



Link Industries Pty. Ltd. A.B.N. 85 005 930 567 trading as:

# LINK PUMPS

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## CONDITIONS OF SALE AND HIRE

### 1. Definitions

1.1 In these Conditions of Sale and Hire:

- (a) "Owner" is Link Industries Pty. Ltd ABN 85 005 930 567
- (b) "Customer" refers to the person, firm or corporation purchasing or hiring Plant from the Owner.
- (d) "Plant" means all equipment including tools accessories and parts supplied to the Customer, except where the conditions relating to DAMAGE WAIVER FOR HIRED PLANT state otherwise,
- (e) "Environmental Laws" means any statute, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

1.2 Except to the extent that the context other wise requires:

- (a) words importing the singular include the plural and vice versa.
- (b) words importing a gender include other genders and corporations and vice versa.
- (c) words importing individuals include corporations and vice versa.
- (d) the word Customer shall mean Hirer or Renter.
- (e) where the Customer comprises two or more persons those persons are jointly and severally bound by these conditions and a reference to the Customer includes a reference to any one or more of those persons.
- (f) a reference to a party to these conditions includes its successors and permitted assigns.

### 2. Application and variation of these conditions

- 2.1 These conditions are deemed to be incorporated in all agreements for the Hire of Plant by the Owner to the Customer and apply in place of and prevail over any terms or conditions contained or referred to elsewhere or implied by trade custom, practice or course of dealing.
- 2.2 These conditions cannot be varied except in writing signed by each party.
- 2.3 The Owners catalogues, price lists and quotations do not constitute offers made by the Owner. Customers order will be deemed to be an offer to the Owner on these conditions, notwithstanding that such order contains terms and conditions which may purport to conflict, add to or vary these conditions.

### 3. Taxes and duties

Except as otherwise provided by the law all sales, excise and similar taxes or duties which the Owner may be required to pay or collect with respect to the Plant or its supply to the Customer shall be paid by the Customer. Where the Customer claims exemption from duty or tax the Customer must furnish appropriate exemption certificates to the Owner. The Owner will determine and advise the Customer of additional amounts payable as a result of the Goods and Services Tax applying to the supplies made by the Owner to the Customer under these Conditions of Sale and Hire. The Customer shall pay the additional amounts notified by the Owner Immediately, or at such times as otherwise determined by the Owner.

### 4. Terms of payment

- 4.1 Where the Owner is responsible for delivery of Plant, it will not be responsible for the delays in delivery or failure to deliver due to causes beyond its control Including but not limited to acts of God, war, mobilisation, civil commotion, riots, embargoes, orders of regulations of governments of any relevant jurisdiction, fires, floods, strikes lockouts or other labour difficulties, shortages of or inability to obtain shipping space or transportation.
- 4.2 Hire is charged for the time the Plant is out of the possession of the Owner at the customers request (inclusive of weekends and public holidays), not only the time during which the Plant is used.
- 4.3 Payment in full for all hiring charges and any other amounts payable in accordance with these Conditions of Sale and Hire is required 30 days from the date of invoice. The Customer cannot make a claim for credit after 14 days from the date of the invoice.
- 4.4 The Owner reserves the right to revise its hire rates and related charges without notice.
- 4.5 Hire charges cover only the fee for hiring the Plant to the Customer. If the Customer requires the Plant to be delivered, the Customer shall pay in addition to the Owner all freight and other charges incurred in transporting the Plant, including loading and unloading at site. The Owner shall, if requested by the Customer, but only if personnel are available, attend the site and instruct the Customer in the operation of the Plant, and the Customer shall be subject to standard charges (if applicable) for such services. Any other additional service, including the provision of an operator, shall be paid for by the Customer
- 4.6 The Owner may charge interest on all amounts not paid by the Customer by the due date at the rate of 5% per annum from and including the due date to the date of the actual receipt of payment.
- 4.7 The Owner reserves the right at its discretion at any time to withdraw any credit terms and substitute Cash with Order or Cash on Delivery or any other terms.

### 5. Hire periods

- (a) The daily rate is based upon the Plant being hired for a maximum hire period of 8 hours. If used in excess of 8 hours per day, an additional hiring charge will be applied,
- (b) The weekly rate is based upon the Plant being hired for a minimum of 5 days unless otherwise specified.

## 6. Transport and Delivery

- 6.1 Any period or date for delivery stated is intended as an estimate only and is not a contractual commitment. The estimate is based on the Customer's total co-operation, the complete accuracy of the Customer's specifications, and the absence of Force Majeure, and will be deemed extended at the Owner's option in the event of variation in any of the foregoing. The Owner will meet delivery dates to which it expressly agrees in writing but under no circumstances whatsoever shall the Owner be liable for any loss or damage suffered by the Customer or any other person, and the Customer shall not be entitled to cancel the agreement when time is agreed to be of the essence until the expiration of seven days from a given delivery date.

## 7. Cancellation of sales orders

- (a) Upon placing an order to purchase any Plant, the Customer must pay the Owner a deposit nominated by the Owner at the time of sale (the "Deposit"),
- (b) The Customer will forfeit the Deposit if the order is cancelled at anytime after 24 hours have passed from the time of the making of the order. Waiver of this condition is at the absolute discretion of the Owner.

## 8. Late return of hired plant

Hiring shall commence from the time the Plant is collected by the Customer from the Owner's premises until returned to the said premises. In the event the Customer failing to return the Plant to the Owner's premises until after 8.00 a.m. on the day following the day of hire the Customer will be charged an additional half day hire if the Plant is returned before 12 noon, or an additional full day's hire if the Plant is returned after 12 noon.

Should the Owner agree with the Customer to deliver and collect the Plant hire charges shall commence from the time the Plant leaves the Owner's premises until the Owner is notified by the Customer that the Plant is available for collection, at which time the Owner shall off hire the equipment. The notification shall be given by the customer in time for the plant to be picked up and returned to the owner's premises within the owner's hours of business on the day of the termination of the hire. In the event of insufficient notice being given the Customer will be responsible for the safety and security of the plant until it is collected.

## 9. Breakdown of hire plant

In the event even of any plant breakdown the Customer is required to notify the owner immediately.

## 10. Customer's hiring obligations

10.1 The Customer shall:

- (a) Prior to use of the Plant determine the condition and suitability of the Plant hired for the purpose required
- (b) Use the Plant in a skilful and proper manner and only for the purpose and within the capacity for which it was designed acknowledging that the Owner can give no warranty as to the said capacity.
- (c) Ensure that the Plant is operated by a suitably certified, trained or licensed operator (whether Supplied by the Customer at its cost or employed and provided by the Owner) who will work entirely in accordance with the instructions of the Customer or his authorized representative.
- (d) At its own expense service, clean, fuel, lubricate and maintain the Plant in good and substantial repair and condition, except for prearranged major servicing which will be carried out by the Owner during normal working hours.
- (e) Become and remain acquainted with the condition of the plant and not operate it after it has become defective, damaged or in a dangerous state.
- (f) Clean the Plant thoroughly after completion of the hire or to be charged at the absolute discretion of the Owner a cleanup fee at a rate to be nominated by the Owner for any cleaning required to be performed by the Owner or its representative/s.
- (g) Accept full responsibility for the safe-keeping and insuring of the Plant, and except as specified hereafter, indemnify the Owner for all loss, theft of or damage to the Plant however caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence, failure or omission of the Customer.
- (h) Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Plant during the hire period however arising, whether from negligence of the Customer or Owner or otherwise and without limiting the generality of the foregoing whether or not the Plant was being operated by a servant of the Owner or any other person for whose acts the Owner might be or is held to be responsible in connection with the operation of the Plant.
- (i) Not be entitled to claim any lien over the Plant nor sell, transfer, mortgage, charge or encumber in any way the Plant nor, without the Owner's prior written consent, part with possession of the Plant nor assign the benefit of the hire agreement.
- (j) Not alter, make any addition to, deface or erase any identifying mark, plate or number on or in the Plant or in any other manner interfere with the Plant.
- (k) Understand and accept that an additional charge for DAMAGE WAIVER FOR HIRED PLANT (see also Condition 10 below) is automatically included in the Owner's charges for any Plant (excluding accessories) where replacement value of the Plant exceeds \$300.00 except upon the Owner receiving written advice from the Customer that the DAMAGE WAIVER FOR HIRED PLANT is not required, and that the Customer accepts the full replacement or reinstatement costs (whichever is applicable) for any loss, theft or damage to the Owner's Plant based on the then current list price of the Plant. In the event that such written advice is received from the Customer, the Owner may, at its absolute discretion, require proof that the Customer has current insurance policies which insure the Plant during the Hire period for its full replacement or reinstatement cost.
- (l) Pay to the Owner all hire and related charges and other costs as stipulated in accordance with this agreement.
- (m) Ensure that any safety information supplied with the Plant will be conveyed to any person using the Plant.
- (n) Attach to the Plant and maintain any safety signs supplied with the Plant and bring them to the attention of any person using the Plant, and ensure they are clearly legible by the operator of the plant.
- (o) Ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Plant.
- (p) Ensure that all operators of the plant wear suitable clothing and any protective equipment required or recommended by the manufacturers' safety and operating instructions, or as recommended by the Owner.
- (q) Comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Plant. The Customer Indemnifies and agrees to keep the Owner indemnified against any loss,

cost, damage or expense incurred or which may be incurred by the owner arising from the use of the plant under this contract.

- 10.2 The Owner may inspect the Plant from time to time during the hire period and the Customer shall permit or procure admission for representatives of the Owner to the premises upon which the Plant is situated for that purpose.

### **11. Termination of hire**

- 11.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement:
- (a) At any time by giving to the Customer notice of its intention to so terminate.
  - (b) Without notice, if the Customer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owners rights in or to the Plant may be prejudiced, or have a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
- 11.2 If installation of de-watering plant cannot be effected within a particular time or at all due to ground conditions or if such plant fails for any reason (other than fault of the Customer to lower or keep lowered the water table at the site) the Customer shall have no other rights or claims against the Owner of any kind whatsoever.
- 11.3 Upon termination of this hire agreement the Owner shall be entitled to take Possession of the Plant and for this purpose the Customer irrevocably appoints the Owner as its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Customer upon which the Plant is then situated and agrees to indemnify the Owner in respect of any claims, damages and expenses arising out of any action taken under this condition.

### **12. Damage waiver for hired plant**

- 12.1 The Customer is responsible for theft, loss and damage to Plant and/or its attached tools and accessories whilst on hire and the costs of replacement or repairs to such will be charged to the Customer. Where DAMAGE WAIVER FOR HIRED PLANT charges have been charged to the Customer, the Owner agrees upon prompt submission of a written Police Report to waive its right to claim for loss and damage to the Plant caused by fire, storm, collision, accident, theft or burglary, providing adequate precautions have been taken to safeguard the Plant and the loss and damage was not incurred due to negligence by the Customer. Such waiving of rights is subject to payment by the Customer of an excess of:
- (a) In the event of loss of the Plant: \$300.00 per item or 15% of the new replacement cost of the Plant (whichever is the greater);
  - (b) In the event of damage to the Plant: \$300.00 per item or 15% of the cost of repairs to the Plant (whichever is the greater).

Expressly excluded from the above DAMAGE WAIVER FOR HIRED PLANT is loss or damage as defined below:

- (a) Damage due to misuse, abuse of the Plant or any components thereof;
- (b) Wrongful conversion of the Plant or any components thereof;
- (c) Loss or damage in contravention of the conditions of this hire agreement;
- (d) Loss or damage from use in violation of any statutory laws and regulations;
- (e) Loss or damage of tools, accessories, fittings, hoses, valves, footvalves, couplings, and other similar accessories;
- (f) Loss or damage relating to lack of lubrication or other normal servicing of the Plant;
- (g) Loss or damage to the Plant whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (h) Loss or damage to motors or other electrical equipment caused by overloading or artificial electrical current, including use of under-rated or excessive length of cable on electrical equipment;
- (k) Damage caused by exposure to any corrosive substance eg. Caustic, cyanide, salt water, acid, etc
- (l) Theft of the Plant unless reasonably locked and secured;
- (m) Loss or damage during transport, except where transported by the Owner;
- (n) Loss or damage to items on which the DAMAGE WAIVER FOR HIRED PLANT premium is not charged;
- (o) Loss or damage caused by the negligence of the Customer.

### **13. Exclusion of conditions and warranties**

To the full extent permitted by law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or State legislation.

### **14 .Exclusion of liability**

The Owner and the Customer agree that in the event of the Customer suffering any loss, damage or claim howsoever arising as a result of hiring or purchasing the Plant, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant, the liability of the Owner is limited to the repair or replacement of the Plant and is not to include economic or consequential damages of any nature whatsoever.

### **15. Miscellaneous**

- (a) The person signing the document for and on behalf of be Customer hereby covenants with the Owner that he or she has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this agreement not in fact having such power and/or authority.
- (b) Termination of the hire period shall not affect any of the conditions that are expressed or implied to operate or have effect after termination.
- (c) Time is to be of the essence of all obligations of the Customer in these conditions.
- (d) If any of the Conditions of Sale and Hire are found to be void, voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.