

Total Water Management Pty Ltd

CONDITIONS OF SALE & HIRE

1.0 DEFINITIONS

In these Conditions of Sale and Hire:

(a) "Owner" is Total Water Management Pty Ltd (ABN 87 117 976 726).

(b) "Customer" refers to the person, firm, organisation or corporation purchasing or hiring Plant from the Owner. The Customer is not permitted nor authorised to lend or re-hire the Plant to any other person, firm, organisation or corporation. When Plant is hired to other hire companies (that are recognised by the Owner to carry on that role), then such Customers have the right to re-hire for value.

(c) "Plant" means all equipment including accessories and parts supplied to the Customer. Plant shall remain the property of the Owner and shall not be deemed to be a fixture.

(d) "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.

2.0 TAXES AND DUTIES

Except as otherwise provided by the law all sales, goods and services 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 immediately, or at such time or times as otherwise determined by the Owner. Where the Customer claims exemption from duty or tax the Customer must furnish appropriate exemption certificates to the Owner.

3.0 TERMS OF PAYMENT

(a) Where the Owner is responsible for delivery and/or installation of Plant, it will not be responsible for the delays in delivery or installation or failure to deliver due to causes beyond its control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

(b) Hire is charged for the time the Plant is out of the possession of the Owner at the Customer's request (inclusive of weekends and public holidays) and when held on standby, not only the time during which the Plant is used.

(c) Payment in full by account Customers 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 the invoice. For all Non Account customers (Cash Customers) payment for Wellpoint Dewatering System Installation work is to be made in advance prior to any work taking place and all Pump hire and Wellpoint Dewatering the first weeks hire charge in advance and then Cash invoices are due on presentation of invoice (Usually Weekly)

(d) The Owner reserves the right to revise its hire rates & related charges without notice.

(e) Hire charges cover only the fee for hiring the Plant to the Customer. If the Customer requires the Plant to be delivered and/or installed, the Customer shall in addition pay 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 in addition pay the Owner for such services. Any other additional services provided to the Customer, shall be paid for by the Customer.

(f) The Owner may charge interest on all amounts not paid by the Customer by the due date at the rate per annum equal to 1% plus the National Australia Bank Business Overdraft Indicator Lending Rate, from and including the due date to the date of the actual receipt of payment.

(g) The right to demand payment of interest under this Clause 3 is without prejudice to any other rights and remedies that the Owner may have in respect of a payment default under this agreement.

(h) The Owner may set-off against any credit owed to the Customer any amount owing by the Customer to the Owner.

4.0 HIRE PERIODS

The weekly rate is based upon the Plant being hired for 7 days unless otherwise specified.

5.0 SALES ORDERS & CANCELLATION

(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.

(b) The Customer will forfeit the Deposit if the order is cancelled at any time after 24 hours have passed from the time of the making of the order. Waiver of this condition is in the absolute discretion of the Owner.

(c) The Customer shall make payment in full prior to the Plant being handed over or delivered.

(d) Title to any Plant sold to a Customer shall not pass until the Owner has received full payment.

(e) Title to any Plant hired to a Customer does not pass from the Owner to the Customer

6.0 LATE RETURN OF HIRED PLANT

Should the Owner agree with the Customer that the Owner will 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 will give an "OFF-HIRE" number as verification that such notification has been received. The notification shall be given by the Customer in time for the Plant to be picked up & returned to the Owner's premises within the Owner's normal business hours on the next day of cessation of hire. In the event of insufficient notice being given, the Customer will be charged a minimum of an extra half day hire at the Owner's absolute discretion. Where the Owner agrees to collect the Plant the Customer remains responsible for theft, loss or damage to the Plant until the Plant is collected by the Owner.

7.0 BREAKDOWN OF HIRE PLANT

In the event of any Plant breakdown the customer is required to notify the Owner immediately. Such notification does not absolve the Customer from its requirement to safeguard the Plant until it is returned to or collected by the Owner. In the event of a breakdown the Customer shall not repair, or attempt to repair, the Plant without the prior consent of the Owner. If the Plant breaks down or becomes unsafe, the Customer must immediately stop using the Plant and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Plant. The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising from any breakdown in the Plant whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or any other reason whatsoever. If any Plant breaks down or is damaged due to the Customer's negligence or wilful misuse the Owner is entitled to continue to charge hire charges until the Plant has been repaired, replaced or the Owner may recover the cost of any repairs that are carried out to the Plant.

8.0 CUSTOMER'S HIRING OBLIGATIONS

8.1 The Customer shall:

(a) Prior to the use of the Plant determine with the owner the condition and suitability of the Plant hired for the purpose required. The Customer accepts that the Owner gives no warranty that the Plant is suitable for the Customer's purpose. If the customer requires the owner or the owners representatives to make a special trip to attend site to determine suitability the cost of this service is payable by the customer.

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- (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 who will work entirely in accordance with the instructions of the Customer or his authorised 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) Accept full responsibility for all flat and/or damaged tyres.
- (f) Clean the Plant thoroughly to an as delivered condition upon completion of the hire or be charged at the absolute discretion of the Owner a cleaning 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 during the period of hire and, where applicable, until the Plant is collected by the Owner, and except as specified hereafter, indemnify the Owner for all loss, theft 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, judgement, damage, loss, expense (including all reasonable legal costs and disbursements of lawyers) or liability incurred or suffered by or brought or made or recovered against the Owner in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use (including unauthorised use) of the Plant during the hire period however arising, whether from negligence of the Customer or otherwise and without limiting the generality of the foregoing whether or not the Plant was being operated by a representative 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 be entitled to remove the Plant or allow it to be removed from the State or site if applicable from which it was hired without the Owner's written permission.
- (k) 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.
- (l) Pay to the Owner all hire and related charges and other costs as stipulated in accordance with this agreement.
- (m) Ensure that all safety information, notices, terms and conditions and operating instructions supplied with the Plant will be conveyed to any person using the Plant.
- (n) Ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Plant.
- (o) Ensure that all operators of the Plant wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by the Owner.
- (p) Ensure that a job safety analysis is conducted prior to operating any electrical or mechanical Plant to ensure safe working methods apply.
- (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.

8.2 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.

9.0 TERMINATION OF HIRE & RECOVERY OF PLANT

9.1 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) 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 Owner's 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 administration or official management or if it ceases to carry on business.

9.2 If the Owner has terminated the hire agreement or if the Customer has failed to make payment to the Owner in accordance with the terms of the agreement, then upon giving the Customer 24 hours notice of its intention to remove the Plant, the Customer expressly authorises the Owner to enter the premises where the Plant is located and arrange for its removal. The Owner is expressly authorised to decommission such Plant and disconnect (or arrange for disconnection) of any utility services where this is required in order to remove the Plant from the premises. The hire period shall not cease until the Plant has been decommissioned, all utility services have been disconnected and the Plant removed and returned to the Owner. The costs associated with any decommissioning, disconnecting services and removal will be charged to the Customer. The Owner shall not be liable for any damage caused to the Customers property as a result of decommissioning, disconnecting the utility services and removing the Plant. The Owner will not be responsible or liable for any personal property left inside the Plant when it is removed or returned to the Owner. The Customer indemnifies the Owner in respect of any claims, damages & expenses arising out of any action taken under this condition.

10.0 THEFT & DAMAGE

10.1 The Customer is responsible for theft, loss and damage to Plant and/or its attached accessories whilst on hire until the Plant is collected by the Owner, and the costs of replacement or repairs to such will be charged to the Customer. In the event of a total right off hire charges will be charged until the replacement unit is delivered to the Owner.

10.2 The Customer is to provide to the Owner a copy of their Insurance Policy showing "Hired In Plant" coverage for the value of equipment supplied

11.0 ELECTRICAL EQUIPMENT – RE-TESTING and TAGGING

All electrical equipment has been safety checked, tested and tagged by the Owner prior to hire in accordance with the relevant latest applicable Australian Standard(s) and Regulatory Authority requirements. While any electrical equipment is on hire, the Customer is responsible for arranging at the Customer's cost the re-testing and re-tagging of the electrical equipment by the manufacturer's agent in accordance with the manufacturers instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. The Owner is able to arrange, at the Customer's cost, for such re-testing and re-tagging of the electrical equipment. Any damage caused to the Plant resulting from incorrect testing shall be at the Customer's cost.

12.0 EXCLUSION OF CONDITIONS, WARRANTIES & LIABILITY

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. The Owner and the Customer agree that in the event of the Customer suffering any loss (including economic loss), damage, cost, expense 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. The Owner shall not be liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature whatsoever.

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13.0 EXCLUSION OF LIABILITY REGARDING DE- WATERING PLANT

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, the Customer shall have no other rights or claims against the Owner of any kind whatsoever.

14.0 MISCELLANEOUS

(a) The person signing the document for and on behalf of the 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, costs and claims 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.

(e) No amendment or variation of this agreement is valid or binding on a party unless made in writing and executed by the parties

(f) No failure to exercise nor any delay in exercising any right, power or remedy by the owner operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

(g) The rights, powers and remedies of a party under this agreement are in addition to, and do not exclude limit, any right, power or remedy provided by law or equity or by any agreement.

(h) This Agreement replaces and supersedes all previously issued Conditions of Sale and Hire.

(i) This Agreement is governed by the laws of the State of Queensland.

The Owner will comply with the National Privacy Principles in all dealings with customers.

PLEASE SIGN BELOW AND INITIAL ALL PAGES AND RETURN WITH COMPLETED ACCOUNT FORM.

_____ **(Sign Here)**