

## **Terms & Conditions**

**SAYFAM PTY LTD**

**Trading As Townsville & Northern Beaches Trailer Hire**

**ABN 32 631 616 423**

**Mobile: 0421 324 411**

**Email: northernbeachestrailers@gmail.com**

**Address: 40 Batten Road, Mount Low, QLD 4818**

Our hire terms and conditions are incorporated and form part of all agreements with you. By entering a contract, you are accepting all Terms & Conditions.

### **1. DEFINITIONS**

"All monies" refers to all amounts of any kind now or in the future due and/or owing, including amounts payable on any account, claims, interest, charges, fees and costs.

"Equipment" refers to any type of equipment, vehicles, machinery, tools, goods, trailers, or plant including but not limited to Skid Steer Loaders, Excavators, Mini Loaders, Tipper Trucks, Lawn Mowers, Trailers, earthmoving equipment and any other equipment (and accessories) we hire out from time to time.

"Fair Wear and Tear" refers to the gradual and normal reduction in the operational performance of the Equipment arising from normal and careful use. It does not include: accelerated wear and tear or any wear and tear arising from a breach of your express obligations herein.

"Force Majeure" includes storm, flood, fire, earthquake, cyclone, industrial action and any other event or circumstance reasonably beyond our control.

"Trailer" refers to any Box, Caged, Horse Float, Car Trailer, Plant Trailer, Buggy/ATV or vehicle trailer capable of being towed and accessories on hire to you and includes any substitute or replacement Trailer that we provide to you from time to time.

"Hire Schedule" refers to a schedule, contract, letter or document prepared by us which specifies the essential terms of any Hire Contract entered into between you and us.

"Hire Period" refers to the period:

(a) commencing on the earlier of the date/time stated as the commencement date in the Hire Contract or the time of collection of the Equipment by you; and expiring

(b) The return date is either the date specified in writing in the Hire Contract or the date when the Equipment is returned to our possession, whichever is later.

"Day to Day" refers to a periodic day to day Hire as outlined in clause 21.

"PPSA" refers to the Personal Property Securities Act 2009 (Cth) and its regulations.

"Hire Contract" is the contract detailing the particulars and terms of hire, which always includes our Terms and Conditions. Typically, it takes the form of our standard Hire Schedule, incorporating our Terms and Conditions.

"Security Bond" is a cash bond of the amount specified in the Schedule or quotation, held by us in our general trading account as security for your performance under any agreement or contract with us.

"Services" refers to any service we agree in writing to provide to you in conjunction with the hire of Equipment.

"you" refers to the person or entity that has ordered or received the hire of Equipment from us, including your executors, successors, lawful assigns, and any other entity you control that may place an order with us.

"Hire Charges" are our hourly, daily, weekly or monthly hire rates (as specified by us in writing) for the hire of the Equipment, as referred to in our Hire Schedule. In the absence of such documentation, it is our standard hourly hire rate as published by us.

"Vehicle" includes any motorized vehicle such as a car, motorcycle or truck.

"We/us" refers to SAYFAM PTY LTD Trading As Townsville & Northern Beaches Trailer Hire, including our successors, assigns, and any other entity that hires Equipment to you.

"Our Terms of Trade" refers to these Hire Terms and Conditions, including our other general terms of trade as published and updated by us.

## **2. INTERPRETATION**

In interpreting Our Terms of Trade and any agreement entered into with you:

(a) singular terms include plural and vice versa;

(b) references to statutes include regulations made under those statutes and statutes amending, consolidating or replacing the statutes.

(c) Each party's covenants include an obligation to ensure compliance by all other persons under that party's control;

- (d) Obligations on a party are joint and several. The release of one person from an obligation does not release any other person who may be jointly liable;
- (e) All annexures, schedules and other attachments (if any) that we attach to the Hire Contract, form part of the Hire Contract;
- (f) Any unlawful, invalid or unenforceable term or condition of the Hire Contract (including these terms and conditions) will not invalidate or affect the interpretation of the remaining terms, but will be severed from those terms;
- (g) Anything that appears after the word "include" or "including" should not be interpreted as limiting the type of thing that may be included within the scope of that clause;
- (h) The term "the parties" refers to you and us and, unless the document expressly states otherwise, does not include the guarantor. The guarantor is not a party to the contract or agreement with us but has a separate contractual obligation to guarantee your obligations according to the terms of the guarantee;
- (i) Agreements, documents or terms and conditions will not be interpreted against us simply because they were drafted by us; and
- (j) In the event of inconsistency between Our Terms of Trade and any of our other general terms of trade, any associated quotation, tender or other contract document, the following order of priority applies:
  - i. the Hire Schedule; then
  - ii. our Terms of Trade; then
  - iii. any document signed or initialed by us; then
  - iv. all other documents.

### **3. OFFER AND ACCEPTANCE**

#### **3.1 You acknowledge that:**

- (a) From time to time, we will hire Equipment to you on the terms and conditions outlined herein and in accordance with the specific terms of the Hire Schedule; and
- (b) Our Terms of Trade are incorporated into and form part of all present and future Hire Contracts and dealings between you and us.

### **4. CREDIT SUPPLY**

4.1 We reserve the right to refuse or proceed with any order, or to provide any order on credit, at our sole discretion.

## **5. DEPOSIT AND SECURITY BOND**

5.1 Please note that we may impose conditions on any order, including the requirement for a non-refundable deposit or bond to be paid in advance.

## **6. HIRE CHARGES AND PAYMENT**

6.1 You agree to pay our hire charges, price, fees, charges, and costs before the start of the hire period, and definitely within 7 days of the date of our tax invoice. You agree to pay all amounts due or owing to us without deduction, set off, or counterclaim.

6.2 You agree to pay all expenses and costs arising from your use or possession of the equipment, including:

(a) costs we incur to recover the equipment; and

(b) all legal costs we incur as a result of taking any recovery or enforcement action against you, on a solicitor and own client basis.

6.3 You agree to pay the hire charges from the start of the hire and for each subsequent hour (or part thereof) the equipment is not in our possession, regardless of whether the equipment is in use by you.

6.4 Unless otherwise stated in writing, any quote, rate, charge, or price given by us:

(a) is in Australian dollars and does not include the cost of delivery, freight, installation, maintenance, dismantling, removal, or re-delivery; and

(b) is exclusive of GST. If GST is payable on any supply made by us, you agree to pay the amount of GST at the same time as paying our invoice; and

(c) excludes all other costs, services, requirements, certificates, or approvals unless expressly stated in writing by us as being included. You agree to provide and/or obtain such things at your expense; and

(d) excludes any applicable government duty, tax, or levy.

6.5 If we have not quoted any hire charges or price, the equipment is hired at our daily hire rate prevailing at the date of our invoice.

6.6 Any quote or estimate we provide is based on the circumstances and conditions you've disclosed to us in writing before the quote or estimate was given. If there are any price,

expense, or cost increases due to undisclosed material facts or circumstances, we may pass these on to you, and you agree to pay for them.

6.7 We reserve the right to issue interim invoices and require payment by the due date specified on the invoice.

6.8 You give us permission to charge and debit your credit card for the Hire Charge and any additional charges. These may include, but are not limited to, fees or charges resulting from late returns, tolls, traffic or parking offences, and recovery of any loss or damages related to the equipment hire.

6.9 If the equipment is returned early, no refund will be given.

6.10 You agree that the credit card provided must be in your name (where applicable).

6.11 If incorrect license details are provided, the credit card details you've given will serve as proof of hire.

## **7. CANCELLATION**

7.1 We reserve the right to cancel delivery/supply at any time before the hire has commenced by giving you written notice. Upon giving such notice, we will refund any payments made for the hire, minus any amounts you owe us. Cancellation fees may apply. We will not be liable for any loss or damage arising from such cancellation.

## **8. INTEREST AND FEES ON OUTSTANDING ACCOUNTS**

8.1 You agree to pay us:-

(a) Interest: on overdue amounts at a rate of 18% per annum, compounding monthly.

(b) Additional costs: all costs, charges, and expenses, legal and otherwise, that we may incur as a result of enforcing our rights against you.

8.2 You agree to indemnify us for the interest and additional costs, charges, and expenses payable under clause 8.2.

## **9. MORE SPECIFIC HIRE TERMS**

9.1 The Hire Period stated in the Hire Schedule is the minimum period required for the hire of the Equipment. You are required to pay us the Hire Charge for the entire Hire Period, even if you return the Equipment before the specified return date/time.

9.2 If you fail to return the equipment to us by the specified return date for any reason, you will be charged our daily (24-hour) hire rate for each day (or part thereof) that the equipment remains out of our possession.

9.3 You must:

- (a) be present at our premises to receive the equipment and sign our receipt or other acknowledgement of receipt. By signing the receipt, you accept that the equipment is clean, undamaged, and in good working order;
- (b) maintain the equipment in good condition and working order throughout the hire period;
- (c) use the equipment lawfully, skillfully, and properly, only for its intended purpose and within its designed capacity. The equipment must not be overloaded, and if it's a vehicle or trailer, it must only be driven on sealed roads;
- (d) ensure the equipment is kept safe and secure during the hire period;
- (e) not use the equipment in a way that would result in an insurer refusing to cover any loss or damage caused to or by the equipment while in your possession;
- (f) ensure the equipment is operated in accordance with applicable Work Health and Safety Laws and Regulations, and all other relevant statutes, regulations, and laws;
- (g) notify us immediately of any loss or damage to the equipment, and not attempt to repair the equipment without our prior consent;
- (h) allow us or our nominated representative to inspect the equipment to assess its state of repair and operation. If misuse, loss, or damage has occurred or is suspected, you must follow our instructions, including taking reasonable measures to repair the damage at your own expense;
- (i) return the equipment 15 minutes before the close of business on the return date specified in the Hire Schedule. If no date is specified or there is ambiguity, the equipment must be returned by the date we demand in writing. The equipment must be returned to our place of business in the same state of repair, condition, and cleanliness as at the start of the hire period, with the exception of fair wear and tear. This includes refuelling (diesel) for all trucks and plant equipment, and (unleaded) for all mowers or as directed by the manufacturer's specifications.

9.4 More specific obligations:

- (a) Each Box Trailer has a unique tare weight stamped on the VIN plates of each drawbar. It's your responsibility to ensure that a trailer, including its tare weight, is never loaded above its ATM. For example, a 750kg ATM minus a 400kg Tare equals a maximum load capacity of 350kg.

(b) Each Car Trailer also has a unique tare weight stamped on the VIN plates of each drawbar. You must ensure that a trailer, including its tare weight, is never loaded above its ATM. For instance, a 2000kg ATM minus a 600kg Tare equals a maximum load capacity of 1400kg.

(c) You agree to always carry the spare wheel provided for the Trailer and the necessary tools to change the wheel. If a tyre is punctured or damaged, you must replace it at your own cost with the same brand, style, and make of tyre. The replacement tyre becomes our property. Any damage to Plant Equipment or Tipper Trucks due to unreasonable wear and tear, neglect, or incident damage is included in this section and is your responsibility to repair or replace. Please advise if you are travelling more than 50km from 40 Batten Road Mount Low.

(d) You acknowledge that the State and Federal Transport and Main Roads are the regulatory authorities for loading and overloading of trailers and vehicles. It's your responsibility to comply with all regulations, including the load capacity of the Trailer and the towing car.

(e) You assure us that you and all authorized drivers possess the necessary knowledge, skill, and ability to load and tow the Trailer without incident or accident. You will not load or tow the Trailer without the required knowledge, skill, and ability. You also assure us that any hired equipment, trailers, or plant equipment will be operated by individuals with the appropriate skills and abilities.

(f) You are responsible for reporting any identified or potential faults with the Equipment immediately or as soon as reasonably possible. Neither you nor any authorised drivers should use the Equipment if there are doubts about its roadworthiness or serviceability.

(g) You confirm that you, as well as all authorised drivers, are competent in (but not limited to):

i. Correctly connecting and disconnecting the Trailer coupling hitch.

ii. Correctly applying the safety chain connections.

iii. Correctly applying the Trailer light plug connections.

iv. Conducting the light operation checks, both before and after use.

v. Ensuring safe load distribution on and off the Trailer.

vi. Ensuring any load is safely secured during loading/unloading activities, or when parked or under tow.

- vii. Ensure the jockey wheel is securely fastened whether the Trailer is under tow or not.
- viii. Adhere to the maximum load rating for this Trailer. Do not operate the Trailer with over or under-inflated tyres.

- ix. Use the Equipment in accordance with the operator's handbook. You affirm your competence in doing so.

(h) The minimum age for you or any Authorised Drivers is 17 years, with a current State or Territory Driver's license.

(i) Acknowledge that the Trailers are not guaranteed to be waterproof or dustproof. You are responsible for taking measures to prevent water damage to any goods enclosed within the Trailer.

(j) Accept responsibility for all traffic or parking offences, as well as any toll charges incurred during the Hire Period. You will also pay any camera fines incurred during the Hire Period. We reserve the right to charge a \$25 administrative fee per offence.

(k) Only drive the Trailer or any other Vehicle on hire on roads that are part of the national road system or properly constructed driveways.

(l) Avoid driving on unsealed roads. If you must, do not exceed 20km/h. Any damage caused while driving on unsealed roads, including but not limited to bodywork paint chipping, will not be covered by any Damage Waiver. You will be liable for restoration and make-good costs. Refer to your Liability and Damage Waiver sections for full details.

(m) Strictly refrain from driving the Trailer or any other Equipment on hire on four-wheel-drive tracks, through more than 10cm of water, beaches or river banks.

(n) Avoid driving Equipment through, or otherwise exposing the Equipment to, any salt water. If the Equipment has been exposed to any salt water or corrosive conditions, it must be washed down immediately.

9.5 If you are required to notify us of any matter, first attempt telephone contact with us, followed by immediate written notification (email or facsimile). Notification by any slower means will not be acceptable.

9.6 In the event the Equipment is lost, stolen or damaged, you must:

- (a) if stolen or maliciously damaged, inform the police and us immediately;
- (b) if damaged, inform us immediately.

- (c) You are required to provide a written statutory declaration, signed by your duly authorized representatives, detailing the event within 30 days of its occurrence;
- (d) You must provide all necessary information and assistance as required by us, the police, and/or any insurer; and
- (e) You are not permitted to make any waiver, release, admission of liability, or promise of payment without our written consent or that of our insurer.

9.7 You are not allowed to modify, vary, or change the Equipment without our prior written consent.

9.8 You indemnify us against any claim, loss, liability, damage, or injury arising from or caused by the Equipment while it is in your use, possession, or control.

## **10. MALFUNCTION, DAMAGE, etc.**

10.1 If the Equipment becomes inoperable, malfunctions, is damaged, or becomes unsafe, you must:

- (a) immediately cease using the Equipment; and
- (b) take all necessary steps, at your own cost, to prevent injuries to any persons or damage to any property as a result of the condition of the Equipment.

10.2 If the Equipment is damaged, faulty, fails, or malfunctions due to your negligence or misuse, in addition to any other rights we have, you agree to continue paying us the Hire Charges until the Equipment has been repaired or replaced. If a machine is damaged while on hire, it is your sole responsibility to pay for the recommended Service Provider to attend the site and report on the Machine. If a machine is rolled over or involved in an impact incident, the safety of personnel is the priority. Shut down the machine. Do not attempt to rectify. Contact Townsville & Northern Beaches Trailer Hire immediately or once it is safe to do so.

If a machine becomes unserviceable during hire, ie a mechanical malfunction, Townsville & Northern Beaches Trailer Hire must be contacted immediately. A qualified Fitter will be requested at the next earliest opportunity to attend the call out. Note: whilst every endeavor will be made to rectify the unserviceable item, if the hours on equipment is reasonable with no ability to complete the hire then a "store credit" will be offered on the next equipment hire. This credit has a four week expiration.

10.3 You agree to compensate for any loss or damage to the Equipment while it is in your possession. If we determine that you must replace the Equipment, you agree to pay the full

expense, cost, and price for the replacement on a new basis and of a similar make, model, and standard of Equipment being replaced.

## **11. INSURANCE**

11.1 You are required to take out and maintain insurance for the Hire Period for the Equipment to their full replacement value for damage and/or loss to the Equipment, and you must note our interest in the Equipment on the insurance policy.

Quote/Invoice Description to Improve:

11.2 Any insurance proceeds related to the Equipment are held in trust for our benefit. In the event of damage, loss, or destruction of the Equipment, you must pay these insurance proceeds to us.

11.3 Upon request, you must provide us with a copy of the insurance policy and proof of its current status.

11.4 If we have made alternative arrangements with you in writing before the Hire Period begins, agreeing to insure the Equipment while it's in your possession, you agree to pay the excess and all other costs related to any claim on our policy. You fully indemnify us from all claims, costs, and expenses arising from a claim on our insurance policy.

## **12 RETENTION OF TITLE**

12.1 You agree that:

- (a) any Equipment hired to you by us remains our property and is held by you as a hirer only;
- (b) you are not allowed to sell, encumber, or enter into any dealing with the Equipment without our prior written consent; and
- (c) if the Equipment is mixed with other goods or items, we retain ownership of the Equipment, an equitable interest in the resulting product, and any proceeds of sale from the resulting product, to the extent legally possible.

12.2 We may enter any premises owned or leased by you to inspect or remove the Equipment. We are exempt from all liability for any damage caused to your, or another person's, property during the removal of the Equipment.

12.3 Our reserved rights continue to apply even if you have caused an accession or co-mingling of the Equipment with any other Equipment owned by you or any other third party.

## **13 PPSA**

13.1 In addition to our rights under clause 12, you grant us:

- (a) a charge over all of your personal property, present or future, including any proceeds from the sale of that personal property; and
- (b) the right to register a security interest in any accounts receivable to which you may be entitled from any other person, as security for your obligations to us, including to pay all monies due to us from time to time.

13.2 You agree:

- (a) We reserve the right to register any security interest you have granted us in your personal property and our Equipment on the Personal Property Securities Register; and
- (b) You are obliged to provide us with all necessary information to register a financing statement or financing change statement on the Personal Property Securities Register.

13.3 Should we exercise our rights under the PPSA to reclaim personal property (including our Equipment), you forfeit the following rights:

- (a) The right to receive prior notice before we remove or seize the personal property; and
- (b) The right to receive a statement of account, a disposal notice or a notice of retention either before or immediately after we retake possession and sell personal property to a third party.

13.4 The terms and expressions used in this clause are as defined in the PPSA.

## **14 SECURITY**

14.1 You unconditionally and irrevocably grant us an equitable mortgage over your land, wherever located (including future acquisitions). This applies to land owned by you personally and/or as trustee of any Trust (excluding a superannuation trust). Additionally, you grant an equitable mortgage over any land owned by any company where you are the sole director/secretary or sole shareholder (including future acquisitions by that company). These equitable mortgages are granted as security for the payment of all monies owed to us and for the fulfilment of all your obligations to us. In this clause, “Trust” refers to each trust for which you hold land as trustee.

14.2 You irrevocably appoint us and each of our directors as your lawful attorney to perform all necessary acts to enforce our rights under any contract or agreement with you, including the rights under this “Security” section. We may sign caveats and other land title forms on your behalf.

14.3 We also reserve the right to exercise a lien over any of your property left in our possession as security for the payment of all monies owed to us.

## **15 ACCEPTANCE, DELIVERY AND ACCESS**

15.1 Upon collection/delivery of the Equipment, you must inspect it and note in writing on the Schedule any defect, fault, short delivery or failure in description, and have us countersign that notation. Failure to do so will be taken as your acceptance of the Condition.

15.2 If, due to Force Majeure or other reasons beyond our control, we are unable to deliver or perform, we may either extend the time for delivery or if the performance is unsatisfactory over a reasonable period, the contract may be terminated. You agree that you have no claim for damages and are required to pay for all equipment, services, and work delivered and/or performed by us prior to the termination date.

## **16. LIMITATION OF LIABILITY**

16.1 Unless otherwise stated in clause 16.2, you must notify us of any incorrect delivery within 7 days from the delivery date. Failure to do so will be considered as acceptance of the equipment.

16.2 You acknowledge that no claim for incorrect delivery can be made if the equipment has been used.

16.3 As far as the law allows, we will not be held responsible for any loss or damage (including to a person, property or thing) resulting from:

- (a) our inability to deliver on a specified date or at all for any reason; or
- (b) delay, non-delivery or other failure to supply.

16.4 To the fullest extent permitted by law, we are exempt from all claims or liabilities arising from:

- (a) your improper use, maintenance or operation of any equipment;
- (b) damage to your property, including any transported in, by or on the equipment, regardless of how it occurred;
- (c) breakdown, error or problem with the equipment due to normal wear and tear or force majeure;
- (d) your own negligence, act, omission, abuse or misuse;
- (e) alteration or modification of the equipment by you;
- (f) a claim that our services, or any part of them, do not comply with the contract, unless the claim is lodged with us in writing within seven (7) days from the end of the hire; and/or

(g) any claim for loss of profits or for any indirect or consequential loss made by you, or anyone else, against us for any reason.

16.5 Any claim of any kind by you against us must be initiated in a court of competent jurisdiction within six (6) months of the end of the hire. Failure to do so will result in a permanent waiver or barring of your rights.

16.6 As far as the law allows, all implied warranties, conditions, terms, and guarantees related to the hire, sale, delivery, or execution of the contract, whether statutory or otherwise, are hereby excluded.

16.7 If our liability cannot be excluded by law or limited by our Terms of Trade, our liability will be confined to either the supply of equivalent equipment or the payment of the cost of having the services supplied again. The choice of remedy will be at our discretion, and you acknowledge that this limitation of liability is fair and reasonable.

## **17 NO WAIVER OF OUR RIGHTS**

17.1 Unless we have expressly, unequivocally, and unconditionally agreed in writing to a damage waiver excess with you, we will not waive our rights against you to recover all loss or damage to the equipment for any reason. You understand that you remain liable for all reinstatement, repair, replacement, and make-good costs to the equipment. Regarding replacement costs, we are entitled to new equipment and the current model of a similar kind (not an inferior product) to the equipment being replaced. You must also pay for all applicable freight, taxes, charges, fees, and other amounts arising to have that replacement equipment made, purchased, and delivered to our business premises.

17.2 If we have unequivocally and unconditionally agreed in writing to a damage waiver excess or some other limit to your liability for damage to the equipment while on hire to you, you understand that any such agreement does not apply and you remain fully responsible for the reinstatement, repair, replacement, and make-good costs to the equipment (as determined by us as being appropriate) where:

(a) the equipment is lost or stolen;

(b) the operator is not suitably licensed or qualified;

(c) the operator was grossly negligent or reckless;

(d) the operator was affected by drugs, alcohol, or a medical condition;

(e) it was willfully damaged;

(f) the damage is caused on unsealed roads;

- (g) the damage has arisen due to you or the operator not following these terms, the manufacturer's guidelines, or any other written guidelines of use published by us; or
- (h) any insurance in respect of the equipment has been refused or denied due to circumstances relating to your acts or omissions or matters occurring during your period of hire.

(h) You are required to comply with all terms and conditions of the damage waiver excess or limit of liability that we have agreed upon in writing.

## **18 RISK**

18.1 The Equipment is at your risk during the Hire Period and while it is in your possession, use or control.

## **19 ACL**

19.1 This clause is applicable only to the extent that the Australian Consumer Laws apply to a transaction or contract with you.

19.2 Our Equipment is accompanied by guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure, or compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Equipment repaired or replaced if it fails to be of acceptable quality and the failure does not amount to a major failure.

## **20 PERSONAL AND BUSINESS INFORMATION**

20.1 You consent to us collecting, storing and using your personal and business details and information, including taking a copy of your driver's license and retaining it on our records.

20.2 You acknowledge that we have CCTV cameras and that we will capture and retain a copy of your image, including that of your vehicles, and that we are entitled to keep these on our file.

20.3 We are also authorized to disclose your personal and business information to police officers or other government officials conducting investigations, enquiries or other government-related duties.

## **21 DEFAULT TERMINATION AND SUSPENSION**

21.1 Without prejudice to any other remedies we may have, if at any time you breach any obligation (including those relating to payment) under any contract or agreement with us, we may suspend or terminate the contract/agreement. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.

21.2 Termination of any contract or agreement or cancellation of an order with you does not:

- (a) affect any claim or action that a party may have against the other or affect any other right or remedy that the party may have;
- (b) release any guarantors; or
- (c) release any other party of any obligation which is expressed to continue after termination.

## **22 HOLDING OVER AFTER HIRE PERIOD EXPIRY**

22.1 Upon the expiry of the Hire Period specified in the Hire Schedule, the hire will transition to a day-to-day basis (24 hours), commencing at the time and day specified for the return of the Equipment, unless:

- (a) the hire has been lawfully terminated at an earlier date;
- (b) an alternate agreement has been reached in writing between the parties; or
- (c) a mandatory law provision prohibits the conversion, in which case the hire will conclude at the expiration date.

22.2 If the hire converts to a day-to-day basis, you will hire the Equipment from us in accordance with our prevailing daily rates for that type of Equipment and in accordance with Our Terms of Trade.

22.3 We may, at any time and without cause, terminate the day-to-day hire by providing written notice to you and require the return of the Equipment by the close of business the following business day.

## **23 EXCHANGE OF REFERENCES**

You agree that we may:

- (a) exchange personal details and information about you, including your creditworthiness, with other credit providers and credit reporting agencies;
- (b) obtain a credit report containing your personal information from a credit reporting agency; and
- (c) conduct security checks and searches, including a search of the Personal Property Securities Register.

## **24 VARIATION**

24.1 We may, at any time, vary or replace Our Terms of Trade (or any of them) by providing no less than seven (7) days' written notice. You agree that the variation or replacement will apply to all contracts, dealings or orders arising after the effective date of any variation or replacement.

## **25 JURISDICTION**

25.1 You agree that the jurisdiction for any relief, remedy and/or enforcement of these terms and conditions will be determined by the Courts in Queensland. Each party waives any right it has to object to an action being brought in those Courts including without limitation, you agree not to dispute the jurisdiction of the courts by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

25.2 Furthermore, you consent to us initiating any claim or seeking any relief in the Supreme Court, District Court, or the Magistrates Court located in Townsville, Queensland. These courts will not be required to determine whether they have local jurisdiction over the matter.

## **26 GENERAL TERMS**

26.1 You are not permitted to assign any Hire Contract or other agreement with us without our prior written approval.

26.2 We reserve the right to assign our rights and obligations with you without your consent. We may also subcontract or license the performance of any of our obligations without your prior written consent. This agreement is enforceable against you and the Guarantor by any successor or assign of ours, and assignment by us does not result in a release of you or the Guarantor.

26.3 You are obliged to keep all of our confidential information confidential and you agree not to disclose it to another party without our prior written consent unless legally required to do so. Confidential information includes our fees, rates, charges, and contract/agreement with you, as well as any insurance claims or repair costs associated with any contracts, and our intellectual property, trade secrets, and business practices.

26.4 You warrant and declare that:

- (a) you agree to, understand, and are authorized to accept, Our Terms of Trade;
- (b) the information provided by you to us is accurate and correct; and
- (c) the credit provided to you by us is to be used entirely or predominantly for business or investment purposes (or both).

## **27 ADDITIONAL FEES & CHARGES**

27.1 You are required to return the hired equipment clean and in the same condition as when collected. Failure to do so will result in cleaning and refueling charges at the discretion of Townsville & Northern Beaches Trailer Hire Staff.

- (a) minimum trailer cleaning fee - \$25
- (b) minimum plant equipment cleaning fee - \$100 ex GST
- (c) minimum truck cleaning fee - \$100 ex GST
- (d) diesel fee per litre (subject to change) - \$2.50/litre ex GST
- (e) Call-out fee - \$175 per hour excluding GST. This applies when our staff attend a repair. If SAYFAM staff are unavailable, a service provider will be requested.
- (f) Call-out fee – If damage occurs whilst on hire, it is the responsibility of the hirer to notify Townsville and Northern Beaches Trailer hire, then contact the preferred supplier: Evolution Diesel Services: m 0431232035. If the hirer damages a hose while on hire, it is the hirers responsibility to replace at their own cost & time. Townsville Hydraulics are the preferred supplier: m: 0476871865. Any/all damages are at the sole cost of the hirer.
- (g) Delivery charges - \$80 excluding GST for up to 10km from the depot, \$100 excluding GST between 10km and 15km from the depot, and \$100 excluding GST plus \$1.20/km per km above 15km from the depot. All distances are determined via GPS route.
- (h) Late fees – Charged at the 6-hour rate for machines or trucks, or the minimum charge rate as per the item price list for other equipment. A payment link will be sent at the time of extension and immediate payment is required.
- (i) Tipper Truck additional km rate - 200km/day is included free in every hire. Additional kilometers are charged at \$0.30 excluding GST per km.
- (j) Tipper Truck weekend rates include 400km total included in every hire. Additional kilometers are charged at \$0.30 excluding GST per km.
- (k) Reasonable hours & km on equipment is as such; Tipper Trucks - 200km/day, 400km/weekend. Machinery - 6hr/day, 12hr/weekend. Any additional km or hours expected above the reasonable average is required to be advised to staff prior to collection. This may carry a variation of charges. It is the hirers responsibility to advise prior to hire.
- (l) Card fees and charges; Fees and charges apply. Online payments attract a 1.75% + .30c fee (domestic cards) & 3.4% + .30c fee (foreign currency transaction cards).

## **SCHEDULE 1 – DEED OF GUARANTEE AND INDEMNITY**

This applies when we require a personal guarantee. We advise the Guarantor to seek independent legal advice.

1. In consideration of us agreeing to supply you with the Equipment and/or Services, including the hiring of any Equipment, at the request of the Guarantor, the Guarantor:

(a) Unconditionally and irrevocably guarantees that you will:

- i. Pay all monies now or in the future payable by you to us;
- ii. Observe and perform all your obligations to us from time to time;

(b) Will be jointly and severally liable for the payment of all monies payable by you to us from time to time and indemnifies us for any loss or damage suffered by us as a result of your failure to observe and perform your obligations with us, however arising from time to time.

2. If the terms of any contract or agreement are not enforceable against you, are invalid or void, for any reason whatsoever then the Guarantor indemnifies us against any loss or damage we may suffer as a result. That loss will include all monies that would have been payable by you had the contract or agreement been fully enforceable by us against you.

3. This is a continuing and unconditional guarantee and indemnity. The Guarantor waives all rights to be released or discharged from the guarantee and indemnity including due to us:

(a) Terminating any contract with you;

(b) Granting any time concession or indulgence to you;

(c) Entering into any composition or scheme of arrangement with you;

(d) Waiving any breach or default by you;

(e) Failing to enforce the terms of any contract against you;

(f) Releasing any other guarantor; or

(g) Changing, varying or amending Our Terms of Trade, any contract or the supply of Equipment and/or Services to you.

## **Schedule 6 – Lawn & Grounds Maintenance Equipment**

Special Hire Terms & Conditions (QLD)\*\*

This Schedule 6 forms part of the Townsville Trailer Hire Terms & Conditions (“Agreement”). Where there is any inconsistency between this Schedule and the General Terms, this Schedule prevails in respect of the Equipment listed below.

#### 6.1 Equipment Covered

This Schedule applies to the hire of the following items (“Equipment”):

Eco 250 Top Dresser

Kubota Zero Turn Ride-On Mower with Catcher (Petrol)

Kubota Zero Turn Diesel Ride-On Mower with High Dump Catcher

Billy Goat Lawn Corer

Weibang 22" Lawn Dethatcher

Toro 30" Stand-On Lawn Corer

Victa 21" Self-Propelled Mower (No Catcher)

Toro 30" Self-Propelled Commercial Walk-Behind Mower

#### 6.2 High-Risk Equipment Acknowledgement

6.2.1 The Hirer acknowledges the Equipment is commercial-grade machinery and constitutes high-risk equipment due to its susceptibility to damage if misused or operated in unsuitable conditions.

6.2.2 The Hirer accepts full responsibility for the Equipment from the time of collection until it is returned, inspected, and accepted by Townsville Trailer Hire.

#### 6.3 Card Storage & Authority to Charge

6.3.1 Due to the high risk of damage, the Hirer must provide valid credit or debit card details, which may be securely stored for the duration of the hire and any post-hire inspection period.

6.3.2 The Hirer irrevocably authorises Townsville Trailer Hire to charge the stored card for any amounts owing, including but not limited to:

Repairs and replacement parts

Mechanical, physical, or cosmetic damage

Cleaning and detailing

Incorrect, missing, or contaminated fuel

Transport, recovery, or call-out costs

Loss of hire

Administrative fees

6.3.3 Hire will not commence unless card authorisation is provided.

#### 6.4 Property Suitability & Use Restrictions

6.4.1 The Equipment must not be used:

As a slasher, clearing, or reclamation tool

On overgrown, neglected, or unmaintained properties

On properties containing rocks, rubble, wire, sticks, roots, or debris

On paddocks, bushland, construction sites, or vacant blocks

6.4.2 Use is strictly limited to maintained residential or commercial lawns.

6.4.3 Townsville Trailer Hire may request photos or videos of the property prior to or during the hire to assess suitability and reduce risk of damage.

6.4.4 If a property is deemed unsuitable, Townsville Trailer Hire may refuse, cancel, or terminate the hire without refund, and all costs incurred remain payable.

#### 6.5 Zero Turn Ride-On Mowers – Mandatory Conditions

6.5.1 Zero Turn Mowers must be returned:

Clean

Free of grass build-up

With the correct fuel type only:

Petrol models: Unleaded petrol

Diesel models: Diesel

With a full fuel tank

6.5.2 Incorrect fuel use will result in the Hirer being charged all costs associated with draining, flushing, repair, or replacement of fuel system components.

6.5.3 Zero Turn Mowers must not be used:

On excessively long, thick, or wet grass

On slopes exceeding manufacturer limits

For clearing neglected or unmaintained land

## 6.6 PPE & Operator Responsibility

6.6.1 The Hirer must supply and use their own Personal Protective Equipment (PPE), including but not limited to:

Steel-cap footwear

Eye protection

Hearing protection

Gloves

6.6.2 The Hire Business accepts no responsibility or liability for injury, illness, property damage, or third-party loss arising from use or misuse of the Equipment.

6.6.3 The Hirer warrants they are competent, experienced, and physically capable of operating the Equipment safely.

## 6.7 Damage, Repairs & Costs

6.7.1 The Hirer is liable for all damage, including but not limited to:

Spindles

Blades

Belts

Bearings

Tyres

Catchers and dump mechanisms

Tynes

Frames, decks, panels, and paintwork

6.7.2 Damage includes damage caused by misuse, unsuitable terrain, negligence, impact, or improper transport.

6.7.3 Repairs will be assessed by Townsville Trailer Hire or its nominated repairer and charged at commercial rates.

## 6.8 Fair Wear and Tear

6.8.1 Fair wear and tear does not include:

Bent, broken, or cracked components

Blade or spindle damage

Broken tyres

Catcher or chute damage

Cosmetic damage caused by misuse

#### 6.9 Cleaning & Maintenance

6.9.1 Equipment must be returned clean and free of debris.

6.9.2 Excessive cleaning will incur a cleaning fee.

6.9.3 Townsville Trailer Hire warrants the Equipment is maintained in a safe and serviceable condition at the commencement of hire.

#### 6.10 Loss of Hire

6.10.1 If damage results in downtime, the Hirer is liable for loss of hire income in addition to repair costs.

#### 6.11 Transport, Security & Loss

6.11.1 The Hirer is responsible for safe transport, loading, securing, and storage of the Equipment.

6.11.2 Loss or theft remains the Hirer's responsibility.

#### 6.12 Termination

6.12.1 Townsville Trailer Hire may immediately terminate the hire if the Equipment is misused, operated unsafely, or used on unsuitable property.

#### 6.13 Australian Consumer Law (QLD) Notice

6.13.1 Nothing in this Agreement excludes, restricts, or modifies any consumer guarantee, right, or remedy conferred under the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)) or the Fair Trading Act 1989 (Qld).

6.13.2 Where the hire constitutes a supply of goods or services to a consumer, the Hirer is entitled to statutory guarantees that cannot be excluded.

6.13.3 To the extent permitted by law, Townsville Trailer Hire's liability for a failure to comply with a consumer guarantee is limited to:

The re-supply of the services, or

The cost of having the services supplied again.

#### 6.14 Acceptance

6.14.1 By hiring the Equipment, the Hirer confirms acceptance of this Schedule.

### **Schedule 7 – Zero Turn Ride-On Mower**

#### Risk Acknowledgement & Waiver (QLD)

This Schedule applies only to Zero Turn Ride-On Mowers hired from Townsville Trailer Hire.

#### 7.1 Risk Acknowledgement

The Hirer acknowledges that Zero Turn Ride-On Mowers:

Are powerful commercial machines

Pose a high risk of mechanical damage and personal injury

Require skill, experience, and caution to operate safely

#### 7.2 Assumption of Risk

The Hirer voluntarily assumes all risks, including but not limited to:

Injury or death

Property damage

Mechanical failure

Third-party loss

arising from use, misuse, or transport of the Zero Turn Mower.

#### 7.3 Release & Indemnity

To the fullest extent permitted by law, the Hirer:

Releases Townsville Trailer Hire from all claims, actions, or demands

Indemnifies Townsville Trailer Hire against all losses, damages, claims, costs, and legal expenses

Accepts full liability for misuse, negligence, or breach of hire conditions

#### 7.4 Property Condition Declaration

The Hirer declares that the property:

Is maintained

Is free of rocks, roots, debris, wire, and hazards

Is suitable for Zero Turn Mower operation

False declarations render the Hirer fully liable for all damage.

#### 7.5 Fuel & Cleaning Acknowledgement

The Hirer acknowledges:

Only the specified fuel may be used

Incorrect fuel causes severe damage

Cleaning and refuelling costs are chargeable

#### 7.6 Australian Consumer Law Notice

Nothing in this Waiver excludes or limits any non-excludable rights under the Australian Consumer Law (Cth) or Queensland legislation.

#### 7.7 Binding Agreement

This Waiver is binding on:

The Hirer

Any authorised operator

The Hirer's agents or contractors

As the hirer, you bear sole responsibility and liability for any/all Equipment once signed for and it leaves the compound. You acknowledge that you possess the appropriate skill levels and competency to safely operate any Equipment you have hired.