



## Atom Heavy Hire Limited Terms & Conditions April 2018

### Definitions

<b>AHH</b>	Atom Heavy Hire Limited
<b>Hirer</b>	The customer hiring the Machine (whose name and contact details are set out in the related Account Application)
<b>Machine</b>	Machine means the equipment described in a text message, email or other written notification from AHH to the Hirer, and includes any accessories or attachments
<b>Start Date</b>	In relation to a Machine, means the date on which the Machine leaves AHH's premises for delivery to (or collection by) the Hirer
<b>Return Date</b>	In relation to a Machine, means the "return date" confirmed by AHH to the Hirer by text message, email or other written notification

### 1. Conditions of Hire

- (a) AHH agrees to hire the Machine to the Hirer on the terms and conditions set out herein.
- (b) AHH reserves the right to change these terms and conditions from time to time by AHH giving notice to the Hirer by either sending notice of the amendment to the Hirer's email address; publishing the amended terms on its website or displaying the amended terms at premises from which AHH conducts its hire business.

### 2. Period

- (a) The Hirer must return the Machine to AHH's premises by no later than the Return Date.
- (b) The hire period will commence on the Start Date and continue until the **first to occur** of:
  - (i) the time the Machine is returned to AHH's premises;
  - (ii) the Return Date; and
  - (iii) any earlier termination of the hire agreement by AHH under these terms and conditions.
- (c) Hire costs will be charged from the time the Machine leaves AHH's premises on the Start Date to the time it is returned to AHH's premises, unless a prior arrangement has been made in writing with AHH management.
- (d) The hire rate is calculated based on an 8 hour day (8am-5pm) or part thereof. AHH will allow a grace period of one hour without charge (until 9am) on any calendar day for the return of the machine after which time the Hirer will be charged another full day's hire at AHH's current rates.
- (e) To avoid confusion NO allowance will be made for the time during which the Machine is not in use for any reason, unless prior arrangements has been made in writing with AHH management.

### **3. Hire and Rates**

(a) Before taking the Machine away from AHH's premises, the Hirer must in their sole opinion satisfy themselves that the Machine is safe, suitable and sufficient for the purpose for which they are hiring the Machine. Any subsequent exchange of tools, the machine itself, etc will entail additional charges.

(b) The Machine hired to the Hirer does not purport to be new, but when hired out all items are understood to be in good order for normal operation at the stated capacity under normal conditions. Where practical and before taking the Machine, Hirer is encouraged to test and accept the basic operation of the Machine to satisfy themselves the Machine is suitable for its purpose.

(c) AHH will not be liable for any delays, accidents or damage of any kind, direct or indirect, which arises due to a defect or breakdown of the Machine hired.

(d) Any additional machines or accessories hired shall be charged and paid on the same invoice as the original hire at the agreed rates or if no rate is agreed AHHs standard rates at the time of hire shall apply.

(e) The cost of reconditioning items blunted by use during the hire period by the Hirer or otherwise rendered unfit for further service without repairs, such as concrete breaker steels and the like will be charged to the Hirer by AHH.

### **4. Operation**

(a) Only competent operators must be given charge of Machines while in the Hirer's possession and the Machine is only to be used in the manner that it is designed to be used.

(b) Hirer is responsible for all cleaning, lubrication and maintenance of adjustment of the Machine and for any damage due to overloading mistakes, or neglect in handling etc during the hire period.

(c) The Hirer must keep the machine in proper working order at their own expense and pay all costs for replacement or repair due to fire, theft, accident and loss or otherwise during the hire period.

(d) The Hirer must ensure the operator has a current drivers license with appropriate class for the Machine hired.

### **5. Transport**

(a) The Hirer shall pay the cost of delivery and collection of the Machine and will be liable for any damage to the Machine in transit.

(b) Delivery and collection by AHH or its subcontractor shall be to and from the footpath unless previously arranged.

### **6. Fuel Oil Etc**

(a) Fuel, oils etc are to be checked everyday or shift. The Hirer shall provide all petrol, fuel, oil lubricating oil, cleaning and other materials and labour for the operation of the Machine and only fuel and oil approved by AHH or the machine's manufacturer shall be used for the same during the hire period.

## **7. Breakdowns**

(a) The Hirer must notify AHH immediately of any breakdown and the date of receipt of such notification shall be used to suspend hireage charges if the Hirer is not at fault. In the event of breakdown occurring due to actions of the Hirer which could have been reasonably avoided in normal operation by a competent operator, normal hireage rates shall continue to apply in full, in addition to Section 3 above.

## **8. Property Rights**

(a) All Machines supplied by AHH to the Hirer under this Agreement shall remain the property of AHH.

(b) The Hirer agrees that the hire of a Machine may create a 'security interest' in the Machine for the purposes of the Personal Property Securities Act 1999 (PPSA).

(c) The Hirer must do anything (for example, entering documents) required by AHH for the purposes of:

- Ensuring that AHH's security interest is enforceable, perfected and otherwise effective under the PPSA;
- Allowing AHH to exercise its rights in connection with the security interest.

(d) The Hirer agrees that nothing in sections 114(1)(a), 133 or 134 of the PPSA applies to this Agreement and waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA.

(e) The Hirer must not sell or otherwise deal with the Machine and must not lease, hire, bail or give possession ("sub-hire") of the Machine to anyone else or grant or create any security interest in the Machine unless AHH (in its absolute discretion) consents in writing. Any such sub-hire must be in writing in a form acceptable to AHH and must be expressed to be subject to the rights of AHH under this Agreement.

## **9. Terms**

(a) All accounts are due for payment on the 20th of the month following the date of the invoice.

(b) Accounts unpaid 10 days after due date shall incur a 2% late fee and AHH reserves the right to recall the Machine on hire.

(c) Accounts unpaid 45 days from the due date may have credit facilities withdrawn.

(d) Accounts remaining unpaid beyond 45 days will have credit facilities withdrawn. the Machine on hire will be recalled and necessary steps will be taken to recover the debt, without prejudice to AHH's rights to recover all amounts due for hire, reconditioning of Machine, and (if any) the costs for transporting the Machine back to AHH's premises.

(e) All accounts will have a credit limit.

(f) If any account is in dispute the undisputed portion of the account shall be payable in accordance with these terms.

(g) Third party costs: The Hirer shall pay or reimburse AHH all costs and/or expenses incurred in instructing a solicitor and/or a debt collection agency to recover any amounts overdue for payment and such costs and expenses shall bear interest plus GST as stated above in paragraph 9(b) from the due date for payment up to and including the date upon which AHH received the outstanding payment.

## **10. Insurance**

Insurance is at the Hirer's risk. The Hirer shall provide a cover note of insurance (satisfactory to AHH) prior to the hire commencing. The Hirer is responsible for the excess on insurance claims.

## **11. Bond**

AHH may at its sole discretion require a bond to be lodged with AHH.

## **12. Termination**

(a) If the Hirer breaches these terms and conditions or the Hirer becomes bankrupt, insolvent or ceases business then AHH shall be entitled to:

- (i) immediately terminate the agreement;
- (ii) repossess the Machine (and the Hirer hereby authorizes AHH to enter any premises where the Machine is located);
- (iii) sue for recovery of all monies owing by the Hirer.

(b) The Hirer indemnifies AHH in respect of any damages, costs or loss resulting from a breach by the Hirer of any provision of this Agreement.

## **13. Limitation of liability**

(a) The parties acknowledge that the hire is in trade (within the meaning of the Consumer Guarantees Act) and the Machine is supplied to the Hirer in trade, AHH and the Hirer confirm and agree that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act do not apply.

(b) The Hirer acknowledges that AHH has no liability to the Hirer for any loss or damage arising as a result of the Hirer's use of the Machine or arising by operation of law.

(c) The maximum liability of AHH (if any) for all claims made by the Hirer will not exceed the hire charges paid by the Hirer to AHH.

(d) The Hirer indemnifies AHH against any liability, losses, damages or expenses incurred or suffered by the AHH as a result of any claim made by a third person against AHH in respect of any loss or liability arising from the use of the Machine hired by the Hirer.

## **14. Conditions**

(a) All infringement notices (ie traffic tickets) that are incurred by the Hirer during the hire period in relation to the Machine are to be paid by the Hirer. There are no exceptions.

(b) AHH may inspect the Machine at any time at the Hirer's premises, and terminate the hire immediately if the Machine is not being used and maintained as provided above or if these terms and conditions and terms are not strictly complied with by the Hirer.

(c) AHH undertakes no liabilities what whatsoever in respect of third party or similar risks or for personal injury, or for consequential damage of any kind.

(d) The Hirer shall keep the Machine in their control and use it solely for their work purposes and will not permit it or any part therefore to be used by any other party for any other work.

(e) After the hire period is completed the Hirer shall deliver the Machine, complete with all accessories, clean and in good working order. Fair wear and tear is expected, however additional charges may apply should this wear and tear be unreasonable or the Machine is returned dirty. In this case AHH will restore the Machine to a state in which it is able to hired again at a cost to the Hirer of \$100 +GST per hour.

(f) The Hirer is liable in all respects to ensure that it and any person operating the Machine or around the Machine complies with their obligations under the Health and Safety at Work Act 2015.