

1. INTRODUCTION

1.1 For the purposes of this Agreement, "Eagle Alliance" is Eagle Alliance Earthmoving Pty Ltd A.C.N. 141 206 591 A.B.N. 41 149 364 727 and its successors and assigns or any person acting on behalf of and with the authority of Eagle Alliance; "the Supplier" is the earthmoving plant owner for whom Eagle Alliance is acting as the authorised agent; "the Hirer" is the entity listed on the Dry Hire Agreement as the Hirer receiving and using the Supplier's Plant on a dry hire basis; "Plant" means all plant hired or otherwise supplied to the Hirer by Eagle Alliance on behalf of the Supplier, including but not limited to machinery and associated attachments and accessories; and "Site" means the place where the Hirer will be operating the Plant.

1.2 Eagle Alliance's Dry Hire Agreement is to be read in conjunction with these Terms and Conditions.

2. AGENT ONLY

Eagle Alliance acts as an agent for the Supplier and has entered into a contract with the Hirer by way of a Dry Hire Agreement. Eagle Alliance has every confidence in the Supplier, but as an agent only, the Hirer will indemnify Eagle Alliance for delays, defaults or claims of any description.

3. HIRE PERIODS AND CHARGES

3.1 Hire Periods

3.1.1 The hire rate is based upon the Plant being hired for a minimum period of no less than one (1) day.

3.1.2 The hire shall commence from the time and date the Plant arrives at the Hirer's nominated Site.

3.1.3 Daily hire is considered no more than eight (8) machine hours per day,

3.1.4 Weekly hire is considered not more than forty (40) machine hours.

3.1.5 Extended operating times must be authorised by Eagle Alliance in writing (applicable charges on application).

3.1.6 Machine hours and days worked for long term hire must be emailed to Eagle Alliance every Monday morning for the previous week's work.

3.2 Hire Charges

3.2.1 The Hirer shall pay Eagle Alliance as per the credit account terms:

- a) the rate/s specified in Eagle Alliance's price list or Dry Hire Agreement for the full hire period that the Plant is under the Hirer's control; and
- b) where the Hirer is responsible for the loss or damage to the Plant the whole or part of the cost of replacement or repair of the Plant which will be added to the invoice total.

3.2.2 Long term hire charges will be billed on a weekly basis as defined in Eagle Alliance's Dry Hire Agreement.

4. DELIVERY

4.1 Float/Delivery Charges

The Hirer will indemnify Eagle Alliance from any float/delivery charges when delivery is made to the Hirer's Site or a nominated third party Site as per the Dry Hire Agreement.

4.2 Site Access

The Hirer shall provide clear and uninterrupted access to the Site. The Hirer shall indemnify Eagle Alliance from extra costs, losses and expenses incurred should the Supplier experience delivery difficulties caused by the Hirer.

4.3 Overtime Rates

The Hirer shall pay Eagle Alliance a surcharge to allow for overtime costs (rates on application) should the Supplier be required to make delivery at night, weekends, statutory or gazetted public holidays.

5. PAYMENT

5.1 Payment Terms

Unless otherwise agreed in writing, payment terms are thirty (30) days from end of month or for long term hire as specified in clause 3.2.2.

5.2 Credit Card Payments

Eagle Alliance will accept payment by MasterCard, Visa and Amex. MasterCard and Visa attract a 1% (one percent) surcharge; Amex attracts a 3% (three percent) surcharge.

6. DAMAGES

6.1 Recoverable Costs

The Hirer must pay to Eagle Alliance any costs, expenses or losses incurred by Eagle Alliance as a result of the Hirer's failure to pay to Eagle Alliance all sums outstanding as owed by the Hirer to Eagle Alliance including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

6.2 Interest

Eagle Alliance may charge interest at 2% (two percent) above the commercial lending rate of the Westpac Banking Corporation calculated on a daily basis on amounts not paid within the time specified in Eagle Alliance's tax invoice.

7. THE HIRER'S RESPONSIBILITIES

7.1 Location of Plant

The Hirer will keep the Plant at the agreed Site and will notify Eagle Alliance of any change in location. The Plant must not leave the State of Queensland without the written approval of Eagle Alliance whose consent may be arbitrarily withheld.

7.2 Plant Operator

The Hirer shall at all times exercise due care that the Plant is not driven or operated by any person not duly authorised under all relevant laws, by-laws and regulations to be driving or operating such Plant for the purpose for which it is designed to be used. The Hirer shall take all reasonable precautions to prevent bodily injury or damage to property and will comply with all statutory obligations and by-laws and regulations imposed by any Public Authority for the safety of persons and property.

7.3 Pre Start Checks

The Hirer must familiarise with the manufacturer's recommendations for the operation of the Plant. The Hirer is responsible for carrying out daily pre start checks as per the manufacturer's recommendations. Any faults must be rectified by a competent person prior to use and the Plant must be operated in accordance with the manufacturer's specifications.

7.4 Fuel and Lubricants

The Hirer must use oils and engine fuels that are specified in the manufacturer's recommendations. The Plant fuel tank will be filled at the commencement of the hire period and must be returned with a full tank, otherwise a refueling fee will apply.

7.5 Fire Ants

If the Hirer is working in a Fire Ant restricted area, the Hirer is responsible for coordinating a Fire Ant Permit from the Department of Primary Industries (DPI) prior to the Plant being dispatched. Regardless of whether soil is being taken off Site or not, soil disturbance of more than 1 cubic metre, must be inspected and tested. Details can be obtained from the Department of Primary Industries' website: www.dpi.qld.gov.au or by calling 13 25 23. reinstating the Plant to a clean and serviceable condition will be paid for by the Hirer within seven (7) days of an invoice issued by Eagle Alliance.

7.6 Condition on Delivery and Return

The Plant shall be returned in a clean and serviceable condition and similar to the condition in which it was supplied. On completion of the hire and at the time of return of the Plant, there shall be an inspection to ensure the Plant is returned in a good, clean and serviceable condition. If, in the reasonable opinion of Eagle Alliance, the Plant is not returned in such condition, then the cost of reinstating the Plant to a clean and serviceable condition will be paid for by the Hirer within seven (7) days of an invoice issued by Eagle Alliance.

7.7 Weed and Seed

If the Hirer has requested Plant to be of a weed and seed free standard, then the Plant must be returned to the same standard at the end of the hire.

7.8 Theft and Damage Insurance

The insurance fee may be waived should the Hirer provide a certificate of currency supporting the appropriate insurance cover before the Plant is delivered. In the absence of documentary evidence, Eagle Alliance will apply an insurance fee of ten (10) percent of the value of the hire for the necessary insurance cover.

7.9 On-Hire of Plant

The Hirer shall not on-hire the Plant without the express written consent from Eagle Alliance.

8. PRIVACY

8.1 The Hirer hereby authorises Eagle Alliance to collect, retain, record, use and disclose commercial and/or consumer information about the Hirer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by Eagle Alliance, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

8.2 Eagle Alliance may give information about the Hirer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Hirer's credit file. This information may be given before, during or after the provision of credit to the Hirer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

9. LIABILITY

9.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Hirer in relation to the provision of the Plant which cannot be excluded, restricted or modified by this agreement ("Non-excludable Rights").

9.2 Disclaimer of Liability

Eagle Alliance disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Hirer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights.

To the extent permitted by law, the liability of Eagle Alliance for a breach of a Non-Excludable Right is limited, at Eagle Alliance's option, to the supplying of the Plant again or payment of the cost of having the Plant supplied again.

9.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, Eagle Alliance is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Hirer for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to supply the Plant.

9.4 Force Majeure

Eagle Alliance will have no liability to the Hirer in relation to any loss, damage or expense caused by the Supplier's failure to supply the Plant as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Supplier's normal suppliers to supply necessary parts or any other matter beyond the Supplier's control.

10. SECURITY AND CHARGE

The Hirer hereby charges all property, both equitable and legal, present or future of the Hirer in respect of any monies that may be owing by the Hirer to Eagle Alliance under these Terms and Conditions or otherwise and hereby authorises Eagle Alliance or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Hirer at any time or to register this charge over assets of the Hirer with the Australian Securities and Investments Commission.

11. ARBITRATION AND MEDIATION

Any dispute or difference between the Hirer and the Eagle Alliance may be notified by a party to the other party and the parties shall firstly meet to negotiate, in good faith, resolution of the dispute and secondly, if negotiation fails to achieve a resolution of the dispute within five (5) working days of the notification of the dispute, attend mediation, administered in accordance with procedures as set out by the Institute of Arbitrators and Mediators Australia, provided that this provision shall not prevent the Eagle Alliance from instituting legal action at any time to recover monies owing by the Hirer to Eagle Alliance.

12. TERMINATION

12.1 Eagle Alliance and the Hirer may give two (2) days written notice that they wish to terminate the hire agreement.

12.2 The Hirer shall indemnify Eagle Alliance from any cost, losses or expenses incurred up until the termination date.

13. GENERAL MATTERS

13.1 Suitability

Eagle Alliance makes no warranty nor expresses an opinion as to the capability or usability of the Plant for the Hirer's purposes. The Hirer shall be responsible to inspect the Plant at the commencement of the hire and to satisfy that the Plant is clean and serviceable and is satisfactory and capable for the Hirer's use.

13.2 Non Waiver

Failure by Eagle Alliance to enforce or delay in enforcing any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision unless acknowledged by in writing.

13.3 Amendments to Terms and Conditions

Eagle Alliance reserves the right to vary these Terms and Conditions at any time with notice in writing. Any subsequent hire will represent the Hirer's agreement to the Terms and Conditions as amended.

13.4 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down, then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions.

13.5 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of the State of Queensland and the laws of the Commonwealth of Australia which are in force in Queensland. All disputes arising between the Hirer and Eagle Alliance will be submitted to a court of competent jurisdiction in Queensland selected by Eagle alliance and such court shall possess territorial jurisdiction to hear and determine such proceedings.