

# Accessmac Conditions of Hire

## 1. Definitions

In these conditions:

- 1.1 "Contract" has the meaning set out in clause 2.2.
- 1.2 "Hirer" is the person entering into this Contract and where that person enters into this Contract on behalf of another entity the expression includes such entity. Where the context requires, this expression also extends to the agents, employees and invitees of the Hirer and those claiming under or authorised by the Hirer.
- 1.3 "Owner" means Supermac Holdings Limited trading under the name "Accessmac", and includes its successors and assigns.
- 1.4 "Plant" means all equipment including tools, accessories and parts supplied to the Hirer, as described in further detail on the cover sheet to these terms.
- 1.5 "Trade Customers" are only those Hirers who the Owner has agreed are currently entitled to trade credit terms. "Trade Customer" status may be removed without notice at the discretion of the Owner.

## 2. Acceptance

- 2.1 All orders are subject to acceptance by the Owner. Any order will only be on these terms.
- 2.2 These terms, the cover sheet to these terms, any orders or other documents or statements accepted by the Owner describing the Plant, and the provisions of any credit application, form the agreement of hire between the Owner and the Hirer ("Contract"). By signing the cover sheet to these terms (or if no cover sheet is used, by placing an order), the Hirer confirms its acceptance of the Contract.

## 3. Hire Period

- 3.1 Subject to clause 3.4, hiring charges shall commence from the time that the Plant is collected by the Hirer from the Owner's premises (or in the event they are delivered by the Owner, from the date of delivery) and shall continue until the return of the Plant to the Owner's premises or until the expiry of the minimum period of hire, whichever occurs latest.
- 3.2 The minimum period of hire (except only in those cases where a specific different written agreement is reached between the parties) shall be a period of one day.
- 3.3 If the Plant is not returned to the Owner's premises within the agreed hire period then additional hiring charges will be payable.
- 3.4 Should the Owner agree with the Hirer to deliver and collect the Plant, hire charges shall commence from the time the Plant leaves the Owner's premises until the Owner is notified by the Hirer that the Plant is available for collection. The notification shall be given by the Hirer in time for the Plant to be picked up and returned to the Owner's premises by the required return time on the day the hire ceases. The required return times are no later than 5:00pm weekdays. In the event insufficient notice is given the Hirer may (at the Owner's unfettered discretion) be charged an extra days hire.
- 3.5 In the event of Plant breakdown, provided that the Hirer notifies the Owner immediately, hiring charges will not be payable during the time the Plant is not working unless the breakdown is due to negligence or misuse on the part of the Hirer. The Hirer is not absolved from the requirements to safeguard the Plant by giving such notification. In the event of a breakdown the Hirer shall not repair or attempt to repair the Plant. The Owner is not liable for any loss suffered by the Hirer or liability incurred by the Hirer as a result of the breakdown of the Plant.

## 4. Hire Rates and Payment

- 4.1 The Plant is hired at the rate(s), and subject to the additional costs, indicated on the cover sheet or, if no rate is indicated, at the rates and/or costs specified by the Owner. Unless there is a written agreement to the contrary between the Owner and the Hirer, cartage and fuel, along with all saleable and consumable items, are not included in the hire rate and may be charged over and above the hire rate. The Owner reserves the right to revise its charges on one week's notice to the Hirer, to reflect changes in its own supply costs or other similar circumstances outside of its control.
- 4.2 Except where the Owner dispenses with this requirement a deposit and/or bond shall be paid or given at the commencement of the hire period. The amount of the deposit or bond shall be as indicated on the cover sheet, or alternatively as notified by the Owner, in its sole discretion. The Owner may deduct from or set-off against any deposit or bond any amount due to the Owner including in respect of the hire of Plant or damage to Plant.
- 4.3 Payment of hire and other charges for Trade Customers shall be made calendar monthly no later than the 20<sup>th</sup> day of each month in respect of hire or other charges during the preceding month.
- 4.4 All other hirings shall be on a cash sale basis and payment shall be made, unless an express contrary agreement has been made between the Hirer and the Owner, on the date when the Plant is returned or within seven (7) days of the commencement of the hire period whichever is the earlier. Where by agreement the hire period is extended to more than 7 days, then the hire charge shall be payable at the end of each 7-day period in respect of the prior 7 days and at the end of the term of the hire in respect of the hire period not previously paid for.
- 4.5 Notwithstanding the foregoing, at any time the Owner may (in its sole discretion) require payment in advance of any amounts relating to hire of Plant. The Owner may refuse to hire Plant or may withdraw Plant without notice, unless any arrears are paid.
- 4.6 The Owner may, as a condition of hiring Plant, require the Hirer to procure a third party guarantee of the obligations of the Hirer or provide security for payments under this contract and the Owner may withhold or withdraw the Plant without notice if such guarantee or security is not provided.
- 4.7 Without limiting the other rights and remedies of the Owner, in the event of default by the Hirer in the payment of any amount due the Hirer shall be liable for interest on the gross amount outstanding at the rate of 2.5% per month from the date on which payment is due until the date on which payment is received in full.
- 4.8 Unless otherwise specified all hire rates shall be GST exclusive. GST is to be paid by the Hirer in addition to the rates specified and at the time for payment of the hire charges.
- 4.9 The Hirer may not withhold payment or make deduction or set-off from any payment under this contract.
- 4.10 In the event that the Hirer disputes a portion of an invoice received from the Owner, the Hirer must pay the undisputed portion and the disputed portion will be resolved in accordance with clause 11.

## 5. Responsibilities of Hirer

- 5.1 The Hirer shall:
  - (a) Determine the condition and suitability of the Plant hired for the purpose required.
  - (b) Use the Plant in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
  - (c) Ensure that the Plant is operated by a suitably qualified operator and used within its rated capacity and ensure that the operator has read and understands the safety instructions and any other information provided. The Hirer must take all steps to ensure the safety of employees and other persons in the vicinity of the Plant during the hire period, and at an absolute minimum must ensure that the Plant is operated at all times in compliance with the Health and Safety at Work Act 2015.
  - (d) At its own expense clean, fuel, lubricate, check water and keep the Plant in good and substantial repair and condition, provided that the Hirer shall not undertake any repair or servicing and if any repair or servicing appears desirable shall advise the Owner immediately. Pre-arranged major servicing will be carried out by the Owner during normal working hours.
  - (e) Meet the cost of repair or replacement (as applicable) of all flat and/or damaged tyres.
  - (f) Clean the Plant properly and thoroughly upon completion of the hire or (within the absolute discretion of the Owner) be charged a cleaning fee at the appropriate rate for such purpose for any cleaning required to be performed by the Owner or its representatives.

- (g) Accept full responsibility for the safekeeping of the Plant and (to the extent permitted by law and subject only to the exceptions as specified hereafter) indemnify the Owner for all loss, theft or damage to the Plant however caused, and for any other losses or damage suffered by the Owner in respect of hire of the Plant to the Hirer, whether or not such loss, theft or damage to the Plant or other losses or damages are attributable to any negligence, failure or omission of the Hirer.
- (h) Accept full responsibility for, and (to the extent permitted by law) indemnify the Owner against, all claims in respect of any injury to persons or damage to property, arising out of the use of the Plant during the hire period however arising, whether from negligence of the Hirer or any other person including, but without limitation, where the Plant is being operated for any reason by the Owner its servants or agents.
- (i) Not be entitled to any lien (or to grant any lien) over the Plant nor, without the Owner's prior written consent, part with possession of the Plant or assign the benefit of the Contract.
- (j) Not alter or make any additions to the Plant including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Plant or any other part of the Plant or in any other manner interfere with the Plant.
- (k) Accept responsibility and fully reimburse the Owner for the cost of freight to retrieve equipment not returned for any reason.
- (l) Immediately on request by the Owner, advise the Owner of the whereabouts of the Plant and allow the Owner, its agents or servants reasonable time and access to inspect the Plant.

## 6. Personal Properties Securities Act ("PPSA")

6.1 The Hirer acknowledges that:

- (a) The Contract may create a security interest (as defined in the PPSA) in favour of the Owner in Plant hired to the Hirer by the Owner and that the title to the Plant remains with the Owner at all times.
- (b) The Hirer will provide such information and do such acts and execute such further documents as in the opinion of the Owner may be necessary or desirable to enable the Owner to perfect under the PPSA the security interest created by the Contract as a first priority interest or with such other priority as the Hirer may agree in writing.
- (c) The Owner may do all things which it thinks desirable to remedy any default by the Hirer or otherwise protect the Plant or the security interest created by the Contract.
- (d) The Hirer irrevocably appoints the Owner to be the Hirer's attorney to do anything which the Hirer agrees to do under the Contract and anything which the attorney thinks desirable to protect the Owner's interests under the Contract and the Hirer ratifies anything done by an attorney under this clause 6. The Hirer agrees sections 114 (1) (a), 133 and 134 of the PPSA shall not apply to the Contract or the security under the Contract.
- (e) The Hirer waives their right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by the Contract.
- (f) The Hirer agrees that none of their rights as debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA shall apply to the Contract.
- (g) The Hirer also agrees, where the Owner has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- (h) The Hirer must not change the Hirer's name without first notifying the Owner of the new name not less than seven days before the change takes effect.
- (i) The Hirer must not allow or permit the creation of a lien over any of the Plant.

## 7. Owner's Right to Terminate

- 7.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate the Contract by notice with immediate effect, if:
  - (a) the Hirer breaches any provision of the Contract; or
  - (b) the Owner believes the Plant to be at risk for whatever reason including, but not limited to, the manner of use of the Plant or that the Hirer is unable to, or is reasonably likely to be unable to, pay any hire charge; or
  - (c) any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, administrator or any like person of the whole or any part of the Hirer's business or assets.
- 7.2 The Hirer grants the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter, at any time, onto any place where the Plant is situated or thought to be situated, to remove the Plant in the event that the Contract is terminated, without being liable in any way to the Hirer, and the Hirer shall indemnify the Owner upon demand for all claims by any third party for any losses resulting from the Owner effecting repossession.

## 8. Risk

- 8.1 The Plant will be at the Hirer's risk, and the Hirer accepts all risk of loss and damage to the Plant (irrespective of whether or not such damage is caused by the Hirer), immediately on delivery.
- 8.2 In the case of damage to the Plant, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full costs of all repairs to restore the Plant to the condition they were in at the time of hire.
- 8.3 In the case of loss or irreparable damage to the Plant, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost to the Owner of replacing the Plant.
- 8.4 The Hirer shall:
  - (a) Take proper care of and use the Plant in a manner or to such an extent that a reasonable Hirer would, and according to any specifications and instructions, if any, given by the Owner, and shall maintain the Plant in a good and clean condition;
  - (b) Not carry out repairs, maintenance, adjustments, alterations or additions to the Plant without the express consent of the Owner; and
  - (c) Immediately notify the Owner, by telephone, if the Plant are damaged or are otherwise in need of maintenance or repair.

## 9. Liability of Owner

- 9.1 The Hirer relies upon its own knowledge, skill and judgement in relation to the particular use or suitability of the Plant for the Hirer's purpose.
- 9.2 The Owner will accept no liability for any damages or losses arising from a consequence of any act, default or negligence on the part of the Hirer or of an employee, agent or contractor of the Hirer.
- 9.3 The Owner shall not be liable to the Hirer or any third party in contract, tort (including negligence) or on any other basis for:
  - (a) any indirect or consequential losses or damages;
  - (b) any loss of use, loss of profits, loss of anticipated savings; or
  - (c) any third party claims,
  - (d) suffered or incurred by the Hirer; and
- 9.4 The limitation in clause 9.3 and exclusion of liability applies whether or not the Owner had, or ought to have had, any special or other knowledge that any such losses, damages or claims would be suffered or incurred by the Hirer.
- 9.5 Subject to clause 9.3, the liability of the Owner shall be limited to the amount equal to the total hire charges payable by the Hirer under the Contract.

## 10. Delegation of Authority by Hirer

Where the person signing the document signs for and on behalf of another person or entity as Hirer, the person signing covenants with the Owner that he or she has the authority of the Hirer to make this contract on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Contract and is not released from the obligations hereof by signing on behalf of or in the name of

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another person or entity as Hirer and, without limiting the foregoing, hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this Contract failing to have such power and/or authority.

### 11. Dispute Resolution

Any and all disputes arising between the parties will be resolved in the first instance by good faith discussions. In the event those discussions fail to resolve the dispute within a reasonable period, the parties will refer the dispute to mediation, by a mediator to be agreed upon by the parties, or failing such agreement, by a mediator nominated by the Resolution Institute upon request of either party.

### 12. Privacy Act 1993

12.1 The Hirer authorises the Owner to:

- (a) collect, retain and use any information about the Hirer, for the purpose of assessing the Hirer's creditworthiness or marketing products and services to the Hirer; and
- (b) disclose information about the Hirer to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Hirer.

12.2 Where the Hirer is an individual the authorities in this clause 12 are authorities or consents for the purposes of the Privacy Act 1993.

12.3 The Hirer shall have the right to request the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Hirer to correct any incorrect information about the Hirer held by the Owner.

### 13. General

13.1 The Hirer will upon demand pay all the Owner's expenses and legal costs (on a solicitor/agent/client basis) of or in connection with the registration of a financing statement or financing change statement relating to the security interest created by the Contract or obtaining an order under section 167 of the PPSA or the collection of overdue moneys or the exercise, enforcement or preservation of any right or interest under the Contract.

13.2 If any provision of the Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

13.3 The Contract shall be governed by the laws of New Zealand and is subject to the exclusive jurisdiction of the courts of New Zealand.

13.4 The Hirer shall not be entitled to set off against or deduct from the charges any sums owed or claimed to be owed to the Hirer by the Owner.

13.5 The Owner may assign or sub-contract all or any part of its rights and obligations without the Hirer's consent.

13.6 The Owner reserves the right to review these terms and the Contract generally at any stage. If, following any such review, there needs to be any change to these terms to account for legislative change or to ensure proper operation of the terms, then that change will take effect from the date on which the Owner notifies the Hirer of such change.

13.7 Neither party shall be liable to the other for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.