

HIRE CONTRACT CONDITIONS

NOTE TO CUSTOMER – These Hire Contract Conditions are subject to change by Kennards without notice from time to time.

1. Interpretation of Words in this Agreement;

Commencement - The latter of the date on the Hire Contract or the time of delivery of the Equipment to the Customer.

Equipment - The equipment, tools, and Motor Vehicles (including accessories) hired to the Customer.

Hire Charge – The amounts shown on the Hire Contract payable by the Customer to hire the Equipment.

Hire Period - The period from Commencement until the Equipment is returned to Kennards.

NOTE TO CUSTOMER: You are responsible for the Equipment until it is back in the possession of Kennards, even after obtaining a Customer Pick Up Number.

Kennards - The Companies listed on the Hire Contract.

Kilometre Charge - The amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Kennards, travelled during the Hire Period.

Motor Vehicle - A truck or utility but not any other equipment such as a scissor lift, trailer or bobcat.

2. Kennards Obligations

Kennards will;

- 2.1 allow the Customer to take and use the Equipment until it is due back;
- 2.2 provide the Equipment to the Customer clean and in good working order;
- 2.3 re-supply or repair the Equipment if it fails to operate properly;
- 2.4 collect the Equipment within 5 days of being requested to do so by the Customer and issuing to the Customer a Customer Pick Up Number.

NOTE TO CUSTOMER: You must return the Equipment when due back unless you obtain a Customer Pick Up Number from Kennards.

3. Payments by the Customer to Kennards

- 3.1 On or before Commencement (or as provided in the Customer's Credit Application with Kennards), the Customer will pay the Hire Charge.
- 3.2 Immediately on request by Kennards, the Customer will pay;
 - (a) the new list price of any Equipment which is for whatever reason not returned to Kennards (**NOTE TO CUSTOMER: Subject only to clauses 4.3 and 4.4 of this Contract, You are responsible for loss or theft of the Equipment**),
 - (b) all costs incurred in cleaning the Equipment,
 - (c) the full cost of repairing any damage to the Equipment, subject only to section 4 of this Contract,
 - (d) stamp duties, Goods and Services Tax, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment,
 - (e) all costs incurred by Kennards in delivering and recovering possession of the Equipment,
 - (f) a late payment fee calculated daily at 10% per month on all amounts owing by the Customer not paid on time,
 - (g) the Kilometre Charge, and any additional Hire Charges,
 - (h) the cost of fuels and consumables provided by Kennards and not returned by the Customer,
 - (i) any expenses and legal costs (including commission payable to a commercial agent) incurred by Kennards in enforcing this Contract,
 - (j) all costs of repairing or replacing tyres, including road service,
 - (k) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

- 3.3 Without limiting the ability of Kennards to recover all amounts owing to it, the Customer authorises Kennards to charge any amounts owing by the Customer to any credit card, details of which are provided to Kennards.

4. Damage Waiver

4.1 Damage Waiver is not insurance, but is an agreement by Kennards that the Customer's liability for damage to the Equipment can be limited **in some circumstances only**, to an amount called the Damage Waiver Excess.

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

BASIC DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances;

- (a) where the Equipment is lost or stolen; or
 - (b) where the Customer has breached any clause of this Contract; or
 - (c) where the damage is caused by the negligence of the Customer or the Customer's agent; or
 - (d) where the damage is caused by vandalism, or in Kennards 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 whatsoever 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.
- 4.3 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 Contract. The Theft Waiver Excess is the same amount.
- "VEHICLE COVER PLUS" DAMAGE AND THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S 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 Kennards 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 damage is caused by vandalism, or in Kennards reasonable opinion in any way whatsoever other than by the ordinary use of the Motor Vehicle by the Customer;
 - (e) where the damage is caused by the negligence of the Customer or the Customer's agent; or
 - (f) where the damage is:
 - to or caused by a truck mounted loading device; or
 - to tyres; or
 - caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road; or
 - caused by overloading.

HIRE CONTRACT CONDITIONS

4.4 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 Vehicles) as determined by Kennards in its discretion from time to time. The Equipment Theft Waiver Excess will be shown on the Hire Contract. (The Damage Waiver on such Equipment will still be the same Basic Damage Waiver under clause 4.2).

EQUIPMENT THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S 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 Kennards 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 Customer's agent.
- 4.5 Where Kennards determines that one or more of the circumstances in clauses 4.2, 4.3 or 4.4 applies, the relevant Damage or Theft Waiver will **NOT** apply unless the Customer is able to establish otherwise to the reasonable satisfaction of Kennards.

5. Obligations of the Customer

The Customer must;

- 5.1 deliver the Equipment to Kennards when it is due back,
- 5.2 return the Equipment to Kennards clean and in good repair,
- 5.3 satisfy itself at Commencement that the Equipment is suitable for its purposes,
- 5.4 operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Kennards or posted on the Equipment,
- 5.5 **indemnify** Kennards for all injury and/or damage caused to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment,
- 5.6 ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the customer will not allege that any such person is not so authorised,
- 5.7 ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed,
- 5.8 conduct a thorough hazard and risk assessment before using the Equipment, and comply with all Occupational Health and Safety laws relating to the Equipment and its operation,
- 5.9 safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Kennards in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer,
- 5.10 operate the Equipment with an adequate motor vehicle and/or power source,
- 5.11 report and provide full details to Kennards of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

The Customer must NOT;

- 5.12 tamper with, damage or repair the Equipment,
- 5.13 lose or part with possession of the Equipment,
- 5.14 rely upon any representation relating to the Equipment or its operation other than those contained in this Contract,
- 5.15 **allow any person to drive a Motor Vehicle if the person;**
 - (a) **only holds a provisional driver's licence, or does**

not hold an unrestricted licence to drive that class of Motor Vehicle, or

(b) is affected by drugs and/or alcohol.

- 5.16 exceed the recommended or legal load and capacity limits of the Equipment,
- 5.17 use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

6. Customer not to Claim Damages

The Customer cannot recover from Kennards compensation for any damages (including for consequential loss) arising in respect of this Contract or the hiring or the use of the Equipment.

7. Breach of Hire Agreement by Customer

If the Customer breaches any clause whatsoever of this Contract, or becomes bankrupt, insolvent or ceases business, then;

- 7.1 Kennards shall be entitled to
 - (a) terminate this Contract, and/or
 - (b) sue for recovery of all monies owing by the Customer, and/or
 - (c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so); and
- 7.2 Any Damage and/or Theft Waiver referred to in Section 4 is immediately invalidated.

8. No Warranties

All warranties and conditions are excluded to the full extent permitted by law and Kennards' only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Equipment again or to the repair of the Equipment.

9. Disputes

- 9.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Kennards in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.
- 9.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Kennards), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

10. Privacy

Kennards will comply with the National Privacy Principles in all dealings with Customers. A copy of the Kennards Privacy Statement is available upon request or by visiting www.kennards.com.au.

11. Governing Law

This Hire Contract is a payment claim under the Building and Construction Industry Security of Payment Act 1999 NSW, the Building and Construction Industry Security of Payment Act 2002 VIC, the Building and Construction Industry Payments Act 2004 QLD, the Building and Construction Industry Security of Payment Act 2009 SA, the Construction Contracts Act 2004 WA, the Building and Construction Industry (Security of Payment) Act 2009 ACT, the Building and Construction Industry Security of Payment Act 2009 TAS, and/or the Construction Contracts (Security of Payments) Act 2009 NT.

Except where Kennards in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause, Kennards and the Customer agree that this Contract is governed by the law of the state of New South Wales, and the parties submit to the jurisdiction of the courts of that State.

Effective June 2010 – V4