonable use) prevents effective use of the Equipment.

The Hirer must contact Minidig as soon as the Hirer becomes aware of a mechanical failure of the Equipment and the stand-down will begin upon approval from Minidig.

1.5 If the Hirer has been given a discount, which has been recorded in the Hire Agreement or if such discount is otherwise acknowledged by the parties and the Hirer fails to pay the hire charges on time, Minidig is entitled to cancel the discount without any notice.

1.6 Minidig may charge interest at the rate of twelve percent (12%) or the highest lawful rate fixed under Section 2 of the *Penalty Interest Rates Act 1983*, whichever is greater, calculated and applied daily if a payment due by the Hirer under this Agreement is not made by the due date.

The Hirer is liable for all reasonable expenses and legal costs incurred by Minidig on a solicitor and own client basis for enforcement of obligations and recovery of monies due from the Hirer to Minidig.

1.7 The Hirer authorises Minidig to complete any documents necessary or desirable to enable the Hirer to make any payments through any credit card system.

1.8 Minidig will issue the Hirer with a Tax Invoice at the commencement of the hire period. Minidig can also issue the Hirer with an additional Tax Invoice at any time if the Hirer incurs any additional hire charges or other charges pursuant to this Agreement or if Minidig or otherwise thinks that it is appropriate to do so.

1.9 If requested by Minidig, the Hirer must provide the Hirer's credit card details to Minidig at the time of the hire of the Equipment and Minidig may charge the Hirer's credit card at any time to effect payment by the Hirer of any payment due by the Hirer pursuant to this Agreement.

1.10 It is the responsibility of the Hirer to ensure that all dealings with Minidig are conducted through an authorised representative. All authorised representatives, except that of the owner shall have a written authority.

## 2. Purchase Orders

If the Hirer requires Purchase Order Numbers to appear on Minidig Invoices, the Purchase Order Number must be provided by the Hirer to Minidig at the time the hire is made.

## 3. Recall Notice

3.1 Minidig may recall any or all of the equipment upon giving the Hirer a five (5) days written notice.

3.2 The Hirer may return any or all of the equipment to Minidig upon giving Minidig a five (5) days written notice.

## 4. Protection of Equipment

4.1 The Hirer is responsible for the security of the Equipment at all times until the Equipment is returned to and accepted by Minidig.

4.2 The Hirer is liable for any loss or damage incurred by Minidig as a result of any accident or damage to the Equipment caused by vandals, neglect, misuse, abuse and weather act.

4.3 The Hirer must take all reasonable steps to safeguard the Equipment from theft, loss or damage and give Minidig notice of any unusual risks.

## 5. Repairs and Maintenance of Equipment

5.1 The Hirer shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed on the equipment, and must ensure that the equipment is not subjected to careless, unusually or needlessly rough usage. The Hirer shall at its own expense maintain the equipment and its appurtenances in good repair and operation condition. The Equipment must be returned to Minidig in the same condition that it was collected in, fair wear and tear excepted.

5.2 The Hirer is liable for the expense of all repairs made during the hire period, including labour, material, parts, loss of hire time and other items.

5.3 The Hirer is responsible in respect of all Equipment for:

(a) At least once per day before it is first used and when indicated during the day:

(i) Maintenance, servicing, greasing and air filter cleaning;

(ii) Checking lubricant, filters and levels of and for leaks of fuel, water, engine oil, brake fluid and clutch fluid;

(iii) Checking for loose bolts;

(iv) Checking ground engaging tools including blades and buckets;

(v) Checking tires including tires' pressure;

(vi) Safety checks; and

(vii) Attending to all items mentioned on the pre-start checks and/or daily maintenance forms;

(b) Immediately reporting to Minidig all faults, defects and/or damage to Equipment and problems that may reasonably arise in relation to the Equipment;

(c) All damage to or loss of the Equipment, in whole or in part, including but not limited to tire damage;

(d) Calling to the attention of Minidig on mobile telephone number 0408 427 512 all pre-start checks and daily maintenance forms at the completion of each working week, if the hire of Equipment extends beyond one week; and

(e) Servicing (e.g. 250, 500, 750, 1000 hour services etc) and carrying out minor repairs of the Equipment when the Hirer has the Equipment on a long term hire and is located more than 100 kilometers from the premises of Minidig;

(i) Minidig will provide the Hirer with a service kit to assist with servicing the Equipment at no additional charge, however, all service reports, service kits, parts and Equipment remains the property of Minidig and must be expeditiously returned by the Hirer to Minidig upon the expiration of the hire period;

(ii) the Hirer is liable for all reasonable costs where Equipment repairs are determined to be minor (i.e. \$500.00 or less), including and but limited to a call-out fee, labor charges and travel time,

(iii) any servicing of the Equipment by or on behalf of Minidig, either at the reasonable request of the Hirer or that Minidig deems reasonably necessary, will be carried out at no additional charge other than a charge for travel time at the rate of \$120.00 per hour.

## 6. Cleaning of Equipment

6.1 The Hirer must ensure that the Equipment is returned to Minidig fully cleaned and detailed inside and outside.

6.2 If the Hirer fails to return the Equipment fully cleaned and detailed, Minidig may charge the Hirer a fee for the cost of doing so and the Hirer acknowledges and agrees that the minimum cost will be a fee of \$100.00.

## 7. Insurance

7.1 The Hirer must ensure that all Equipment is covered by insurance at full replacement cost (for new Equipment) with industry approved insurers and on terms, amounts and subject to conditions required by Minidig before the commencement of the hire period;

7.2 The Hirer must have and maintain throughout the hire period all other insurances appropriate to its circumstances and/or required by law, including public liability insurance and worker's compensation insurance.

7.3 The Hirer must provide Minidig with the copies of all relevant insurance policies and details in writing of any claim under such policies upon request from Minidig and without any delay.

7.4 If the Hirer fails to take out any insurance Minidig may do so and the Hirer will immediately pay the cost.

## 8. Loss and Liability

(a) The Hirer is responsible for all risks of or in connection with the use and/or operation of the Equipment, including third party injury and damage to any persons and/or property. The Hirer indemnifies Minidig against all actions, claims and demands howsoever arising from the use and/or operation of the Equipment.

(b) Minidig gives no warranty that the Equipment is fit for any particular purpose and all other conditions, warranties and representations whether expressed, implied or statutory are excluded. The Hirer must make its own inquiries in relation to the suitability, capacity and ability of the Equipment and should not rely on any warranty, representation or the like.

(c) Minidig is not liable for any delay, failure or inability to perform its obligations as a result of any cause beyond Minidig's reasonable control, including fire, flood, material adverse weather conditions, interruption of power supply, war, act of terrorism or civil disturbance, industrial action, trade dispute or blockade, legal or government restrictions or embargo ("Force Majeure").

(d) The Hirer must inspect the Equipment immediately upon its receipt. If the Hirer is not satisfied with the repair or condition of the Equipment the Hirer must give immediate written notice to Minidig specifying all defects or any other objections. Unless the abovementioned notice is given to Minidig by the Hirer it is deemed that the Hirer has inspected the equipment and acknowledged that the Equipment is in good repair and condition.

## 9. Using and Operating the Equipment

9.1 It is the Hirer's responsibility to:

(a) determine whether the Equipment has a valid vehicle license or a valid registration;

(b) ensure that the Equipment operator is fully conversant with and has been properly trained in the use of the Equipment, has all the appropriate permits and licenses and is aware of all safety requirements;

(c) ensure that the Equipment is only used within the limitations of its permits, licences and/or registrations.

9.2 The Hirer must have all licences, permits, authority clearances and registrations that are required in respect of the Equipment, including without limitation the use of the Equipment.

9.3 The Hirer must ensure the compliance with all weight and load restrictions governed by road laws, manufactures, specifications, and vehicle limitations.

9.4 The Hirer must ensure towing vehicles and trailers of either Minidig and/or the Hirer comply with road worthy standards.

9.5 The Equipment must only be operated in accordance with existing laws and regulations, and generally accepted practices.

9.6 The Hirer must ensure that the current operating manuals and current safety instructions are kept on the Equipment at all times.

9.7 The Hirer may use the Equipment only for the purpose for which it is designed and suited and may not modify the Equipment.

9.8 The Hirer must not permit any repairs to be done to the Equipment other than by Minidig, or with Minidig's prior written authority, except repairs carried out in accordance with Cl. 5(3)(e) of this Agreement.

## 10. Return of the Equipment

10.1 The Hirer must return the Equipment with a full tank of fuel. If the Hirer fails to do so, Minidig will charge the Hirer a fee for Minidig to fill the tank that is equal to \$2.00 per litre of fuel needed to fill the tank, with a minimum charge of \$20.

10.2 The Hirer will be charged for a lost, discharged or damaged fire extinguisher at \$100.00 per item.

10.3 The Hirer will be charged for a lost or damaged grease gun at \$120.00 per item.

10.4 The Hirer will be charged the replacement cost of any manuals or safety instructions that are damaged or not returned together with the Equipment to Minidig.

10.5 Signs of excessive brake use on trailers, eg. Brakes left on while towing, will result in additional charges at Minidig's discretion.

## 11. Termination

11.1 Minidig may terminate this agreement or suspend its obligations, at the option of Minidig, where:

(a) the Hirer dies or becomes bankrupt, or a petition of bankruptcy is lodged, or a winding up petition is lodged against it, or it enters into any composition for arrangements with creditors, or a receiver is appointed or a petition for administration is lodged, or execution is issued against the Hirer;

(b) the Hirer fails to pay any Hire Charge or other monies due in full on the due date or breaches any of the other terms and conditions of this agreement;

(c) there is an event of Force Majeure, being an event outside of the reasonable control of any party to this agreement;

(d) the Hirer does not have or is unable to obtain suitable and adequate insurance for the Equipment and personnel.

11.2 Upon the termination of this agreement all sums outstanding, including hire charges for the unexpired residue of the hire term, become immediately due and payable by the Hirer to Minidig.

11.3 Termination of this agreement will not limit any right or entitlement available to Minidig.

11.4 If upon termination of this agreement or expiry of the hire term the Hirer fails to return the Equipment to Minidig, Minidig will be entitled to repossess the Equipment at the expense of the Hirer without giving a notice. The Parties agree that Minidig is authorised to enter the premises where the Equipment is located and arrange for a third party to enter the premises to repossess such equipment without a notice to the Hirer.

11.5 Except as provided by Clause 3.2, the Hirer can cancel or terminate this agreement only upon obtaining the written consent from Minidig. If Minidig provides such written consent then the Hirer agrees to pay Minidig an amount or amounts equal to Minidig's loss of profit for the remaining term of hire and reimbursement of all costs, such amount/s to be advised by Minidig to the Hirer.

## 12. Guarantee

12.1 In consideration of Minidig entering into this agreement with the Hirer at the request of the Guarantor, the Guarantor hereby (and if more than one, jointly and severally) guarantees to Minidig the due and punctual performance by the Hirer of all the terms, covenants, agreements and stipulations contained or implied in this agreement, including the due payment of any Hire Charges and other monies payable under this agreement.

12.2 The Guarantor further agrees to indemnify and keep indemnified Minidig against any losses, costs, expenses and/or damages sustained or incurred by Minidig as a result of any breach of this agreement by the Hirer.

12.3 The guarantee and indemnity contained in the paragraphs 12.1 and 12.2 shall be irrevocable and continuing and cannot be revoked by notice or by any other reason, including, but not limited to the death, bankruptcy, liquidation or mental incapacity of the Guarantor, or any of them or the Hirer.

## 13. Title to the Goods

13.1 Minidig retains the title to the Equipment at all times and the Hirer has rights to use the equipment as a mere bailee only.

13.2 The Hirer does not have any rights to pledge Minidig's credit in connection with the Equipment and agrees not to do so.

13.3 The Hirer agrees not to agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with the personal possession session of or otherwise deal with the equipment and not to conceal or alter the equipment or make any addition or alteration to, or repair of, the equipment.

13.4 If Minidig has a security interest in the Equipment within the meaning of Section 12 of the *Personal Property Securities Act 2009* (Cth) ("the Act"), the Hirer must, if requested to do so, provide to Minidig all information necessary to permit Minidig to register its security interest in the Equipment on the Personal Property Securities Register.

## 14. General

14.1 The Hirer may not assign, subcontract or novate its rights and/or obligations under this Agreement.

14.2 This Agreement may only be varied if the variation is agreed to in writing by Minidig.

14.3 Where the Hirer consists of two or more parties their liability under this Agreement is joint and several.

14.4 These Terms shall be governed and interpreted according to the laws of Victoria and Minidig and the Hirer consent and submit to the jurisdiction of the Courts of Victoria.

14.5 If any provision of this Agreement proves to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason then that the provision is deemed omitted without affecting the legality of the remaining provisions of this Agreement, and the remaining provisions shall continue in full force and effect.

14.6 Any notice under this agreement must be in writing and may be served on by pre-paid post or electronic mail to the address or email address set out in this agreement or such other address as is provided by the parties in writing for this purpose.

14.7 The Hirer has agreed to hire MiniDig Hire's items set out in the hire agreement and in accordance with the MiniDig Hire Terms and Conditions.

14.8 The Hirer's responsibilities are not limited or restricted to any dates written on the hire agreement. Terms and Conditions are applied to all time present and future when the Hirer has any of the MiniDig Hires equipment in their possession.

14.9 The Hirer accepts the equipment entirely in its current state and condition. 14.10 The Hirer accepts full responsibility for the safe and competent operation of the equipment.

14.11 Payment is to be received by Minidig upfront unless other arrangements have been approved by Minidig prior to hiring.

14.12 It is the Hirers responsibility to be aware of all within Minidig Terms and Conditions. Current Terms and Conditions are available upon request.

