



Hire Contract Terms and Conditions

1. Agreement to Hire

Big Chief Hire agrees to hire the Equipment to the **Customer** and the **Customer** agrees to hire the Equipment from Big Chief Hire on the terms and conditions set out in **Agreement to Hire** this Contract. These terms and conditions are the entire agreement between **Big Chief Hire** and the **Customer**.

2. Obligations of Big Chief Hire

Big Chief Hire will:

- 2.1 keep the title and ownership of the equipment throughout the term of the contract;
- 2.2 allow the **Customer** to take possession of the Equipment and use it until it is Due Back;
- 2.3 provide the Equipment to the **Customer** in good working order; and
- 2.4 re-supply or repair the Equipment (at its sole discretion) if it fails to operate properly as a result of a defect in the Equipment other than a defect which is caused or contributed to by the use or mis-use of the Equipment vehicle the Equipment is in the possession of the **Customer** or any other breach of this Contract by the **Customer**.

3. Obligations of the Customer

The **Customer** must:

- 3.1 deliver the Equipment to **Big Chief Hire** when it is Due Back;
- 3.2 return the Equipment to **Big Chief Hire** clean and in good repair subject only to fair wear and tear
- 3.3 operate the Equipment only for its intended use, and in accordance with any manufacturer's Instructions supplied by **Big Chief Hire** or attached to the Equipment;
- 3.4 use the Equipment safely and ensure that all persons operation or erecting the Equipment are lawfully authorized to do so and are suitably instructed in it safe and proper use;
- 3.5 cease to use the Equipment immediately the **Customer** becomes aware of any defect in the Equipment or the Equipment fails to operate properly;
- 3.6 comply with all laws relating to the use and operation of the Equipment including without limitation all Motor Vehicle legislation and occupational health and safety laws;
- 3.7 transport the Equipment safely and ensure that the Equipment is safely secured in or on the Customer's vehicle during transport;
- 3.8 not tamper with or repair the Equipment;
- 3.9 only allow a person to drive a Motor Vehicle if the person:
 - 3.9.1 holds an unrestricted licence to drive that class of Motor Vehicle; and
 - 3.9.2 is not affected by drugs and/or alcohol.
- 3.10 notify **Big Chief Hire** immediately if the **Customer** becomes aware of any defect in the Equipment or the Equipment fails to operate properly.
- 3.11 not sell, lease, rent or hire or dispose of the equipment, grant any further Security Interest In or part with possession of the equipment or any interest in the equipment (or purport or attempt to purport to do such a thing) or permit any lien over the equipment. **However, Big Chief Hire reserves an express right to assign its rights under the contract.**

4. Payments by the Customer to Big Chief Hire

- 4.1 The **Customer** must pay the Hire Charge together with any deposit which **Big Chief Hire** may require before the Commencement or in accordance with agreed trading terms.
- 4.2 In addition to the Hire Charge the **Customer** must immediately pay on demand by **Big Chief Hire**, all other fees and charges which become due and payable by the **Customer** pursuant to the Terms of this Contract. (NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment)
- 4.3 Without limitation, the **Customer** must pay:
 - 4.3.1 the additional Hire Charges if the Equipment is not returned when it is Due Back;
 - 4.3.2 all costs incurred in cleaning the Equipment;
 - 4.3.3 the new list price of any Equipment which is for whatever reason not returned to **Big Chief Hire**;
 - 4.3.4 except as expressly provided for in this Contract the full cost of repairing any damage to the Equipment;
 - 4.3.5 all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the **Customer's** use of the Equipment;
 - 4.3.6 all cost incurred by **Big Chief Hire** in delivering and recovering possession of the Equipment;
 - 4.3.7 the cost of fuel and consumables provided by **Big Chief Hire** and not returned by the **Customer**;
 - 4.3.8 all costs of repairing or replacing tyres;
 - 4.3.9 any other amount for which the **Customer** is liable as set out in this Contract; and
 - 4.3.10 all costs and expenses, (including legal costs and commission payable to a commercial Agent) incurred by **Big Chief Hire** in enforcing this Contract.
- 4.4 Without limiting the ability of **Big Chief Hire** to recover all amounts owing to it, the **Customer** authorizes **Big Chief Hire** to deduct any moneys due from the deposit or charge any amounts owing by the **Customer** to any credit card, details of which are provided to **Big Chief Hire**.

5. Customer Releases Big Chief Hire

- 5.1 The **Customer** agrees to release **Big Chief Hire** to the full extent of the law from any claim, action or demand arising out of or in relation to this Contract of the hire of the Equipment, including without limitation any claim arising as a result of the negligence of **Big Chief Hire** or its servants or agents.
- 5.2 Without limiting any other provision of this Contract, the **Customer** releases **Big Chief Hire** from any damages (including for consequential loss) arising in respect of this Contract or the hiring or the use of the Equipment.
- 5.3 The **Customer** cannot recover from **Big Chief Hire** compensation for any damages (including for consequential loss) arising in respect of this Contract or the hiring or the use of the Equipment.

6. No Representation by Big Chief Hire

- 6.1 The **Customer** acknowledges and agrees that neither **Big Chief Hire** nor its servants or agents make any representation in relation to the suitability of the Equipment for any purpose which the **Customer** wishes to use the Equipment and the **Customer** relies solely on the **Customer's** own assessment that the Equipment is suitable for the **Customer's** purpose.
- 6.2 The **Customer** is solely responsible for ensuring the safe transport of the Equipment and does not rely on representation by **Big Chief Hire** as to how the equipment should be safely transported.

7. Indemnity

The **Customer** hereby agrees to indemnify and keep indemnified **Big Chief Hire** and its servants and agents from any cost or liability arising out of or in any way related to this Contract and without limiting the generality of the foregoing for any loss, claim or liability in respect of any injury and/or damage caused by the Equipment.

8. No Warranties

All warranties and conditions are excluded to the full extent permitted by law. If the Equipment fails to operate properly, the only obligation of **Big Chief Hire** is to repair or re-supply the Equipment (at its sole discretion).

9. Breach of Hire Contract by Customer

If the **Customer** breaches any clause whatsoever of the Contract, or becomes bankrupt, insolvent or ceases business then **Big Chief Hire** shall be entitled to:

- 9.1 terminate this Contract; and /or
- 9.2 repossess the Equipment (and are authorized to enter any premises where the Equipment is located to do so); and/or
- 9.3 sue for recovery of all moneys owing by the **Customer**.

10. PPSA

10.1 If Chapter 3 of the PPSA would otherwise apply to the enforcement of a Security Interest arising out of this Contract, the parties agree that:

10.1.1 to the extent that section 115(1) of the PPSA allows this, that the following provisions of the PPSA will not apply to the enforcement of that security interest:

- (a) Section 95 (notice of removal of accession), to the extent that it requires us to give notice to you;
- (b) Section 96 (when a person with an interest in the whole may retain an accession);
- (c) Section 125 (obligation to dispose of or retain collateral);
- (d) Section 130 (notice of disposal), to the extent that it requires us to give a notice to you;
- (e) Section 132 (3)(d) (contents of statement of account after disposal);
- (f) Section 132 (4) (statement of account if no disposal);
- (g) Section 142 (redemption of collateral); and
- (h) Section 143 (reinstatement of security agreement); and

10.1.2 to the extent that section 115(7) of the PPSA allows this, that the following provisions of the PPSA will not apply to the enforcement of that Security Interest:

- (a) Section 127 (seizure by higher priority parties – notice);
- (b) Sections 129 (2) and (3) (disposal by purchase);
- (c) Section 132 (secured party to give statement of account);
- (d) Section 134 (2) (proposal of secured party to retain collateral);
- (e) Section 135 (notice of retention of collateral);
- (f) Section 136 (3), (4) AND (5) (retaining collateral free of interest); and
- (g) Section 137 (persons entitled to notice may object to proposal).

10.2 Notice or documents required or permitted to be given to **Big Chief Hire** for the purpose of the PPSA must be given in accordance with the PPSA.

10.3 Without limiting any other provision of this Contractor, the **Customer** consents to **Big Chief Hire** effecting a registration on the PPSR (in any manner **Big Chief Hire** considers appropriate) in relation to any Security Interest arising under or in connection with or contemplated by this Contract and the **Customer** agrees to provide all assistance reasonably required to facilitate this.

10.4 The **Customer** waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

10.5 If the **Customer** makes a payment to **Big Chief Hire** at any time whether in connection with this Contract or otherwise **Big Chief Hire** may, at its absolute discretion, apply that amount as it sees fit. Without limiting the foregoing, **Big Chief Hire** may, at its absolute discretion, apply that payment to:

- 10.5.1 first, satisfy obligations that are not secured;
- 10.5.2 second, satisfy obligations that are secured, but not by a PMSI;
- 10.5.3 third, satisfy obligations that are secured by a PMSI for those obligations and using proceeds from the sale of the collateral subject to that PMSI; and
- 10.5.4 fourth, satisfy obligations that are secured by a PMSI using funds or proceeds from any source.

11. Notwithstanding anything else in the Contract, the **Customer** acknowledges and agrees that a **Security Holder** may hold a **Security** Interest in the equipment and/or this Contract (a "**Security**") without the **Customer's** consent. If a **Security** exists the **Customer** further acknowledges and agrees including for the benefit of any **Security Holder**.
- 11.1 the exercise of any rights by the **Security Holder** under a **Security** will not constitute a breach or default under this Contract or otherwise entitle the **Customer** to terminate, rescind or revoke this Contract; and
- 11.2 the **Security Holder** holds **Security**, which may include a purchase money **Security interest** (as defined in the PPSA), in this Contract and/or the equipment; and
- 11.3 by entering into this Contract, **Big Chief Hire** will be in breach of the **Security** unless the **Customer** agrees to the terms set out in this clause; and
- 11.4 the exercise of any rights by the **Security Holder** under the Contract between the **Security Holder** and **Big Chief Hire**, will not constitute a breach or default under this Contract or otherwise entitle the **Customer** to terminate rescind or revoke this Contract; and
- 11.5 the **Customer's** rights in respect of the equipment are expressly subject and subordinated to the rights of the **Security Holder** (whether arising under the **Security** at law or otherwise). Nothing in this Contract will in any way limit, reduce, vary or otherwise qualify the rights of a **Security Holder** under or in connection with any **Security** any other document connected with any **Security** or any equipment and the **Security Holder** will be entitled to exercise all of its rights under or in respect of the **Security** to the same extent as if this Contract had not been entered into.

12. If a Security becomes enforceable:

- (a) **Big Chief Hire** may by notice to the **Customer** terminate this Contract and upon such notice the **customer's** right to possess and use the equipment automatically, ceases and the **Customer** must surrender possession and control of the equipment to the **Security Holder** or **Big Chief Hire** notwithstanding that the **Customer** may not be in breach or default of its obligations under this Contract; and
- (b) The **Security Holder** may enter any premises where any equipment is located to exercise any rights of **Big Chief Hire** or the **Security Holder**, under any Security this Contract or at law, including if the need arises, the right to remove the equipment from the relevant premises, and
- (c) The **Customer** agrees to obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the equipment is located to enable the **Security Holder** and **Big Chief Hire** to inspect or take possession of the Equipment.

13. Confidentiality

The **Customer** and **Big Chief Hire** agree that the terms and conditions of this Contract and any other related document(s) are confidential. The **Customer** and **Big Chief Hire** agree that the content of these documents will not be disclosed except to the extent permitted by this Contract or required by law (other than section 275(1) of the PPSA).

14. Privacy

Big Chief Hire will comply with the National Privacy Principles in all dealings with **Customers**.

15. Interpretation of Words in this Contract

- 15.1 '**Big Chief Hire**' means the Company listed on the front page of this Hire Contract.
- 15.2 '**Commencement**' means the time of delivery of the Equipment to the **Customer**.
- 15.3 '**Due Back**' is the date and time when the **Customer** agrees to return the Equipment.
- 15.4 '**Equipment**' means the equipment and Motor Vehicle (including accessories) hired to the **Customer**.
- 15.5 '**Hire Charge**' means the amounts shown on the Hire Contract payable by the **Customer** to hire the Equipment.
- 15.6 '**Motor Vehicle**' means a truck or utility but not any equipment such as scissor lift, trailer or bobcat.
- 15.7 '**PPSA**' means the Personal Property Securities Act 2009 (with) and any regulations made pursuant to it.
- 15.8 '**PPSR**' means the register established under the PPSA.
- 15.9 '**PMSI**' means a Purchase Money Security Interest as defined in the PPSA.

15.10'Security' means the Security Interests granted by the Owner in favour of **Security Holder** over the Plant and/or the Contract.

15.11 'Security Interest' has the same meaning given to it in the PPSA.

15.12'**Security Holder**' means any third party who holds a Security Interest in the Plant and/or the Contract.

16. Damage Waiver

16.1 Damage Waiver is not insurance but is an agreement by **Big Chief Hire** that the **Customers** liability for damage to the Equipment can be limited in some circumstances only to an amount called the **Damage Waiver Excess**.

16.2 A **Basic Damage Waiver Fee** is included in the Hire Charge, For Motor Vehicles, the **Damage waiver Excess** is shown on the Hire Schedule. For all other Equipment, the **Damage Waiver Excess** is the actual recovery and repair cost of the Equipment, or 10% of the replacement cost of the Equipment, whichever is the lesser amount.

BASIC DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMERS LIABILITY in the following circumstances:

- (a) Where the Equipment is lost or stolen;
- (b) Where the **Customer** has breached any clause of this **Contract**;
- (c) Where the damage is caused by the negligence of the **Customer** or the **Customers** agent;
- (d) Where the damage is caused by vandalism, or in **Big Chief Hire's** reasonable opinion in any way whatsoever other than by the ordinary use of the Equipment by the **Customer**;
- (e) Where the damage is caused by a collision with a bridge, carpark, awning gutter, tree or any other overhead structure or object due to insufficient clearance;
- (f) Where the damage is to or caused by a truck mounted loading device;
- (g) Where the damage is to tyres;
- (h) Where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;
- (i) Where the damage is caused in any way by overloading.
- (j) Where the damage is to glass;

16.3 The Customer may pay an additional **Vehicle Cover Plus Damage and Theft Waiver Fee** in relation to the hire of a Motor Vehicle. The **Damage Waiver Excess** is shown on the Hire Schedule. The **Theft Waiver Excess** is the same amount.

VEHICLE COVER PLUS DAMAGE AND THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMERS LIABILITY in the following circumstances:

- (a) Where, in the case of theft, the **Customer** has failed to properly secure or lock the Motor Vehicle;
- (b) Where, in the case of theft, the **Customer** has failed to submit to **Big Chief Hire** a Police Report on the theft within 7 days of the theft allegedly occurring;
- (c) Where the **Customer** has breached any clause of this **Contract**;
- (d) Where the theft is caused by the negligence of the **Customer** or the **Customers** agent;
- (e) Where the damage is caused by vandalism, or in **Big Chief Hire's** opinion in any way whatsoever other than by the ordinary use of the Motor Vehicle by the **Customer**; or
- (f) Where the damage is:
 - To or caused by a truck mounted loading device;
 - To tyres;
 - To glass;
 - Caused while the Motor Vehicle is being driven on any road that is unsealed or not a public road; or
 - Caused by overloading.

16.4 The Customer may pay an additional Equipment Theft Waiver Fee, but only in relation to the hire of some types of Equipment (other than Motor Vehicle) as determined by Big Chief Hire in its discretion from time to time. The Equipment Theft Waiver Excess will be shown on the Hire Schedule. (The Damage Waiver on such Equipment will still be the same Basic Damage Waiver under clause 16.2)

EQUIPMENT THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMERS LIABILITY FOR THEFT in the following circumstances:

- (a) Where the Customer has failed to keep the Equipment in a securely locked compound;

- (b) Where the Customer has failed to submit to Big Chief Hire a Police Report on the theft within 7 days of the theft allegedly occurring;
- (c) Where the Customer has breached any clause of this Contract; or
- (d) Where the theft is caused by the negligence of the Customer or the Customers agent;

16.5 Where Big Chief Hire determines that one or more of the circumstances in clauses 16.2, 16.3 or 16.4 applies, the relevant Damage or Theft Waiver will NOT apply unless the Customer is able to establish otherwise to the reasonable satisfaction of Big Chief Hire.