

Mclean Grazing Co Pty Ltd T/A Komic Contracting & Earthworks – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Komic" means Komic Contracting & Earthworks, its successors and assigns or any person acting on behalf of and with the authority of Komic Pty Ltd T/A Komic Plant Hire.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Komic to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment (including, but not limited to, any vehicles, plant, containers, tools, or any accessories thereto) which is supplied on hire by Komic to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Komic to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Komic to the Client.
- 1.6 "Price" means the Price payable for the purchase of Goods or for Equipment hire as agreed between Komic and the Client in accordance with clause 4 below.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with Komic's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Komic.
- 3. Change in Control**
- 3.1 The Client shall give Komic not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Komic as a result of the Client's failure to comply with this clause.
- 4. Price and Payment**
- 4.1 At Komic's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Komic to the Client; or
- (b) the Price as at the date of delivery of the Goods/Equipment according to Komic's current price list; or
- (c) Komic's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Komic reserves the right to change the Price if a variation to Komic's quotation is requested, or where due to increases in foreign exchange rates, or any increases to Komic in the cost of materials or labour which are beyond Komic's reasonable control.
- 4.3 At Komic's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Komic, which may be:
- (a) on delivery of the Goods/Equipment;
- (b) the date specified on any invoice or other form as being the date for payment; or
- (c) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Komic.
- 4.5 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and Komic.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Komic an amount equal to any GST Komic must pay for any supply by Komic under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5. Delivery of Goods/Equipment**
- 5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Komic's address; or
- (b) Komic (or Komic's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 5.2 At Komic's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then Komic shall be entitled to charge a reasonable fee for redelivery (and/or the storage of any Goods).
- 5.4 Komic may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by Komic to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and Komic will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 6. Risk to Goods**
- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Komic is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Komic is sufficient evidence of Komic's rights to receive the insurance proceeds without the need for any person dealing with Komic to make further enquiries.
- 6.3 If the Client requests Komic to leave Goods outside Komic's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7. Title to Goods**
- 7.1 Komic and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Komic all amounts owing to Komic; and
- (b) the Client has met all of its other obligations to Komic.
- 7.2 Receipt by Komic of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to Komic on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Komic and must pay to Komic the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Komic and must pay or deliver the proceeds to Komic on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Komic and must sell, dispose of or return the resulting product to Komic as it so directs.
- (e) the Client irrevocably authorises Komic to enter any premises where Komic believes the Goods are kept and recover possession of the Goods.
- (f) Komic may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Komic.
- (h) Komic may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by Komic to the Client.
- 8.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Komic may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Komic for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Komic;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Komic;
- (e) immediately advise Komic of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 Komic and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Komic, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by Komic under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 9. Security and Charge**
- 9.1 In consideration of Komic agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies Komic from and against all Komic's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Komic's rights under this clause.
- 9.3 The Client irrevocably appoints Komic and each director of Komic as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.
- 10. Defects in Goods, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 10.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Komic in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Komic to inspect the Goods/Equipment.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 10.3 Komic acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Komic makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Komic's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, Komic's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If Komic is required to replace the Goods under this clause or the CCA, but is unable to do so, Komic may refund any money the Client has paid for the Goods.
- 10.7 If Komic is required to rectify, re-supply, or pay the cost of re-supplying any Services/Equipment under this clause or the CCA, but is unable to do so, then Komic may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of any Services/Equipment and Goods which have been provided to the Client which were not defective.
- 10.8 If the Client is not a consumer within the meaning of the CCA, Komic's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Komic at Komic's sole discretion;
- (b) limited to any warranty to which Komic is entitled, if Komic did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 10.9 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 10.1; and
- (b) Komic has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.10 Notwithstanding clauses 10.1 to 10.8(c) but subject to the CCA, Komic shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods/Equipment;
- (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
- (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Client failing to follow any instructions or guidelines provided by Komic;
- (e) fair wear and tear, any accident, or act of God.
- 10.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Komic as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Komic has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 0.
- 10.12 Komic may in its absolute discretion accept non-defective Goods for return in which case Komic may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 10.13 Notwithstanding anything contained in this clause if Komic is required by a law to accept a return then Komic will only accept a return on the conditions imposed by that law.
- 11. Default and Consequences of Default**
- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Komic's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Client owes Komic any money the Client shall indemnify Komic from and against all costs and disbursements incurred by Komic in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Komic's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies Komic may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Komic may suspend or terminate the supply of Goods/Equipment to the Client. Komic will not be liable to the Client for any loss or damage the Client suffers because Komic has exercised its rights under this clause.
- 11.4 Without prejudice to Komic's other remedies at law Komic shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Komic shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Komic becomes overdue, or in Komic's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

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- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 12. Cancellation**
- 12.1 Komic may cancel any contract to which these terms and conditions apply or cancel delivery of Goods or a Equipment at any time before the Goods or the Equipment are delivered by giving written notice to the Client. On giving such notice Komic shall repay to the Client any money paid by the Client for the Goods or Equipment hire. Komic shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of the Goods or Equipment hire the Client shall be liable for any and all loss incurred (whether direct or indirect) by Komic as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 13. Privacy Act 1988**
- 13.1 The Client agrees for Komic to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Komic.
- 13.2 The Client agrees that Komic may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.3 The Client consents to Komic being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Client agrees that personal credit information provided may be used and retained by Komic for the following purposes (and for other purposes as shall be agreed between the Client and Komic or required by law from time to time):
- (a) the provision of Goods/Equipments; and/or
 - (b) the marketing of Goods/Equipment by Komic, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods and/or for Equipment hire.
- 13.5 Komic may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 13.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Komic is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Komic, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by Komic has been paid or otherwise discharged.
- 14. Unpaid Komic's Rights**
- 14.1 Where the Client has left any item with Komic for repair, modification, exchange or for Komic to perform any other service in relation to the item and Komic has not received or been tendered the whole of any moneys owing to it by the Client, Komic shall have, until all moneys owing to Komic are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 14.2 The lien of Komic shall continue despite the commencement of proceedings, or judgment for any moneys owing to Komic having been obtained against the Client.
- 15. Construction Contracts Act 2004**
- 15.1 At Komic's sole discretion, if there are any disputes or claims for unpaid Goods/Services or for Equipment hire, then the provisions of the Construction Contracts Act 2004 may apply.
- 15.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 16. General**
- 16.1 The failure by Komic to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Komic's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Komic has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 16.3 Subject to clause 10 Komic shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Komic of these terms and conditions (alternatively Komic's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 16.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Komic nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 Komic may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.6 The Client agrees that Komic may amend these terms and conditions at any time. If Komic makes a change to these terms and conditions, then that change will take effect from the date on which Komic notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Komic to provide Goods/Equipment to the Client.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- Additional Terms & Conditions Applicable to Equipment Hire Only**
- 17. Hire Period**
- 17.1 Hire charges shall commence from the time the Equipment is collected by the Client from Komic's premises and will continue until the return of the Equipment to Komic's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 17.2 If Komic agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Komic's premises and continue until the Client notifies Komic that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 17.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 17.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Komic confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies Komic immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 18. Risk to Equipment**
- 18.1 Komic retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 18.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies Komic for all loss, theft, or damage to the Equipment whatsoever 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 Client.
- 18.3 The Client must insure, Komic's interest in the 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 property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 18.4 The Client accepts full responsibility for and shall keep Komic indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 19. Title to Equipment**
- 19.1 The Equipment is and will at all times remain the absolute property of Komic, or Komic's affiliates or partners.
- 19.2 If the Client fails to return the Equipment to Komic then Komic or Komic's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 19.3 The Client is not authorised to pledge Komic's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 20. Komics Responsibilities**
- 20.1 Komic shall supply all Equipment in a safe, useable and (where applicable) roadworthy condition.
- 20.2 Komic shall be responsible for all ordinary and extraordinary costs of running the Equipment during the term of the hire except to the extent that by the terms of this agreement those costs are payable by the Client
- 21. Client's Responsibilities**
- 21.1 The Client shall:
- (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipments safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to Komic upon request;
- (c) maintain the Equipment as is required by Komic (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
- (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
- (e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Komic relating to any such matters or occurrences;
- (f) not carry any animals or dangerous goods on, or in, the Equipment supplied without the prior written permission of Komic;
- (g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
- (h) return the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
- (i) notify Komic immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (j) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (k) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Komic or posted on the Equipment;
- (l) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (m) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Komic (or Komic's designated employee);
- (n) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien over the Equipment;
- (o) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (p) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (q) not allow the Equipment to be used or carry any illegal, prohibited or dangerous substance, either in or on the Equipment;
- (r) immediately notify Komic should the Equipment become bogged or stuck (refer also 22.2(g)).
- 21.2 Immediately on request by Komic the Client will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to Komic;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by willful or negligent actions of the Client or the Client's employees;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in Komic's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (f) the cost of fuels and consumables (including Ground Engaging Tools (GETS) which shall be charged pro-rata based on usage) provided by Komic and used by the Client;
 - (g) any costs incurred by Komic in picking up and returning the Equipment to Komic's premises if the Client does not return the Equipment to Komic's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.
 - (h) any insurance excess payable in relation to a claim made by either the Client or Komic in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Komic's.
- 22. Wet Hire**
- 22.1 In the event of Wet Hire the Equipment the operator of the Equipment remains an employee of Komic but operates the Equipment in accordance with the Client's instructions. As such Komic shall not be liable for any actions of the operator where the operator is following the Client's instructions.
- 22.2 In the event of Wet Hire the following shall apply in relation to the above clauses:
- (a) clause 21.1(a), (l), (p) shall be the joint responsibility of both Komic and the Client; and
 - (b) clause 21.1(b), (c), (d), (f), (g), (k), shall be the responsibility of Komic or Komic's employee/operator; and
 - (c) clause 21.1(e) shall be the responsibility of Komic except where such costs are incurred by Komic's employee/operator following the express instructions of the Client; and
 - (d) clause 21.1(h) shall be the responsibility of the Client unless otherwise agreed in writing; and
 - (e) clause 21.1(j), (m), (n), (o), shall be the responsibility of the Client; and
 - (f) clause 21.1(i) and (r) both Komic's employee/operator and the Client must comply with these clauses; and
 - (g) for clause 21.1(f) if the Equipment has become bogged or stuck due to the negligent actions of Komic's employee/operator then Komic shall incur the costs of recovering the Equipment, otherwise the Client shall be liable for all such costs.
 - (h) the clauses under 21.2 shall all be the Client's responsibility except where any loss, or damage or costs to which those clauses pertain are caused by Komic or Komic's employee/operator.

Please note that a larger print version of these terms and conditions is available from the Seller on request.