





## Plant Hire Agreement

### RESPONSIBILITIES CHECK LIST

Item	Plant and Equipment Responsibilities	Responsible for Coordination and Provision of		Responsible for Payment of	
		Gemhawk	Customer	Gemhawk	Customer
1	Mobilization		✓		✓
2	Craneage and onsite assembly		✓		✓
3	Demobilisation and disassembly		✓		✓
4	Pre-mobilisation & de-mobilisation inspection*	✓	✓	✓	✓
5	Tyre pre-hire inspection*	✓	✓	✓	✓
6	Pre-start inspections (Daily)		✓		✓
7	Personnel verification of competency		✓		✓
8	Scheduled servicing (every 250 hours)	✓		✓	
9	Daily servicing (fluid top ups, air filters, greasing to OEM)	✓ wet hire	✓ Dry hire	✓ wet hire	✓ Dry hire
10	Minor repairs (up to \$1500 in parts & labour ....each occasion)	✓ wet hire	✓ Dry hire	✓ wet hire	✓ Dry hire
11	Major repairs (greater than \$1500 in parts & labour.... each occasion)	✓		✓	
12	ADDITIONAL Modifications for site compliance (outside the minimum criteria set out by Customer prior to delivery)	✓			✓
13	Tyre damage (refer to terms and conditions)	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
14	Tyre maintenance (inc. weekly pressure & safety checks)	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
15	Body/blade/ripper/tyre damage (exceeding normal wear and tear)	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
16	Cleaning for Servicing and at Completion of hire	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
17	Glass/mirror damage and replacement	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
18	Fuels (unless otherwise agreed)		✓		✓
19	Lubricants	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
20	Insurances (for Plant Comprehensive cover)	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
21	Payment of associated taxes* & duties*	✓	✓	✓	✓
22	Operational risk assessments*	✓	✓	✓	✓
23	SWMS* (Safe Work Method Statements)	✓	✓	✓	✓
24	OHS Registers* and Safety Data Information*	✓	✓	✓	✓
25	Certifications / Inspections (Fire System/Pressure Vessel Systems etc.) In excess of the minimum required by Aust. Standards	✓			✓
26	Personnel medical assessment (requested by the Customer for Gemhawk personnel – prior to commencement on site)		✓		✓
27	PPE (Personal Protective Equipment)	✓ Wet hire	✓ Dry hire	✓ Wet hire	✓ Dry hire
28	Site Inductions		✓		✓
29	Personnel site facilities		✓		✓
30	G.E.T (Cutting Edges, Ripper Points etc..)		✓		✓

\* Each Party shall be responsible for their own respective costs and resource's.

# Plant Hire Agreement

## Terms and Conditions

### 1. Site Safety

Gemhawk Services shall ensure that Plant and Equipment complies with all applicable legislation, industry standards and OH&S requirements.

The Customer / Hirer shall:

- a) Comply with all applicable legislation and industry standards and shall carry out the Works in accordance with the Site OHS&E requirements,
- b) Carry out the Works safely, including ensuring that all persons undertaking Works are competent to do so under all applicable legislation and regulations,
- c) Ensure all operators attend a Project Induction prior to commencing work on site,
- d) Ensure all operators of Gemhawk Plant and or Equipment attend safety tool box talk conducted by the Hirer on a minimum weekly basis, and keep complete and comprehensive records of the same, providing a complete copy of the records to Gemhawk upon request.
- e) Report immediately to Gemhawk Services all lost time injuries, near miss incidents and dangerous occurrences involving the hired Plant and or Equipment. All Accidents & incidents involving Gemhawk Plant and or Equipment will be investigated by Gemhawk Services in conjunction with Hirers' authorised representative.
- f) Ensure the safe keeping of the Plant and direct the Operators to work only within the OEM specifications and the Operators competency.
- g) Identify all risks on the works on the work site and ensure appropriate controls are in place to eliminate or mitigate risks as low as reasonably practicable.
- h) Ensure the communication of all OH&S policies, procedures and requirements during the term of the agreement.
- i) When Dry Hire Provide to the Gemhawk Services office on a minimum weekly basis copies of daily pre-start inspections and weekly tyre pressure and condition reports.
- j) Where any additional certification/testing of equipment, is required above and beyond the Australian Standards Guidelines the cost of additional certification/testing will be the responsibility of the hirer.
- k) Where modifications are required to the Plant and or Equipment at the hirer's request, the hirer will be responsible for these costs and additional costs of restoring Plant and or Equipment to pre-hire condition.
- l) Where Plant and or Equipment is supplied with GPS control, set up costs shall be the responsibility of the hirer.
- m) Equipment is supplied full of all consumables, if Plant and or Equipment is not returned full of all consumables at completion of hire the Customer will be charged for any top ups at market rates plus 14.5%.

### 2. Hire Charges and Rates

The Hirer shall pay the hire charges for the Hire Period at the rate stipulated in this agreement subject to any entitlement of Gemhawk Services under this agreement.

The Hirer shall be responsible for any charges or costs incurred by Gemhawk Services resulting from downtimes due to any default on the part of the Hirer. Work hour calculations will be based upon the primary GPS Tracking Device. Secondary SMU recording devices (Service Meters, daily logs etc.) will only be used for reference purposes or failure of the primary recording system.

All prices exclude GST

All prices, unless otherwise specifically stated exclude G.E.T (Ground Engaging Tools)

Labour rates are based on a minimum 8 hours - Monday – Friday between the hours of 0700 – 1530 (normal hours)

Labour costs outside the above mentioned (normal) hours may incur penalty rate charges.

Weekends and Public Holiday labour rates are based on a minimum 4 hours.

GPS rates (where applicable) are based on a minimum weekly rate.

Where Plant hire rates are provided inclusive of fuel, the fuel rates are based upon the published terminal gate price (TGP) plus delivery and distribution costs as at the date of contract execution.

Fuel rates are subject to rise and fall based on the TGP weekly average exceeding plus or minus 5%.

#### Dry Hire

Dry hire hourly rates are based on 5 days per week and 8 hours per day. Dry hire daily rates are based on 5 days per week.

Stand down periods due to inclement weather; requires notice in writing prior to 10am on the day of stand down with a receipted response notifying of the Plant and or Equipment stand down. Please Note: charges shall apply in accordance with the agreement should the GPS tracking device register Plant and or Equipment usage during notified stand down periods.

**All written notices to Gemhawk must be emailed to [andrew@gemhawk.com.au](mailto:andrew@gemhawk.com.au) with a receipted response.**

#### Stand Down (for reasons excluding inclement weather)

If an Operator is in attendance on site and stood down for reasons outside the control of Gemhawk and the Operator and the Operator has been working less than four hours, minimum four hours charges for both Operator and Plant will apply.

If an Operator is on site and stood down for reasons outside the control of Gemhawk and the Operator has been working on site for greater than four hours, but less than eight hours, minimum eight hours charges will apply for both the Operator and the Plant.

# Plant Hire Agreement

## Stand Down due to inclement weather

Where Gemhawk Services provide Plant with an Operator and the Customer is forced to stand down the Operator and Plant due to inclement weather; a minimum four hours' notice is required. If no notice or notice less than 4 hours is advised to the Operator and Gemhawk Services, four hours of the Operators full labour rate will be charged to the Customer.

If however four hours' notice or greater is advised to both the Operator and Gemhawk Services, No charges for either the Plant or the Operator will apply.

All written notices to Gemhawk must be emailed to [andrew@gemhawk.com.au](mailto:andrew@gemhawk.com.au) with a receipted response.

## 3. Transportation (mobilisation and demobilisation)

The Hirer shall (unless otherwise agreed in writing) be responsible for all mobilisation and demobilisation transportation costs for the Plant including but not limited to, unloading costs, Insurance, Storage, carriage, towage, salvage and demurrage costs including all damage or loss, direct and consequential however caused while the Plant is in transit and during the entire period of this Agreement.

## 4. Repairs and Operation Costs

Where the Plant and or Equipment is "dry hired" The Hirer shall maintain the Plant in good, safe and operating condition and shall bear the cost thereof including protection against freezing, corrosion and all other exposures. All equipment, accessories and attachments not listed herein or necessarily included as part of the Plant or necessary for the Hirer to perform this Agreement shall be furnished by the Hirer at its own expense or provided by Gemhawk Services Pty Ltd at an additional charge.

## 5. Damage to Plant and or Equipment

If the Plant is damaged or made inoperable in any way, including as a result of normal wear and tear, the Hirer shall immediately notify Gemhawk Services of its occurrence, specifying the extent and nature of the damage. The Hirer shall pay for any damage caused by neglect, misuse abuse or accident except that it was caused by negligence of Gemhawk Services' Operators.

## 6. Tyre / Track Wear and or Damage

A detailed tyre / track report will be submitted prior to commencement of hire by a Gemhawk Services appointed specialist. This report forms part of this agreement and will allow a professional assessment of tyre / track wear on completion of hire. Assessed excessive tyre / track wear/damage on return of Plant and or Equipment at completion of hire will be charged to the Customer's account. Acceptances of Gemhawk Services Tyre / Track professional service provider reports are a condition of this agreement.

When Dry hired, damage to tyres requiring major repairs, MUST be replaced with an with an equivalent tyre which will be subject to prior written approval from Gemhawk Services or an authorised delegate as appointed by Gemhawk Services. Major repairs to tyres (particularly, but not limited to side wall damage) are not an acceptable resolution to major tyre damage due to the high failure rate of such repairs.

Plant and or Equipment must be operated within OEM load, grade, speed and braking specifications. Tyres must be operated within tyre manufacturer pressure and TKPH rating.

## 7. Indemnity

The Hirer shall be liable for, indemnify and keep indemnified Gemhawk Services against any loss damage, expense or other costs arising out of any liability, claim, demand or proceedings in respect of any injury or damage to any person or personal property, including the Plant, or arising under any statute, regulation or ordinance or at common law or in equity arising in any manner out of the operation or use of the Plant during the period of hire.

## 8. Insurance

Where Plant and or Equipment is Dry Hired, the Hirer shall provide and maintain insurance (minimum \$20,000,000) to cover its liabilities throughout the life of the Agreement and such insurance, where permitted by law, shall include Gemhawk as a joint insured and when requested the Hirer shall furnish evidence to Gemhawk that such insurances have been affected and the premium paid. The provision of this evidence does not relieve the Hirer of its obligations. The Plant and or Equipment will be comprehensively insured by the Hirer to the agreed value.

## 9. Termination

If the Hirer is in breach of any term of this Agreement, commits a negligent act or acts in any way to endanger any property or person, Gemhawk Services shall be entitled to immediately terminate this Agreement, whereupon Gemhawk Services, without, limiting any other of its entitlements under this Agreement or at law, shall be entitled to recover damages from the Hirer. The Hirer shall have no recourse or claim against Gemhawk Services for termination pursuant to this Clause.

## 10. Default

Without prejudice to any other rights or remedies of Gemhawk Services, If the Hirer;

- a) Shall become bankrupt, commits an act of bankruptcy, enters into a scheme of arrangements with its creditors, is placed in official management, has a receiver appointed, has an application to wind it up presented to the Supreme Court (including any application to which the Hirer alleges a bona fide dispute exists), has a liquidator appointed, or has a provisional liquidator appointed, or is deemed to be insolvent as defined in the Cooperation's Law, or
- b) Wholly or partly suspends this Agreement before completion, or
- c) Fails to proceed with this Agreement in a reasonable, diligent or competent manner, or
- d) Commits any breach hereof, then Gemhawk Services may determine to terminate this Agreement forthwith by notice in writing to the Hirer. Without prejudice to any other rights or remedies of Gemhawk Services, Gemhawk Services shall be entitled to reimbursement of any loss or expense incurred from the Hirer as a result of determining this Agreement pursuant to this Clause and such amount shall be deemed to be a debt due and owing by the Hirer.

## Plant Hire Agreement

### 11. Warranties

Gemhawk Services warrants that it has the right to hire the Plant to the Hirer and that the Plant complies with the requirements of this Agreement. This Agreement contains the terms on which the Plant is to be provided and the Hirer acknowledges the terms or conditions on Gemhawk Services' quotation and Plant Hire Agreement.

### 12. Taxes

All taxes incurred as a consequence of this Agreement or arising out of the use or possession of the Plant shall be paid for by the Hirer.

### 13. Designation of Plant and Removal from Site.

The Hirer shall not, in absence of Owner's prior written consent, remove the Plant from the Site nor shall the Hirer relinquish possession, custody or control of the Plant to anyone other than those designated by Gemhawk Services Pty Ltd in writing.

The Hirer acknowledges the Plant and Equipment in all circumstances is owned by Gemhawk Services. Gemhawk Services retain title to the Plant and Equipment (even if the hirer goes into liquidation or becomes bankrupt during the hire period). The Hirer's rights to use the Plant and Equipment are as Bailee only.

In no circumstances will the Plant and or Equipment be deemed to be a fixture.

The Hirer is not entitled, nor permitted to offer, sell, assign, sublet, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Plant and or Equipment in any way.

### 14. PPS Law

This clause applies to the extent that this Agreement provides for a "security interest" for the purposes of the Personal Property Securities ACT 2009 (Cth) ("PPS Law"). Reference to PPS Law in this agreement includes references to amended, replacement and successor provisions or legislation.

If Gemhawk Services does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Plant and or Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in the document or any Hire schedule be longer than:

- a) 90 days in the case of Plant and or Equipment which may or must be described by serial number in a PPS Law registration; or
- b) A year in any other case.

Gemhawk Services may register its security interest. The Hirer must do anything (such as obtaining consents and signing documents) which Gemhawk Services requires for the purposes of:

- a) Ensuring that Gemhawk Services security interest is enforceable, perfected and otherwise effective under the PPS Law;
- b) Enabling Gemhawk Services to gain first priority (or any other priority agreed to by Gemhawk Services in writing) for its security interest; and
- c) Enabling Gemhawk Services to exercise rights in connection with the security interest.

The rights of Gemhawk Services under this document are in addition to and not in substitution for Gemhawk Services rights under other law (including the PPS Law) and Gemhawk Services may choose whether to exercise rights under this document, and / or under such other law, as it sees fit. To avoid any doubt about it Gemhawk Services security interest will attach to proceeds.

To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Gemhawk Services to give a notice to the Customer), section 96 (retention of accession); section 121 (4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Gemhawk Services to give notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral) and section 143 (re-instatement of security agreement).

The following provisions of the PPS Law section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights of Gemhawk Services. Customer agrees that in addition to those rights, Gemhawk Services shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Gemhawk Services may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or hire.

The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

Gemhawk Services and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Gemhawk Services the benefit of section 275(6)(a) and Gemhawk Services shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

The Customer must not dispose or purport to dispose of or create or to purport to create or permit to be created any "security interest" (as defined in PPS Law) in the Plant and Equipment other than with the express written consent of Gemhawk Services.

## Plant Hire Agreement

The Customer must not lease, hire, bail, or give possession (sub-hire) of the Plant and Equipment to anyone else unless Gemhawk Services (in its absolute discretion).

In the event that Gemhawk Services approve the request for sub-hire, the Customer must ensure that Gemhawk Services are provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Plant and Equipment.

The Customer must take all steps including registration under the PPS Law as may be required to:

- a) Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- b) Enabling the Customer to gain (subject always to the rights of Gemhawk Services) first priority (or any other priority agreed to by Gemhawk Services in writing) for the security interest; and
- c) Enabling Gemhawk Services and the Customer to exercise their respective rights in connection with the security interest.

To assure performance of its obligations under this agreement, the Customer hereby gives Gemhawk Services an irrevocable power of attorney to do anything Gemhawk Services considers the Customer should do under this agreement. Gemhawk Services may recover from the Customer the cost of doing anything under this clause "14", including registration fees.

### 15. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, administrators, executors, trustees and permitted assigns.

### 16. Form of Agreement.

This Agreement is a complete and exclusive statement of all the terms of the agreement between the parties and supersedes all previous communications or representations either oral or written between the parties and this Agreement may only be modified in writing signed by both parties.

### 17. Arbitration

In the event of any disputes arising hereunder or in any way in connection with the Works, whether before or after the completion or determination hereof, then either party shall give to the other notice in writing by certified mail of such dispute. At the expiry of seven days from the date of receipt of such notice by Gemhawk Services or the Hirer as the case may be such dispute (unless settled) shall be and is hereby referred to the arbitration of the President of the institute or Arbitrators or its nominee or in the event that either is unable or unwilling to act, by an arbitrator appointed in accordance with the provisions of the appropriate Act of the State or the appropriate Law of the Territory governing the Contract. This Agreement and the rights and obligations of the Parties hereto shall be construed in accordance with and governed by the Laws of the State or Territory where the Site is situated. The Parties agree that any legal action or proceedings with respect to its obligations hereunder shall be brought in the said State or Territory and each of the Parties hereby submits to such jurisdiction.

### 18. Payment.

Hire and associated costs are payable in advance unless the Hirer has an established credit facility with Gemhawk Services Pty Ltd.

Any quantity based discounts offered and agreed to by Gemhawk Services will become valid upon reaching the agreed minimum hours and / or Plant quantities or combinations of minimum hours and Plant quantities as agreed and nominated in the quotation and Plant Hire Agreement.

Unless otherwise agreed in writing by Gemhawk Services, Gemhawk Services shall invoice the full rate (non-discounted rate) each month and upon reaching any nominated minimum hours and / or Plant quantities or combinations of minimum hours and Plant quantities, Gemhawk shall rebate by credit note, refund or deduction on "next" future invoices any such agreed discounts. If the discount is applied by way of deduction on future invoices, Gemhawk shall provide a detailed summary with the invoice detailing the original rate, minimum required hours / quantity of Plant agreed to and the discount rate applied along with the revised invoice amount.

Payment terms 30 days from date of invoice.

All prices exclude GST.

### 19. Customer Acceptance of these terms and conditions of Hire

Purchase orders, written requests to proceed, use of Plant and / or continuation of Plant use on an existing site following the provision of a quotation accompanied by these terms and conditions of Plant Hire, all constitute unequivocal acceptance of these terms and conditions of Hire.

The Hirer agrees unequivocally to the acceptance of the prices and associated terms and conditions for hire of Plant and / or Equipment as stipulated herein. Any deviation from these terms and conditions will ONLY become valid upon written and signed acceptance of any such deviations, changes or omissions agreed to in writing by an Authorised Director of Gemhawk Services.