

CONDITIONS OF HIRE

1. Definitions

In this Hire Agreement:

- The “Owner” is Howell Davies Welding Pty Ltd (A.B.N. 82 084 835 996).
- The “Hirer” means the person, firm or corporation hiring the plant from the Owner.
- The “Plant” means all plant, equipment, and machinery of whatever nature hired by the Hirer from the Owner.
- The “Hire” means the amount charged by the Owner and payable by the Hirer for the Plant for the Hire Period.
- The “Hire Period” means the period commencing when the Plant is taken from the Owner’s premises by the Hirer and ending when the Plant is returned to the Owner’s premises, or delivered to another place named by the Owner.

2. Terms of Payment

- 2.1 Hire is charged for the Plant for the Hire Period.
- 2.2 Payment in full for Hire and other amounts payable in accordance with these Conditions of Hire is required prior to the plant leaving the premises of the Owner unless an approved account has been established.
- 2.3 The Hirer agrees to pay any:
 - State Government stamp duty
 - Financial institutions duty
 - Cranage charges to load and unload any plant at the Owner’s premises
 - Freight charges; and
 - Lubricant, consumable, coolant and routine maintenance costs incurred during the hire period
- 2.4 Hire is charged at the rate as stated on page 1 of this Agreement, invoiced monthly and is due payable within 30 days of date of invoice.

3. Hire Period

- 3.1 The minimum Hire Period is as stated on page 1 of this Agreement.
- 3.2 The notice period of intent to cease hire is as stated on page 1 of this Agreement. This notice must be received in writing.

4. Late Returns

- 4.1 In the event of the Hirer failing to return the Plant to the Owner’s premises on completion of the Hire Period, the Hirer shall be liable for:
 - 4.2 Hire incurred for the Plant until it is returned to the Owner’s premises; or
 - 4.3 The whole cost of replacement of the Plant if the Plant is not returned to the Owner’s premises within three (3) months of completion of the Hire Period.

5. Inspections

- 5.1 A machine audit is to be jointly conducted/verified prior to commencement of work and upon completion of the hire period. A signed copy of the audit will accompany the unit to site.
- 5.2 Tyres and GET will be measured at the start and end of hire and will be charged on a pro-rata usage basis upon completion of the hire period.

6. Maintenance

- 6.1 Regular maintenance is to be carried out to Howell Davies Welding Pty Ltd standards, with records forwarded to the Maintenance Contact as stated on page 2 of this Agreement.

6.2 Attached (Appendix 1) is a list of major and minor (running) maintenance items. The hirer is responsible for the minor maintenance items and the owner responsible for major maintenance items. Any repairs required to be undertaken as a result of damage or operational or maintenance neglect are to be undertaken by the hirer to Howell Davies Welding Pty Ltd standards or to a jointly agreed condition. Minor maintenance not undertaken within the hire period will be charged to the hirer's account and the hire extended until such time as the repairs are completed or jointly valued and accounted for.

7. Breakdown

7.1 In the event of a major breakdown of any Plant where the Hirer notifies the Owner immediately, the Hirer shall not be charged the Hire for the period from its notification of the breakdown until the Plant is either replaced or repaired by the Owner, unless the breakdown is due to the negligence or misuse on the part of or attributable to the Hirer.

7.2 Where it is impractical or not possible for repairs to be undertaken to the Plant or the Plant to be replaced by the Owner, the Owner shall terminate the Hire Agreement effective from the notification of the breakdown by the Hirer.

7.3 The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer arising out of any breakdown of the Plant.

7.4 Where the plant breakdown is due to the negligence or misuse on the part of or attributable to the Hirer of the Plant, the Owner will continue to charge hire until the Plant has been repaired or replaced at the Hirer's expense, such repairs or replacement being expressly authorised by the Owner.

8. Hirer's Obligations

8.1 The Hirer will:

- (a) Prior to use of the Plant ascertain the suitability of the Plant hired for the required purpose.
- (b) Be responsible for complying with any statutory authorities, State or Federal legislation concerning the use of the Plant hired.
- (c) At his/her own expense, perform minor servicing in accordance with OEM recommendations using OEM parts, clean, fuel, lubricate and maintain the Plant in good and substantial repair and condition.
- (d) Use the Plant in a proper and skilful manner and only for the purpose and in the capacity for which it was designed.
- (e) Use only trained, certified, competent operators (as defined in the Workplace Health & Safety Act 1995 and Workplace Health & Safety Regulations 2008, Codes of Practice – Moving Plant on Construction Sites. Australian Standards 3798 – 1996 Guidelines on Earthworks, Plant Manufacturers Operation & Maintenance Manuals. or other relevant legislation) to operate, service, move or drive the equipment stated in this agreement.
- (f) Clean the Plant thoroughly upon completion of the Hire Period or be charged at the absolute discretion of the Owner a cleaning fee for any cleaning required to be performed by the Owner or its representatives.
- (g) Be responsible for obtaining and fitting the appropriate ropes for any winches hired.
- (h) Be responsible for the safekeeping of the Plant and all fixture during the Hire Period.
- (i) Not operate the Plant after it has become defective, damaged or in a dangerous state.
- (j) Not be entitled to remove the Plant or allow it to be removed from the Site for which it was hired without the prior written permission of the Owner.
- (k) Pay to the Owner all Hire and related charges and other costs as stipulated in accordance with the Owner's Terms of Payment.
- (l) Be liable for any breach of this Hire Agreement committed by the Hirer's servants or agents.

(m) Indemnify the Owner for any loss (including legal costs) incurred in relation to any breach of this Hire Agreement and for any liability arising out of any such breach.

8.2 The Hirer shall allow the Owner to inspect the Plant from time to time during the Hire Period and the Hirer shall permit or procure admission for the Owner's servants, agent and insurers to the premises upon which the Plant is situated for that purpose.

8.3 The Hirer ACKNOWLEDGES that the Owner does not warrant that the Plant is suitable for any particular or general purpose required by the Hirer and in all circumstances the Hirer relies on his own skill and judgement and not that of the Owner in choosing the relevant Plant.

9. Insurance

9.1 The Hirer shall be responsible at its own expense for the safe-keeping and insuring the Plant and all fixtures (e.g. fire extinguisher, radio) to its full replacement value and itself against all risks arising from the presence or operation of the Plant on site prior to the plant being placed upon transport at the Owner's premises.

9.2 The insurable value of the equipment is as stated on page 1 of the agreement.

10. Termination of Hire

10.1 Without prejudice to any other remedies available to the Owner and notwithstanding any Hire Period specified, the Owner may terminate this Hire Agreement:

(a) At any time by giving the Hirer twenty-four (24) hours notice of its intention to so terminate, such termination to be effective as of the expiry of twenty-four (24) hours.

(b) Without notice, if the Hirer:

- Commits any breach of the Hire Agreement;
- Does or permits to be done any act or thing whereby the Owner's rights in or to the Plant may be prejudiced;
- Being an individual, the Hirer dies, becomes permanently incapacitated, commits an act of bankruptcy, has a Trustee appointed or a receiving order made against him; or
- Being a body corporate or legal persons, calls any meeting of its creditors, has a winding up petition presented against it or is wound up, goes into voluntary liquidation, has its business placed under official management, or ceases to carry on business.

10.2 In the event of such termination, the Owner shall be entitled to take possession of the Plant and for this purpose the Hirer irrevocably appoints the Owner as its agent and authorises the Owner to enter on any land or premises of the Hirer upon which the plant is then situated and agrees to indemnify the Owner from and against any liability, claims, damages and expenses arising out of any action taken under this condition.

11. Indemnity

11.1 The Hirer shall be solely responsible for and shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to persons, or loss and damage to property, arising out of the delivery, servicing, storage, possession or use of the Plant during the Hire Period and in respect of all costs and charges in connection there with whether arising under statute or common law. The foregoing indemnity shall be effective whether or not the loss, damage or injury arises from any negligence of the Hirer or Owner or otherwise and without limiting the generality of the foregoing whether or not the Plant was being operated by a servant of the Owner or any other person for whose acts the Owner might be or is held to be responsible in connection with the operation of the Plant.

12. Exclusion of Liability

12.1 The Owner and the Hirer agree that in the event of the Hirer suffering any loss, damage or claim howsoever arising as a result of the hiring of the Plant, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant, the liability of the Owner is

limited to the repair or replacement of the Plant where it is possible or practical to do so, and is not to include economic or consequential damages of any nature whatsoever.

13. Miscellaneous

- 13.1 Certain conditions and warranties may be implied into the Hire Agreement by the Trade Practices Act and State legislation and these conditions are to be read subject to such legislation but no other conditions or warranties shall be implied in these Conditions of Hire.
- 13.2 The person signing the Hire Agreement for and on behalf of the Hirer hereby covenants with the Owner that he or she has the authority of the Hirer to make this Hire Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Hire Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this Hire Agreement, not in fact having such power or authority.
- 13.3 The Contract represents the complete Hire Agreement between the Owner and the Hire with regard to the Hire of the Plant and contains all agreements; warranties, conditions, representations and other terms agreed, made or relied upon by either party in connection with the same.
- 13.4 Termination of the Hire Period shall not affect any of the conditions that are expressed or implied to operate or have effect after termination.
- 13.5 Time is to be of the essence of all obligations of the Hirer in this Hire Agreement.

APPENDIX 1

MAJOR REPAIRS	RUNNING REPAIRS
Engines	
ECM Cylinder Head Overhauls Timing gears Flex plant	Turbo Charger Injectors and lift pump V-belts Sensors Wiring Water pump Seals Fuel pump
Drive Train	
Transmission/gear box Diff centre Wheel ends (planetary gears, axles) Transmission oil cooler Torque converter Clutch and pressure plate	Seals, gaskets and bearings for inboard repairs Drive shafts Centre bearings
Braking	
Centre bearing park brake (501 LHD) Wheel end and reaction friction discs	Seals for inboard repairs Brake pads Brake shoes
Cooling System	
Radiators Intercoolers	Mounts, hoses, caps and clamps
Exhaust System	
Catalytic converters	Exhaust piping, gaskets and clamps
Hydraulic System	
Cylinder replacement Implement valve Steering amplifier valve Pins and bushes	Shock load and relief valves Hydraulic hosing Fittings and O rings Seal kits for cylinders and valves Pumps and motors Spherical bearings in cylinder ends Valves
Bearings	
	Bearings included as part of inboard repairs
Fire suppression	
Replacement	Repairs and servicing
12 and 24 Volt Electrical System	
EMCs Retarders Data loggers	Starter motors, alternators Coils, relays, lights
Ancillary Items	
	Fan motors Accumulator bladders Lights Coils Air-conditioning components Rubber mounts
Tyres	
Rims	All tyres Keepers

MAJOR REPAIRS	RUNNING REPAIRS
Ground Engaging Tools	
	All GET and bucket and tub repairs
Cabin	
	Seats Windows Wiper arms and blades
Auxiliary Equipment	
Lifting man baskets Lifting jib Forks	Basket Lifting hooks, chains, shackles, slings, etc. Locating pins
<p>NOTES:</p> <ol style="list-style-type: none"> 1. Damage is not included in major maintenance provisions 2. Inboard repairs are repairs that are performed without removing the module 3. Ancillary components are items which are parts of minor systems 4. The above notes apply generically to all plant exceeding 3.5 tonne weight 	