

PANTON HILL HIRE

HIRE TERMS

Please read these terms and conditions (**Hire Terms**) carefully. By making a booking via this website, www.pantonhillhire.com (**Website**), you (**Customer**) are taken to have accepted these Hire Terms and are entering into an agreement to hire, on the terms of these Hire Terms, from BH Builds Pty Ltd trading as Panton Hill Hire ABN 22 609 537 420 (**Panton Hill Hire**) the equipment selected by you (**Equipment**) for use at the address provided by you (**Job Site**), from the time and date selected by you (**Start Date**) until the time and date selected by you (**Return Date**) for the fees set out on the website or otherwise agreed with Panton Hill Hire (**Hire Fee**) (collectively, the **Booking**).

1. HOW TO READ THIS AGREEMENT

- (a) Capitalised words and phrases used in these Hire Terms have the meaning given by the words immediately preceding any bolded and bracketed word(s) or phrase(s).
- (b) A reference to Equipment includes both tools and plant (for example, a woodcutter) as well as machinery and vehicles (for example, an excavator or ute). Not all provisions will be applicable to both types of equipment.

2. BOOKINGS AND CUSTOMER INFORMATION

- (a) As part of making the Booking, in addition to the Equipment, Job Site, Start Date, and Return Date, the Customer will be required to provide additional information (including personal information) such as the Customer's name, address and contact details including mobile number and email address (**Customer Information**).
- (b) When making the Booking, the Customer warrants that:
 - (i) all Customer Information is accurate, up to date and complete; and
 - (ii) the Customer has the legal capacity to enter into this agreement.
- (c) Bookings are not confirmed until Panton Hill Hire has confirmed the Booking via a confirmation email.
- (d) Panton Hill Hire may refuse a Booking for any reason, including if the Booking is for a Job Site located outside of Nillumbik Shire, Victoria.

3. DELIVERY AND RETURN

- (a) The rental period starts from the Start Date and finishes on the Return Date (**Rental Period**).
- (b) Panton Hill Hire will deliver the Equipment on the Start Date to the Job Site.
- (c) The Customer must ensure there is a person to accept delivery of the Equipment. Panton Hill Hire will not deliver the Equipment if there is no one to accept delivery.

- (d) The Customer must ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so.
- (e) The Customer acknowledges Panton Hill Hire will use its best endeavours to ensure that the Equipment is delivered on the Start Date (and time), however circumstances may mean Panton Hill Hire may be late. Panton Hill Hire will notify the Customer as soon as possible if it is going to be late.
- (f) At the end of the Rental Period, Panton Hill Hire will pick up the Equipment from the Job Site.
- (g) The Customer must ensure that the Equipment is ready and available for pick up from the Job Site at the agreed time.
- (h) Despite any other provision in these Hire Terms, Panton Hill Hire may require the early return of the Equipment at any time for any reason. The Customer will be entitled to a refund of any Hire Fees already paid on a pro rata basis.

4. PAYMENT

4.1 HIRE FEES

- (a) The Hire Fees are payable on making the Booking.
- (b) Subject to the type of Equipment being hired, Panton Hill Hire may require the Hire Fees to be paid via the Website or issue an invoice and via the method as set out in the invoice.

4.2 ADDITIONAL CHARGES AND AMOUNTS

- (a) If any Additional Charges or amounts are charged in accordance with these Hire Terms (including insurance excesses and the cost of any repairs) (**Additional Charges**), the Customer must pay Panton Hill Hire the Additional Charges.
- (b) Panton Hill Hire will notify the Customer as soon as any Additional Charges are payable. If the Customer does not agree with any Additional Charges, the Customer must notify Panton Hill Hire immediately and provide details as to why the Customer does not agree with the Additional Charges.

4.3 SUMMARY OF ADDITIONAL CHARGES

The table below is a summary of Additional Charges that may be charged to the Customer. This table is not complete and does not include (for example) any fees or amounts that may be paid for repairs or damage to third party property.

| Charge | Amount to be charged | When the amount is charged |
|--------------|--|--|
| Late Fee | 50% of the daily Hire Fee amount in addition to the daily Hire Fee amount. | If the Equipment is not made available by the Customer to be picked up by Panton Hill Hire on the Return Date and charged for each day or part day the Equipment is not available for pick up. |
| Cleaning Fee | \$[x] | If the Equipment is not clean when returned. Note this fee is an estimate only and the final amount may be greater if the Equipment requires an extensive clean. Also see clause 5.5. |
| Fuel Rate | \$2 per litre | If the Equipment is not returned with a full tank of fuel. The Fuel Rate will be charged for each litre of fuel required to fill up the Equipment's tank. |

| | | |
|------------------|-------|---|
| Insurance Excess | \$[x] | If an insurance claim is made by Panton Hill Hire and the excess for the claim is payable. See also clause 7. |
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4.4 PAYMENT PROVIDERS

Panton Hill Hire may use third-party payment providers (**Payment Provider**) to collect Hire Fees and Additional Charges. The processing of payments by the Payment Provider will be, in addition to these Hire Terms, subject to the terms, conditions and privacy policies of the Payment Provider and Panton Hill Hire is not liable for the security or performance of the Payment Provider. Panton Hill Hire reserves the right to correct, or to instruct the Payment Provider to correct, any errors or mistakes in collecting any Hire Fees and Additional Charges.

4.5 GST

Amounts set out on the Website and these Hire Terms **include/do not include** GST. If GST is not included, the Customer must promptly pay GST subject to Panton Hill Hire providing a tax invoice.

4.6 CARD SURCHARGES

Panton Hill Hire reserves the right to charge credit card surcharges if payments are made using a credit, debit, charge card or any other bank card (including Visa, MasterCard or American Express).

4.7 PAYMENTS OTHER THAN FEES

- (a) Immediately on demand by Panton Hill Hire, the Customer must pay:
- (i) the full replacement cost of any Equipment which is for whatever reason not returned to Panton Hill Hire;
 - (ii) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;
 - (iii) all costs incurred by Panton Hill Hire in delivering and recovering possession of the Equipment; and
 - (iv) any expenses and legal costs (including commission payable to a commercial agent) incurred by Panton Hill Hire in these Hire Terms due to the Customer's breach.
- (b) Without limiting the ability of Panton Hill Hire to recover all amounts owing to it, the Customer authorises Panton Hill Hire to charge any amounts owing by the Customer to any credit card or account which the Customer provides in a Booking.

5. USE OF EQUIPMENT

5.1 USE

- (a) Only the Customer may use the Equipment.
- (b) The Equipment may only be used at the Job Site.
- (c) The customer must read and understood any instructional materials provided by Panton Hill Hire or the Equipment manufacturer before using any Equipment.
- (d) If applicable, the Customer must obtain up to date information from relevant authorities, (for example, by using the "Dial Before You Dig" service), about any infrastructure networks at the Job Site.
- (e) The Customer agrees to ensure that the Equipment is only used:
 - (i) in a proper and skilful manner;
 - (ii) by persons who hold all relevant licenses, permits or tickets required for the operation of the Equipment;
 - (iii) in accordance with the Equipment manufacturer's instructions;

- (iv) in accordance with all laws, rules and regulations applicable to the Equipment and its use; and
 - (v) in accordance with any instructions provided by Panton Hill Hire.
- (f) The Customer agrees not to, and agrees not to allow any third party to:
 - (i) tow trailered Equipment with an unsuitable or unroadworthy Equipment or on unsealed roads;
 - (ii) tow trailered Equipment, if the driver is not the holder of a valid driver licence;
 - (iii) use the Equipment for any dangerous or illegal purpose;
 - (iv) use or allow the Equipment to be used to carry passengers for payment of any kind and/or for racing;
 - (v) use, or allow the Equipment to be used, while the operator is under the influence of alcohol or drugs;
 - (vi) make any alterations to the Equipment, including by unauthorised repair;
 - (vii) use the Equipment, or allow the Equipment to be used, when it is damaged or unsafe;
 - (viii) affix or install any accessories, equipment or device on or to the Equipment;
 - (ix) sub-hire the Equipment; or
 - (x) use the Equipment for the conveyance or towing of any loads.
- (g) The Customer agrees to:
 - (i) when the Equipment is unattended, keep it in a safe place, locked and keep the keys under the Customer's control at all times; and
 - (ii) keep the Equipment under appropriate shelter if there is severe weather, including hail, heavy rain and strong winds.
- (h) If the Customer uses the Equipment or allows any third party to use the Equipment in breach of clause 5.1(f), the Customer, must pay Panton Hill Hire for any expenses, costs, damage or loss (including consequential loss), Panton Hill Hire suffers as a result of or in connection to the breach.

5.2 MAINTENANCE

- (a) The Customer is responsible for the performance and cost of any maintenance and care of the Equipment that is required as part of the normal use of the Equipment, including for example, lubricating the Equipment.
- (b) The Customer is required to regularly check the Equipment for any defects in its operation or safety.

5.3 OPERATOR

The Customer acknowledges and agrees they are responsible for the acts and omissions of any other person they allow to use the Equipment.

5.4 FUEL

- (a) The Customer agrees to return the Equipment to Panton Hill Hire with a full tank of fuel.
- (b) The Customer must only fill the Equipment with fuel of a type that meets the Equipment's specifications.
- (c) If the Equipment is not returned to Panton Hill Hire with a full tank of fuel, the Customer must pay to Panton Hill Hire the costs of refuelling the Equipment at the Fuel Rate.

5.5 CLEANLINESS

- (a) The Customer acknowledges that the Equipment is hired out to the Customer in a clean condition. The Customer agrees to return the Equipment in the same state of cleanliness (inside and out) it was in on the Start Date (**Clean**). If the Equipment is not Clean upon return, a cleaning fee covering the total cost to Panton Hill Hire to clean the Equipment will apply (**Cleaning Fee**).
- (b) The Cleaning Fee is an estimate only. The final amount of the Cleaning Fee will be Panton Hill Hire's reasonable costs of ensuring the Equipment is Clean, as reasonably determined by Panton Hill Hire and may be greater than the Cleaning Fee set out in these Hire Terms.

6. BREAKDOWNS

- (a) If the Equipment breaks down during the Rental Period, or otherwise in the possession of the Customer:
 - (i) the Customer must immediately notify Panton Hill Hire of the breakdown;
 - (ii) the Customer must immediately stop using the Equipment;
 - (iii) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment;
 - (iv) take all steps necessary to prevent the Equipment from sustaining any further damage;
 - (v) not repair or attempt to repair the Equipment; and
 - (vi) comply with Panton Hill Hire's directions.
- (b) If the breakdown was not caused or contributed to by a breach of these Hire Terms, or otherwise caused or contributed to by the Customer and repairs cannot be completed within a reasonable time, Panton Hill Hire will endeavour to replace the Equipment with a similar item and if such a replacement is not possible, Panton Hill Hire will provide the Customer with a refund of any Hire Fees already paid on a pro rata basis.
- (c) Any refund provided in accordance with clause 6(b) is not an admittance of fault by Panton Hill Hire.
- (d) Clause 6(b) does not limit:
 - (i) any of the Customer's rights under the *Competition and Consumer Act 2010* (Cth); or
 - (ii) any rights or remedies Panton Hill Hire may have access to in relation to a breakdown, under these Hire Terms or otherwise.

7. INSURANCE

- (a) The Customer acknowledges that Panton Hill Hire may, in its discretion, hold insurances for the Equipment but such insurances may not cover the Customer or the Customer's use of the Equipment and Panton Hill Hire will have no obligation or requirement to insure the Customer's use of the Equipment under these Hire Terms.
- (b) The Customer is strongly encouraged to take out adequate insurance to cover all potential liabilities that could arise from their use of the Equipment.
- (c) If Panton Hill Hire notifies the Customer that it holds insurance for the Equipment, the Customer must not do or permit anything to be done which may make Panton Hill Hire's insurance invalid or able to be cancelled or which may increase Panton Hill Hire's insurance premiums.
- (d) Panton Hill Hire reserves the right to apply any insurance policy it does hold for the Equipment during the Hire Term, to damage or loss caused or contributed to by

the Customer, however Panton Hill Hire is under no obligation to do so. If Panton Hill Hire chooses to make a claim under an applicable insurance policy for any damage or loss during the Hire Term, the Customer will be required to pay any excess payable by Panton Hill Hire for such a claim.

8. INCIDENTS

(a) If:

- (i) the Equipment is involved in an accident or claim, damaged, destroyed or stolen; or
- (ii) damage or loss is sustained to the property of any third party, including personal injury or death and is caused or contributed to by the Equipment,

during the Rental Period, or otherwise when the Equipment is in the Customer's possession (**Incident**), then, the Customer:

- (iii) must promptly report the Incident to the local police (if required by law);
- (iv) must report the Incident in writing to Panton Hill Hire;
- (v) must, if the Incident is covered by and compensated to Panton Hill Hire under an insurance policy, pay the relevant excess amount to Panton Hill Hire, as well as any other reasonable costs that Panton Hill Hire incurs in relation to the Incident;
- (vi) must not, without the Panton Hill Hire's prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the Incident, except as required by law;
- (vii) must, if requested, permit Panton Hill Hire or its insurer bring, defend, enforce or settle any legal proceedings in the Customer's name in relation to the Incident; and
- (viii) must, if requested, provide to Panton Hill Hire, within a reasonable time, any statement, information or assistance which Panton Hill Hire or its insurer requests, including by attending a lawyer's office or a court to give evidence.

9. PERSONAL PROPERTY

Panton Hill Hire is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after it is picked up by Panton Hill Hire or stolen from the Equipment or otherwise lost or damaged during the Rental Period or otherwise in the possession of the Customer.

10. OWNERSHIP, POSSESSION AND TITLE

10.1 OWNERSHIP

- (a) The Equipment is, and will at all times be and remain, the property of Panton Hill Hire, notwithstanding delivery of the Equipment to the Customer or the possession and use of the Equipment by the Customer.
- (b) The Customer will not have any right, title or interest in or to the Equipment except as expressly set out in these Hire Terms.

10.2 POSSESSION

The Customer agrees not to part with possession of the Equipment during the Rental Period or until the Equipment is picked up by Panton Hill Hire.

10.3 ENCUMBRANCES

The Customer must not allow any security interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer's lien, except if:

- (a) a repairer's lien arises, the Customer agrees to take all necessary steps to have it removed or satisfied, or, at Panton Hill Hire's option, Panton Hill Hire may remove or satisfy the lien at the Customer's cost; and
- (b) a security interest, lien or charge that arises by law in respect of unpaid rates, taxes, fees or duties of any kind, in which case the Customer agrees to pay any money due so that the Equipment will be free of the lien or charge.

11. RISK, LIABILITY AND INDEMNITIES

11.1 CUSTOMER RISK AND LIABILITY

The Customer will bear all risk and liability for all losses (including consequential loss), claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) the casual maintenance, use, storage or operation of the Equipment;
 - (b) injuries to or deaths of persons and damage to property caused or contributed to by the Equipment;
 - (c) any breach of these Hire Terms by the Customer; or
 - (d) any negligent, fraudulent or criminal act or omission of the Customer,
- during the Rental Period or otherwise when the Equipment is in the Customer's possession.

11.2 CUSTOMER INDEMNITY

The Customer agrees at all times to indemnify and hold harmless Panton Hill Hire and its officers, employees, agents and contractors ("**those indemnified**") from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by the Customer or the Customer's officers', employees', agents' or contractors':

- (a) breach of any term of this agreement; or
- (b) negligent, fraudulent or criminal act or omission.

11.3 PANTON HILL HIRE LIABILITY

- (a) To the maximum extent permitted by applicable law, the maximum aggregate liability of Panton Hill Hire to the Customer in respect of loss or damage sustained by the Customer under or in connection with these Hire Terms is limited to the total Hire Fees paid to Panton Hill Hire by the Customer as at the date of the first event giving rise to the relevant liability.
- (b) Panton Hill Hire will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with these Hire Terms or any goods or services provided by Panton Hill Hire, except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any other applicable law.

11.4 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in these Hire Terms are excluded.
- (b) Nothing in these Hire Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (ACL). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services we provide.

12. CANCELLATION

12.1 CANCELLATION BY PANTON HILL HIRE

Panton Hill Hire may immediately cancel a Booking at any time by notice to the Customer and will (if applicable) refund any Hire Fees already paid on a pro rata basis.

CANCELLATION BY THE CUSTOMER

- (a) The Customer may immediately cancel a Booking at any time by notice to Panton Hill Hire.
- (b) If the notice under clause 0 is:
 - (i) 48 hours or more prior to the Start Date, Panton Hill Hire will provide the Customer with a full refund of any Hire Fees paid; or
 - (ii) less than 48 hours prior to the Start Date, the Customer will not be entitled to any refund.

12.2 EFFECT OF CANCELLATION

Upon cancellation of a Booking, the Customer agrees to promptly:

- (a) pay all amounts owed to Panton Hill Hire as at the date of cancellation (including any Additional Charges); and
- (b) subject to any contrary direction in writing given by Panton Hill Hire, make the Equipment ready and available to pick up from the Job Site.

12.3 SURVIVAL

Any provision of these Hire Terms which, by its nature, would reasonably be expected to be performed after the cancellation of a Booking or the termination or expiration of this agreement.

13. DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with these Hire Terms must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with these Hire Terms must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

14. NOTICES

- (d) A notice or other communication to a party under these Hire Terms must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, in the case of Panton Hill Hire to the contact email set out on the Website and in the case of the Customer, to the email address provided in a Booking (**Email Address**).
- (e) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent; or

(ii) when replied to by the other party,
whichever is earlier.

15. GENERAL

15.1 GOVERNING LAW AND JURISDICTION

These Hire Terms is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these Hire Terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

15.2 AMENDMENTS

These Hire Terms may only be amended in accordance with a written agreement between the parties.

15.3 WAIVER

No party to these Hire Terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

15.4 SEVERANCE

Any term of these Hire Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these Hire Terms is not limited or otherwise affected.

15.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

15.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under these Hire Terms without the prior written consent of the other party.

15.7 COUNTERPARTS

These Hire Terms may be executed in any number of counterparts. Each counterpart constitutes an original of these Hire Terms and all together constitute one agreement.

15.8 COSTS

Except as otherwise provided in these Hire Terms, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing these Hire Terms.

15.9 ENTIRE AGREEMENT

These Hire Terms embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these Hire Terms.

15.10 INTERPRETATION

- (a) (**singular and plural**) words in the singular includes the plural (and vice versa);
- (b) (**currency**) a reference to \$; or "dollar" is to Australian currency;
- (c) (**gender**) words indicating a gender includes the corresponding words of any other gender;
- (d) (**defined terms**) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) (**person**) a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture

(whether incorporated or unincorporated), a partnership, a trust and any other entity;

- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(these Hire Terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these Hire Terms, and a reference to these Hire Terms includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including these Hire Terms) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of these Hire Terms will be interpreted adversely to a party because that party was responsible for the preparation of these Hire Terms or that provision.