

DRY HIRE AGREEMENT

This Dry Hire Agreement (“Agreement”) consists of the following documents, which should be interpreted in the following order of precedence: (1) these Agreement Details; (2) the Schedule of Hire Details; and (3) the Terms and Conditions.

AGREEMENT DETAILS

	Hirer	Owner
NAME:		Joe Wagner Group Pty Ltd ACN 163 372 790
ABN:		13 163 372 790
ADDRESS:		15 Parker St Toowoomba Qld 4350
TELEPHONE NO:		(07) 4630 1855
CONTACT NAME:		
CONTACT PH NO:		
CONTACT EMAIL		sales@joewagnergroup.com.au

Executed by the Parties as an Agreement

Signed by Hirer’s duly authorised representative:

Signed by Owner’s duly authorised representative:

.....
Signature

.....
Signature

.....
Name

.....
Name

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Title

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Title

.....
Date

.....
Date



Schedule of Hire Details (“the Schedule”)

Plant Particulars			
Plant type (eg. Excavator)		Rated capacity (eg 24t)	
Plant make (eg Case)		Plant model (eg CX240B)	
Registration		Serial #	
Attachments included			
Equipment market value (AUD)			
Project Particulars			
Job Site			
Commencement Date		Expected Completion Date	
Mobilisation by		Demobilisation by	
Plant Origin		Return location	
Responsibilities			
Party responsible for safe storage of plant (e.g., owner)	Hirer	Party responsible to accommodate Owner’s mechanics	Hirer
Party responsible for keeping plant in good working order	Hirer	Party responsible for fair wear and tear on tyres or tracks	Owner
Party responsible for daily service and top up fluids	Hirer	Party responsible for damage to tyres or tracks	Hirer
Party responsible for completing scheduled servicing	Hirer	Party responsible for supply of GET	Hirer
Party responsible for supplying materials for scheduled serving	Hirer	Party responsible for fitting of GET	Hirer
Party responsible for scheduled oil sampling and analysis	Hirer	Party responsible for cleaning plant at the completion of works	Hirer
Party responsible for fuel supply	Hirer	Party responsible for loss or damage	Hirer
Hire Rates			
Hire Rate		per	Hour
Minimum Charge	40 Hours	per	Week
Mobilisation rate		Demobilisation rate	
Payment Terms		Hirer Purchase Order No	

Confirmation of Schedule Details

Signed by Hirer’s duly authorised representative:

Signed by Owner’s duly authorised representative:

Signature

Signature

Name

Name

Date

Date



1. Definitions

- 1.1 “Minimum Hire Period” means the period from the Commencement Date until the Expected Completion Date.
- 1.2 “Plant and Equipment” means the items specified in the Schedule and includes but is not limited to any item of plant, machinery or vehicle, and any tools, accessories, parts, items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle let by the Owner to the Hirer; and
- 1.3 “Hire Price” means the price payable for the hire of the Plant and Equipment calculated in accordance with the Hire Rates set out in the Schedule. The period of hire the machinery is charged for will be calculated in accordance with the minimum charge period specified in the Schedule or having regard to the actual time the machinery is used, at the sole discretion of the Owner.

2. Hire of Plant and Equipment and Basis of Rates

- 2.1 The Owner will hire the Plant and Equipment to the Hirer for the Minimum Hire Period and the Hirer agrees to take the Plant and Equipment on hire and pay the Hire Price.
- 2.2 The hire period may be extended beyond the Minimum Hire Period by agreement between the parties.
- 2.3 The Hire Price is payable for the entire Minimum Hire Period, during any extension to this Agreement, during any period the Plant and Equipment remains in possession of the Hirer and during any period in which repairs are being undertaken in accordance with clause 10.4 of this Agreement.
- 2.4 Without limiting clause 2.2 and 2.3 above, where the term of the hire is extended beyond the Minimum Hire Period the Owner reserves the right to review and alter the Hire Price.
- 2.5 Mobilisation and Demobilisation costs are payable by the Hirer at the rate specified in the Schedule.
- 2.6 Plant hire rates include fair wear and tear on GET and tyres. Work that results in excessive wear shall incur additional charges.
- 2.7 Hire rates for machine control do not include modelling, setup, localisation, base station, laser or total station. If JWG are required to provide these services then additional charges shall apply.
- 2.8 The Owner may levy additional charges where the Hirer requires the use of the Owner’s resources outside of chargeable plant hire time or requires the Owner to go beyond the Joe Wagner Group Pty Ltd Company Integrated Management System standards. Additional costs may include, but are not limited to, charges for inductions, medicals, weed ‘n’ seed certificates, particular plant safety features, particular Personal Protective Equipment (PPE) and others.
- 2.9 JWG retains title in all goods and materials forming part of the Works supplied to the Client under this Agreement until such time as the Works have been paid for in full. The Client must not seek to transfer, charge or otherwise deal with any goods or materials forming part of the Works until such time as the Works have been paid for in full.

3. Payment Terms

- 3.1 The Hirer must pay all amounts levied by the Owner either:
 - (a) within 7 days of provision of a tax invoice for the hire; or
 - (b) in accordance with the terms of the tax invoice if longer terms are agreed; or
 - (c) in accordance with the payment terms set out in the Schedule.
- 3.2 Unless stated otherwise, all prices exclude GST. Any applicable GST, other tax or duty will be payable in addition to the price.
- 3.3 The Hirer must pay to the Owner interest on any monies outstanding under the Payment Terms calculated from the date following the date upon which payment should have been made at the Reserve Bank of Australia Indicator Lending Rate for Unsecured Variable Personal Loans plus 3%.
- 3.4 The Owner reserves the right to charge an administration fee of \$500.00 per month in respect of any monies outstanding under the Payment Terms.
- 3.5 The Hirer will pay the Owner’s costs and disbursements incurred in pursuing any recovery action or any other claim or remedy against the Hirer including collection costs, debt recovery fees and legal costs (on a solicitor and own client basis), resulting from the Hirer’s failure to make due payment.
- 3.6 In relation to all monies and obligations owing by the Hirer to the Owner, the Hirer charges all beneficial interest (freehold and leasehold) in any real property held now or in the future by the Hirer. The Hirer agrees that upon demand by the Owner that the Hirer will immediately execute a mortgage in registerable form or

consent to a caveat with respect to any real property as required by the Owner to secure the interest of the Owner pursuant to this equitable mortgage. If the Hirer fails to execute a mortgage within a reasonable time of being requested the Hirer irrevocably and by way of security appoints each officer and director of the Owner to be the Hirer’s true and lawful attorney to execute and register such documents.

- 3.7 The Hirer grants to the Owner a security interest in all of the Hirer’s present or after-acquired property as security for the performance of the Hirer’s obligations in respect of these Terms.

4. Use of Plant and Equipment

- 4.1 The Hirer must not, without the prior consent of the Owner, make any alterations, additions or replacements to the Plant and Equipment.
- 4.2 The Hirer must:
 - (a) comply with the Hirer’s responsibilities outlined in the Schedule;
 - (b) keep and maintain the Plant and Equipment in proper working order and good and substantial repair;
 - (c) employ only persons who are properly trained and competent in the use of the Plant and Equipment and, where required by Workplace Health and Safety Standards, have all applicable licences, tickets or other approvals required to safely operate the Plant and Equipment.
 - (d) comply with all relevant laws, regulations, rules and by-laws governing or relating to the use and operation of the Plant and Equipment;
 - (e) safely operate the Plant and Equipment;
 - (f) notify the Owner of any accident resulting in injury to persons or damage to property (including damage to the Plant and Equipment) involving the Plant and Equipment within 24 hours of the date of the accident;
 - (g) not remove the Plant and Equipment from the Job Site without the prior written consent of the Owner;
 - (h) secure the Plant and Equipment when not in use and ensure that all reasonable measures are taken to protect the Plant and Equipment against acts of theft and vandalism; and
 - (i) return the Plant and Equipment in the same condition as it was hired.

5. Title to Plant & Equipment, Risk and Insurance

- 5.1 The Plant and Equipment is and will at all time remain the absolute property of the Owner.
- 5.2 Without limiting clause 5.1 all risk for the Plant and Equipment passes to the Hirer on delivery and remains with the Hirer until the Plant and Equipment is returned to the Owners possession.
- 5.3 The Hirer is not authorized to create a lien over the Plant and Equipment.
- 5.4 The Hirer will insure the Owner’s interest in the Plant and Equipment against physical loss or damage including, but not limited to the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to any person or property arising out of the use of the Plant and Equipment. Further the Hirer will not use the Plant and Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 5.5 Without limiting clause 5.4 above and irrespective of whether the Hirer has effected adequate insurance cover the Hirer accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Plant and Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.
- 5.6 Without limiting clause 5.4 above and irrespective of whether the Hirer has effected adequate insurance cover the Hirer accepts full responsibility for the safekeeping of the Plant and Equipment and indemnifies the Owner for all loss, theft or damage to the Plant and Equipment howsoever caused and whether or not such loss, theft or damage is attributable to any negligence failure or omission of the Hirer.

6. PPS Law

- 6.1 The Hirer acknowledges and agrees that to the extent this Agreement creates a PPS lease, as defined in the PPS Act, the Owner has a security interest in the Plant and Equipment for the purposes of the Personal Property Securities Act 2009 (Cth) as



- amended (the **PPS Act**), and to the extent applicable the PPS Act applies.
- 6.2 If the Owner does not have at the Commencement Date or otherwise obtain within 15 business days of the Commencement Date a PPS Law registration ensuring a perfected first priority security interest in the Plant and Equipment, the term of hire, (including any extension) may not, despite anything else in this document or Schedule, be longer than 90 days.
- 6.3 The Hirer acknowledges that the Owner may do anything reasonably necessary, including but not limited to registering any security interest which the Owner has over the Plant and Equipment on the Personal Property Securities Register in order to perfect the security interest and comply with the requirement of the PPS Act. The Hirer agrees to provide, without charge, all information and do all things reasonably necessary to assist the Owner to undertake the matters set out above.
- 6.4 The Hirer 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.
- 6.5 The Hirer and the Owner agree that the security interest the Owner has over the Plant and Equipment is a PPS lease, as defined in the PPS Act, which does not secure payment or performance of an obligation, and accordingly that chapter 4 of the PPS Act does not apply.
- 6.6 The Owner and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law.
- 6.7 The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any ‘security interest’ (as defined in PPS Law) in the Equipment other than with the express written consent of the Owner.
- 6.8 The Hirer must not lease, hire, bail or give possession (‘sub-hire’) of the Plant and Equipment to anyone else unless the Owner first consents in writing. Any such sub-hire must be expressed to be subject to the rights of the Owner under this agreement.
- 6.9 Where the Owner has approved a sub-hire, the Hirer must take all steps including registration under 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 Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner) for the security interest; and
 - (c) enabling the Owner and the Hirer to exercise their respective rights in connection with the security interest.
- 7. Access to Plant and Equipment**
- 7.1 The Owner is authorised to access, inspect and test the Plant and Equipment at any time during the term of hire after giving reasonable notice to the Hirer.
- 7.2 If the Hirer fails to return the Plant and Equipment to the Owner after the conclusion of the term of hire, or in the event that this agreement is terminated in accordance with clause 9 below, then the Hirer authorises the Owner or the Owner’s agent to enter upon and into the land and premises owned, occupied or used by the Hirer, or any premises where the Plant and Equipment is situated as the invitee of the Hirer and take possession of the Plant and Equipment without being responsible for any damage thereby caused.
- 8. No reliance or warranties**
- 8.1 The Hirer acknowledges and agrees that the Hirer has satisfied itself as to the condition and suitability of the Plant and Equipment for the Hirer’s purposes.
- 8.2 The Hirer acknowledges and agrees that the Owner is not liable:
- (a) to the Hirer for any loss or damage or delay through breakdown, mechanical defect or accident to or of the Plant and Equipment;
 - (b) for any loss or damages caused as a result of this agreement being terminated in accordance with the following clause 9; and
 - (c) to any person for any loss or damage to any property stolen from the Plant and Equipment or damaged or otherwise lost during the Dry Hire of the Plant and Equipment or left in the Plant and Equipment after the return of the Plant and Equipment to the Hire Site.

- 9. Default and Termination**
- 9.1 Without prejudice to any other remedies and notwithstanding any period of hire specified the Owner may elect to terminate this agreement in the following circumstances:
- (a) During any extension to the Minimum Hire Period, without notice;
 - (b) At any other time during the Minimum Hire Period by giving the Hirer 24 hours’ notice of its intention to terminate;
 - (c) Where any monies due under this agreement become overdue for payment;
 - (d) where the Hirer breaches any condition of this Agreement;
 - (e) If the Hirer becomes or is presumed to be insolvent (including where any steps are taken by a mortgagee to enter into possession of the Hirer’s assets, or to have a receiver, administrator or liquidator appointed in respect of the Hirer, or to have the Hirer declared bankrupt, or enter into any scheme of arrangement), the Owner may immediately terminate this agreement.
- 9.2 Where the Agreement is terminated under this clause 9, the Owner may immediately take possession of the Plant and Equipment with or without notice to the Hirer, and the Hirer must at the Hirer’s expense immediately on demand deliver the Plant and Equipment in good order and repair in accordance with the directions of the Owner.
- 9.3 Upon termination of this Agreement under this clause, the Hirer must pay to the Owner by way of liquidated damages, in addition to and without prejudice to any other right or remedy of the Owner, an amount equal to the total of:
- (a) the unpaid balance of any outstanding Hire Fees;
 - (b) the Owner’s costs and expenses incurred in repossessing the Plant and Equipment and in entering on and removing the Plant and Equipment from land or premises on which the Plant and Equipment was situated, and make good any injury or damage caused to the land or premises;
- 10. Condition of Plant and Equipment**
- 10.1 The Hirer acknowledges that the Owner completes a condition report in respect of the Plant and Equipment immediately prior to the Commencement Date and at the conclusion of the hire as soon as the Plant and Equipment is returned to the Owner’s possession.
- 10.2 The Hirer acknowledges and agrees that it will, at its cost, promptly reinstate the Plant and Equipment to its original condition as specified in the Owners condition report, excepting fair wear and tear, at the conclusion of hire.
- 10.3 If the Hirer fails to promptly undertake repairs in accordance with clause 10.2 above, the Owner is authorised to undertake the necessary repairs and the hirer will be liable for the cost of repairs and management and administration of the repairs.
- 10.4 During any period in which repairs are being undertaken or the Plant and Equipment is rendered unfit for service prior to the repairs being undertaken, in accordance with clause 10.2 or 10.3 above, the Hirer’s liability to pay the Hire Price in accordance with this agreement will continue.
- 10.5 The Hirer further acknowledges that it will ensure all Plant and Equipment has been refuelled and all liquids topped up at the conclusion of hire. If the Hirer fails to comply with this subclause, the Hirer is liable to reimburse the Owner for any refuelling or fluid top up expenses.
- 10.6 The Hirer may request a copy of the Owners condition report at any time.
- 11. Miscellaneous**
- 11.1 These Terms continue to apply during any extension to the Minimum Hire Period.
- 11.2 If any part of this Agreement is, or becomes void or unenforceable, that part is or will be, severed from this Agreement to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- 11.3 The Hirer may accept these Terms in the following manner:
- (a) By signing these Terms; and/or
 - (b) By indicating acceptance to the Owner in another manner; and/or
 - (c) By accepting delivery of the Plant and Equipment.
- 11.4 This Agreement constitutes the entire agreement between the parties and contains all the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Agreement.