

# COASTAL HIRE

**ABN 70 114 481 408**  
**33 Jindalee Road Port Macquarie,**  
**New South Wales 2444**  
**Phone 02 6581 3388**  
**Email [admin@coastalhire.com.au](mailto:admin@coastalhire.com.au)**

## **Agreement for the Hire of Elevating Work Platforms (EWPs) and other Equipment**

### **Definitions**

**Owner** is Coastal Hire Pty Ltd trading as Hastings Rentals.

**Hirer** refers to the Consumer as defined in the Australian Consumer Law which is contained in the schedule 2 of the Competition and Consumer Act 2010.

**EWP** is an abbreviation for 'Elevating Work Platform' and means a machine or device that is intended to displace persons, tools and materials to working positions and consists of at least a work platform with controls, an extending structure and a chassis.

**Other Equipment** includes temporary fencing (including bases, bracing and clamps), portable toilets/ showers, site offices/ lunchrooms and ablution blocks, shipping containers, holding tanks, stairs, refrigerators, microwave ovens, urns, desks, chairs, plan benches, generators, compactors, harnesses, lanyards, post hole digger, track mats, distribution boards, electrical leads, water pumps, hot water systems and trailers.

### **Hire agreement**

The Owner shall let and the Hirer shall take on hire an EWP and other equipment. The Owner and the Hirer are entering into this agreement to provide for the hiring of all EWPs requested by the Hirer from time to time. The Owner may decline to hire an EWP in its sole discretion.

If the Hirer wishes to hire an EWP and other equipment, the Owner will require the Hirer to sign a hire schedule, order, delivery docket or similar document (the "Schedule") in the form of Attachment 1 or any other form required by the Owner from time to time.

The Schedule provided by Coastal Hire to the Consumer, whether signed or not, may list the particular EWP and other equipment taken for hire, applicable charges, hire commencement and termination date and such other information and provisions as the Owner requires.

This agreement provides for the terms of each such hire. Each Schedule shall not constitute a separate hire agreement but shall be read together with and form part of this agreement incorporating all of the provisions of this agreement. The agreement shall include the terms and conditions attached.

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## **Terms and Conditions**

### **1 Hire of EWP and other equipment.**

- 1.1 The Owner agrees to provide EWP and other product in good condition. Any items missing or defects in equipment must be notified in writing within seven days to the Hirer.
- 1.2 The hiring of the EWP and other equipment will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.
- 1.3 The hirer is entitled to use the EWP and other equipment for the hire period. Any extension of the hire period must be agreed to by the owner.
- 1.4 The hirer agrees to return the EWP and other equipment to the address identified by the owner on or before the end of the hire period as outlined in the Schedule and that failure to do so can be criminal theft and may be immediately reported to the police.

### **2 Payment for rental**

- 2.1 The hirer agrees to pay the owner the hire fee and the damage waiver fee specified in the Schedule for the EWP and other equipment for the hire period including any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to this agreement and the hire.
- 2.2 The required fees must be paid within 30 days of receipt of an account from Coastal Hire.
- 2.3 The owner may agree to make the EWP and other equipment delivery and collection arrangements to and from the hirer's site and the hirer will pay to the owner any charges and expenses incurred in such delivery, installation and/or collection. The owner will use its best endeavours to deliver the EWP and other equipment by the agreed time but will not be liable to the hirer for a late delivery, non-delivery or any associated loss or damage due to a late or non-delivery.
- 2.4 A cancellation fee may be charged by the owner where the EWP and other equipment has been reserved by booking and the hirer cancels the booking without reasonable notice or fails to take delivery of the EWP and other equipment.
- 2.5 The owner may charge the hirer a fee for accepting payment by credit card.
- 2.6 The owner may charge additional fees if the EWP and other equipment is used for more than eight hours per day.
- 2.7 The owner reserves the right at any time without notice to revise the hire charges.

### **3 Damage waiver**

- 3.1 Damage Waiver is not insurance, but is an agreement by Coastal Hire that the Customer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.
  - (i) Damage Waiver applies to all hires, subject to the conditions below. The Damage Waiver Excess is the actual recovery and repair cost of the Equipment, or 20% of the current replacement cost of the Equipment as reasonably determined by Coastal Hire using supplier's list prices, whichever is the lesser amount. **DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY** in the following circumstances.
- 3.2 This clause in no way entitles the hirer to, or implies the availability of, compensation from the owner for any liability incurred by the hirer in relation to the use of the hired EWP and other equipment.
- 3.3 This clause will not continue to operate after the expiration of the hire agreement unless an extension by the owner is granted in writing and an additional agreed fee is paid.

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- 3.4 This clause will not apply to loss or damage which relates to or arises from:
- (i) Breach of any statutory laws or regulations in connection with the use of the EWP and other equipment by the hirer;
  - (ii) Misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the EWP and other equipment;
  - (iii) Theft, loss or damage by whatever cause to tools and/or accessories supplied with the EWP and other equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
  - (iv) Lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the hirer under the agreement;
  - (v) Disregard for instructions given to the hirer by the owner in respect of the proper use of the EWP and other equipment or in contradiction of the Manufacturer's Instructions if supplied with the EWP at and other equipment the commencement of hire;
  - (vi) Unexplained disappearances of the EWP and other equipment;
  - (vii) Theft of the EWP and other equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where proper security is not used by the hirer to secure the EWP and other equipment whilst they are left unattended;
  - (viii) Loading or off-loading the EWP and other equipment from maritime vessels, transportation of the EWP and other equipment on maritime vessels or the use of the EWP and other equipment on any wharf or bridge or over any body of water.
  - (ix) The Customer must produce proof of insurance to the Owner or take up the option of the "Property Insurance requirement waiver" through the Owner. If the Hirer fails to insure and keep insured the Equipment, the Owner may do so at the cost indicated beside the words "Property Insurance damage waiver" in the quotation. This cost will be added to the monthly rental payable on the next monthly instalment date for the EWP and other equipment. An excess fee as published on the notice board in head office of Coastal Hire at 33 Jindalee Road Port Macquarie, New South Wales, Titled "Access Equipment Damage Waiver Insurance Excess per Damage" will apply to each claim made under this arrangement. If the Owner insurance policy applies because the Hirer has exercised the "Property Insurance damage waiver":
    - a. The Hirer must provide a written report to the Owner and in case of theft to the police within 24 hours of any incident likely to result in a claim against the insurance.
    - b. The Hirer accepts the terms and conditions of the Owner insurance policy including all exclusions.

## **4 Use, operation and maintenance**

- 4.1 The hirer agrees that the use of the EWP and other equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 4.2 The EWP and other equipment shall not be used by anyone other than the hirer without the express permission of the owner.
- 4.3 The hirer will ensure that all persons operating the EWP and other equipment are instructed in its safe and proper use and where required hold valid proof of training or are fully licensed to use it.
- 4.4 The hirer agrees to operate, maintain, store and transport the EWP and other equipment in a proper manner and where required strictly in accordance with any instruction provided by the owner and with due care and diligence.
- 4.5 The hirer agrees that the EWP and other equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and

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- 4.6 recommendations whether supplied by the owner or posted on the EWP and other equipment in regard to its operation, maintenance and storage
- 4.7 The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the EWP and other equipment and associated operations.
- 4.8 The hirer shall ensure the EWP and other equipment is returned to the owner clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the owner.
- 4.9 The reasonable costs of fuel or other consumables provided by the owner and used by the hirer are to be paid to the owner at the completion date.

## 5 Hirer's warranties

- 5.1 The hirer warrants that:
  - (i) They must insure at all times against: loss or damage to the EWP and other equipment caused by fire, lightning, explosion, earthquake, aircraft, riot, malicious damage, storm and tempest, flood, theft or accident for the full insurance value as specified by Coastal Hire & Sales; and public liability for bodily injury or damage to property arising in connection with the Equipment for no less than \$10 Million.
  - (ii) Their insurance policy must;
    - a. Be in a form of substance and with an insurer acceptable to the owner
    - b. Contain a provision where the insurer waives any right of subrogation which the insurer may have with respect to the owner:
    - c. Note the interest of Coastal Hire & Sales as owner of the Equipment
  - (iii) The Hirer must not:
    - a. Do anything or fail to do anything which would allow the insurer to refuse or reduce an insurance claim; or
    - b. Vary the insurances effected for the EWP or other equipment without the Owners prior consent or;
    - c. Enforce, conduct, settle or compromise any claim without the Owners prior consent.
  - (iv) The Owner accepts no liability whatsoever for any injury, illness or accident to any person or thing arising out of the use of the above equipment or supplied accessories and the Hirer indemnifies the Owner against all claims or any nature whatsoever and howsoever arising from the hire, use, storage or person thereof. Except where any injury, illness or accident arises as a result of any fault with any equipment and where that fault was not caused by the hirer during the course of the hire period.
  - (v) The EWP and other equipment will be used in accordance with the conditions outlined in the Schedule;
  - (vi) The particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
  - (vii) The hirer holds a valid current driver's licence, operating licence or certificate of competency valid for the type of EWP and other equipment hired and is not affected by alcohol or drug that may impair their ability to operate the EWP and other equipment safely;
  - (viii) The EWP and other equipment will not be used for any illegal purpose;
  - (ix) The hirer's vehicle is suitable for towing the EWP and other equipment if required;
  - (x) The hirer will not, without prior written consent of the owner, tamper with, repair or modify the EWP and other equipment in any way, or permit another to do so;
  - (xi) The hirer agrees that the EWP and other equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.

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- (xii) The hirer agrees that the EWP and other equipment have been received by the hirer clean and in good working order from the owner.
- (xiii) The hirer is responsible for the cost of repairs to any EWP and other equipment should damage be sustained during the hire period.
- (xiv) The hirer will not in any way part with possession of the EWP and other equipment, nor assign this hire contract, nor remove the EWP and other equipment from the State without the prior approval of the owner.

## **6 Indemnity**

- 6.1 To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the EWP and other equipment during the hire period.
- 6.2 Without limiting clause 6.1 of this agreement, the hirer agrees that to the full extent permitted by law, no warranties are given by the owner in respect of the EWP and other equipment. Any liability of the owner pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the EWP and other equipment or the cost of resupplying the EWP and other equipment, at the discretion of the owner. The owner warrants that, as at the date of this agreement, the equipment is in good working order and is fit for the purpose that the hirer has advised it intends to use it for.

## **7 Loss, damage or breakdown of plant and EWP**

- 7.1 Subject only to the obligations of the owner following payment of the damage waiver fee by the hirer in accordance with Clause 3 the hirer will be responsible for any loss or damage to the EWP and other equipment irrespective of how the loss or damage occurred, except for fair wear and tear, during the hire period.
- 7.2 The hirer is liable for the payment of the new list price of any EWP and other equipment not returned to the owner.
- 7.3 If there is a breakdown or failure of the EWP and other equipment the hirer shall notify the owner immediately for the appropriate action to be taken.

## **8 Termination**

- 8.1 Without prejudice to any other remedies the owner may have against the hirer and notwithstanding the period of hire specified in the contract, the hire agreement may be terminated by either party as follows;
  - (i) Without notice if the other party breaches a fundamental term of this agreement.

## **9 Insurance**

- 9.1 The owner will maintain current insurance policies in respect of the EWP and other equipment to its full insurable value. This insurance does not cover the hirer unless they elect to pay the damage waiver fee described in Clause 3.

## **10 Liability**

- 10.1 The hirer will assume all risks and liabilities for, and in respect of, the EWP and other equipment and for all injuries to or deaths of persons and any damage. The owner will, however, assume proportionate liability where it has contributed to the damage or loss suffered.

## **11 Title to the EWP and other equipment**

- 11.1 The hirer acknowledges that the owner retains title to the EWP and other equipment and that the hirer has rights to use the EWP and other equipment as a mere Bailee only. The hirer agrees that the hirer has no rights to pledge the owner's credit in connection with the EWP and other equipment.

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- 11.2 The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the EWP and other equipment and not to conceal or alter the goods or make any addition or alteration to, the EWP and other equipment.

## **12 Repossession and remedies on default**

- 12.1 The owner may retake possession of the EWP and other equipment if the hirer breaches any provision of this agreement or does not pay their account in the time agreed, notwithstanding anything else herein contained.
- 12.2 If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.
- 12.3 All costs incurred by the owner incurred in repossessing due to a breach are to be paid by the hirer.
- 12.4 In the case of repossession due to a breach of this agreement the hirer agrees to grant the owner permission to enter any premises where the EWP and other equipment listed in the Schedule is situated to disconnect, decommission and/or remove that EWP and other equipment.
- 12.5 In addition to the owner's right to retake possession, the owner is entitled in its discretion, following any breach of any provision of this agreement by the hirer, to terminate this agreement, and/or sue for recovery of any damages or charges or loss suffered by the owner, and/or cancel any insurances effective in respect of the EWP and other equipment hired.

## **13 Completion of the hire period**

- 13.1 The hire period is completed when the EWP and other equipment has been returned to the owner in the same condition as when it was hired:
- (i) On or by the date and time outlined in the Schedule, or
  - (ii) Will be deemed completed on the date agreed for pick-up by the owner.
- 13.2 Where pick-up is agreed, the owner will arrange to pick-up the EWP and other equipment within a reasonable period (no longer than seven consecutive days) of a request to do so and will issue the hirer with a pick-up number on request.
- 13.3 The hirer agrees to maintain the responsibility for the EWP and other equipment whilst it is awaiting pick-up.

## **14 Non-merger**

- 14.1 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

## **15 Severance**

- 15.1 If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

## **16 Governing law**

- 16.1 This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

## **17 Privacy policy**

- 17.1 The owner will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

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## 18 Disputes

- 18.1 Both the owner and the hirer agree that any disputes arising from the hire and use of the EWP and other equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 99982255) before litigation is pursued.

## 19 PPS law

- 19.1 This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ('PPS Law').
- 19.2 References to PPS Law in this Agreement include references to amended, replacement and successor provisions.
- 19.3 The Owner may register its security interest as a PMSI. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:
- (a) Ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) Enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and
  - (c) Enabling the Owner to exercise rights in connection with the security interest.
- 19.4 The Owner may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 19.5 The rights of the Owner under this document are in addition to and not in substitution for the Owner's rights under other law (including PPS Law) and the Owner may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 19.6 To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Owner to give notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 19.7 The following provisions of the PPS Law confer rights on the Owner: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral).
- 19.8 The Hirer agrees that in addition to those rights, the Owner shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 19.9 The Hirer acknowledges that in all circumstances the Owner retains title to the Hire Equipment (even if the Hirer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstances will the Hire Equipment be deemed to be a fixture. The Hirer has no interest in the Hire Equipment of any kind whatsoever other than an interest as a Bailee;

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- (i) Except with the prior written consent of the Owner, the Hirer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Hire Equipment in any way whatsoever.
- 19.10 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.
- 19.11 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. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing the Owner the benefit of section 275(6)(a) and the Owner shall not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

## **20 Security interests and sub-hire**

- 20.1 The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the EWP and other equipment other than with the express written consent of the Owner.
- 20.2 The Hirer must not lease, hire, bail or give possession ('sub-hire') of the EWP and other equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing.
- 20.3 Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this Agreement.
- 20.4 The Hirer may not vary sub-hire without the prior written consent of the Owner (in its absolute discretion).
- 20.5 The Hirer must ensure that the Owner is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the EWP and other equipment.
- 20.6 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 in writing) for the security interest; and
  - (c) Enabling the Owner and Hirer to exercise their respective rights in connection with the security interest.
- 20.7 The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.

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## Executed as an Agreement

### Owner

For and on behalf of; Coastal Hire Pty Ltd Trading as Hastings Rentals. (company)

Authorised Person: .....(printed name)

Signature: ..... Date: .....

### Hirer

I have read and accept the above terms and conditions of hire. In particular I am aware that the hirer is responsible for the safekeeping of the EWP and other equipment against damage or theft and that the owner's insurance will not cover the hirer, subject to any damage waiver agreement.

For and on behalf of: ..... (company)

ABN Number: .....

Authorised person:..... (printed name)

Signature:..... Date: .....

## WARNING

**FAILURE TO RETURN THE SCHEDULED EQUIPMENT ON OR BEFORE THE FINAL DATE OF THE HIRE PERIOD NOMINATED IN THE SCHEDULE CAN BE CRIMINAL THEFT AND MAY BE IMMEDIATELY REPORTED TO THE POLICE**