

Agreement for the hire of elevated work platforms (EWP)

Definitions

Owner is the Linke Services Pty Ltd (ACN 147 934 398), being the owner of the EWP .

Hirer includes an agent of the hirer and agrees to hire the EWP specified in the schedule from the owner upon the terms in the agreement.

EWP is a abbreviation for “elevated work platform” and means a machine or device that is intended to displace persons, tools and materials to a working positions and consists of at least a work platform with controls, an extending structure and a chassis, being the machine(s) or device(s) identified by the “EWP number” in the schedule to this agreement or on the invoice or work order supplied by the owner to the hirer.

PPS Act means the *Personal Property Securities Act 2009* (Cth), as amended from time to time.

Terms and conditions

1. Hire of EWP

1.1. the hiring of the EWP will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.

1.2. The hirer is entitled to use the EWP for the hire period. The owner must agree to any extension of the period.

2. Payment for rental

2.1. The hirer agrees to pay the owner the hire fee as specified in the schedule for the EWP for the hire period. The owner must agree on any extension of the hire period.

2.2. A cancellation fee may be charged by the owner where the EWP has been reserved by booking and the hirer cancels the booking without reasonable notice or fails to take delivery of the EWP.

2.3. The hirer agrees to pay the owner interest at 6% per annum (calculated daily) of the outstanding balances due over and beyond the terms of payment specified on the invoice.

2.4. The hirer agrees to pay the owner all costs associated with the recovery of any unpaid monies relating to the hire of any plant and equipment.

3. Use, operations and maintenance

3.1. The hirer agrees that the use of the EWP carries with it dangers and risks of injury and the hirer agrees to accept the dangers and risks.

3.2. The EWP shall not be used by anyone other than the hirer without the express permission of the owner.

3.3. The hirer will ensure that all persons operation the EWP are instructed in its safe and proper use and where required hold a valid certificate of competency or are fully licensed to use it.

3.4. The hirer agrees to operate, maintain, store and transport the EWP strictly in accordance with any instruction provided by the owner and with due care and diligence.

3.5. The hirer agrees that the EWP will only be used for its intended purpose and in accordance with the manufacturer’s instructions and recommendation whether supplied by the owner or posted on the EWP in regards to its operation, maintenance and storage.

3.6. The hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the EWP and associated operations.

3.7. The Hirer shall ensure the EWP is returned to the owner clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the owner.

3.8. 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.

4. Hirer’s warranties

The hirer warrants that:

4.1. the EWP will be used in accordance with the conditions outlined in the schedule; the particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission.

4.2. The hirer holds a current driver’s license, operating license or certificate of competency valid for the type of EWP hired, and, upon a request being made by the owner, the hirer will provide to the owner a copy of the relevant Licence or certificate.

4.3. The EWP will not be used for any illegal purpose.

4.4. The hirer will not, without prior written consent of the owner, tamper with repair or modify the EWP in any way, or permit others to do so.

4.5. The hirer agrees that the EWP complies with its description, is in merchantable condition and is fit for hirer purpose.

4.6. The hirer agrees that the EWP has been received by the hirer clean and in good working order.

5. Indemnity

5.1. 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 consequence on the use or misuse of the EWP during the hire period.

5.2. Without limiting clause 6.1 of the agreement, the hirer agrees that the full extent permitted by law, no warranties are given by the owner in respect of the EWP, 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 or the cost of resupplying the EWP, at the discretion of the owner.

6. Loss, damage or breakdown of plant and EWP

6.1. The hirer will be responsible for any loss or damage to the EWP irrespectively of how the loss or damage occurred, except for fair wear and tear, during the hire period.

6.2. The hirer is liable for the payment of the new list price of any EWP not returned to the owner.

6.3. If there is a breakdown or failure of the EWP the hirer shall notify the owner immediately for the appropriate action to be taken.

7. Insurance

7.1. The owner will maintain current insurance policies in respect of the EWP to its full insurable Value.

8. Liability

8.1. The hirer will assume all risks and liabilities for, and in respect of, the EWP and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer’s possession, use, maintenance, repair, storage of the EWP.

8.2. The hirer is responsible for obtaining insurance as and from the date taking possession or control (whichever is earlier) of the EWP for any loss or damage arising directly or indirectly from the hirer’s possession and use of the EWP including consequential losses arising from breakdown of the EWP.

8.3. The hirer agrees to indemnify the owner in respect of all and any liability claims, loss, damage, costs and fines that the owner may incur as a direct or indirect result of a breach this clause 8 including, but not limited to, any costs associated with the owner making a claim under any insurance policy.

9. Disclaimer

9.1. To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the EWP

10. Title to the EWP

10.1. The hirer acknowledges that the owner retains title to The EWP and that the hirer has rights to use the EWP as a mere bailee only. The hirer agrees that the hirer has no rights to pledge the owner’s credit in connection to the EWP.

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

11. Repossession and remedies on default

11.1. The owner may retain possession of the EWP if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.

11.2. If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.

11.3. All cost incurred by the owner in repossessing the EWP (as a result of the hirer’s breach of this agreement) must be paid by the hirer.

11.4. In the event that the hirer fails to return the EWP to the owner or the hirer breaches any term of this agreement then the owner or its employees or agents shall have the right to enter without notice upon the hirer’s premises or any other premises where the EWP is known to be stored (and the hirer must ensure that the owner has the right to enter such premises at all times) to repossess, disconnect or decommission the EWP and for this purpose the hirer shall grant reasonable access rights and the owner, its employees or agents shall be entitled to do all things required to secure repossession of the EWP..

11.5. In addition to the owners' rights 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 insurance affective in respect of the EWP hired.

12. Completion of the hire period

12.1. The hire period is completed when the EWP has been returned to the owner in the same condition as when it was hired.

12.1.1. on or by the date and time out lined in the schedule, or

12.1.2. will be deemed completed on the date agreed for pick up by the owner.

12.2. Where pick-up is agreed the owner will arrange to pick up the EWP within a reasonable period of the request to do so.

12.3. The hirer must maintain the responsibility for the EWP whilst waiting for pick-up.

12.4. The hirer must keep safe and secure the EWP during the term specified in the schedule including such other period which the hirer has control or is in possession of the EWP.

13. Non-merger

13.1. The covenants, agreement 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 affect.

14. Severance

14.1. If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if 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.

15. Governing law

15.1. This agreement is governed by the laws of the state and territory where the agreement is made and each party submits to the exclusive jurisdiction of the court of that state or territory.

16. Personal Property Securities Act 2009 (Cth)

16.1 For the purpose of this agreement, as appropriate, any words contained in the subsequent clauses have the respective meaning as defined in the PPS Act and the parties acknowledge that:

16.1.1. the hirer is the grantor,

16.1.2. the owner is the secured party,

16.1.3. the EWP, which are commercial property, are the collateral; and

16.1.4. attachment occurs on acceptance of this agreement.

16.2. The hirer acknowledges this agreement gives rise to a Security Interest in favour of the owner, which the owner may, in its discretion, affect a registration on the PPS Act register (in any manner the owner deems appropriate) in relation to any security interest arising under or in connection with or contemplated by this agreement.

16.3. The hirer waives its right to receive notice of a verification statement in relation to any registration by the owner on the register.

16.4. The hirer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the owner and do any other act or thing that the owner requires to ensure that the owner has a perfected security interest in, and has priority over any other security interests in, the EWP or otherwise.

16.5. The hirer will not:

16.5.1. register a financing change statement in respect of the Security Interest; or

16.5.2. agree to or create another Security Interest in the EWP; without the owner's prior written consent.

16.6. If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising in connection with this agreement, the hirer agrees that the following provisions of the PPS Act will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the owner to give a notice to the hirer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the owner to give a notice to the hirer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(3) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).

16.7. Notices or documents required or permitted to be given to the owner for the purpose of the PPS Act must be given in accordance with the PPS Act.

16.8. The owner agrees with the hirer not to disclose information of the kind mentioned in subsection 275(1) of the PPS Act except in circumstances required by paragraphs 257(7)(b)-(e).

16.9. If the owner receives any notice in relation to the hirer under section 64 of the PPS Act, all outstanding monies may, at the owner's discretion, become immediately due and payable and the EWP may be immediately returnable.

16.10. The hirer agrees to reimburse the owner, upon demand, for all costs and/or expenses incurred or payable by the owner in relation to registering or maintaining any financing statement, releasing in whole or in part the owner's security interest or any other document in respect of any security interest.

17. Privacy policy

17.1. The owner will comply with the national privacy principles in the dealing with hirers. Information on our privacy policy is available on request.

18. Indemnity

To the full extent permitted by law, the hirer will indemnify the owner and keep the owner indemnified from and against any liability and any loss or damage the owner may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these terms and conditions by the hirer or its representatives.

Executed as an Agreement

Owner

For and on behalf of: Linke Services Pty Ltd trading as Ezyup Scissor Lift Hire

Authorised Person:.....Wayne Linke.....

Signature.....*Wayne Linke*.....Date.....date of online cart sale

Hirer

By ticking the Box at checkout you are agreeing to all the terms and conditions in this agreement. Confirmation of you agreeing is that you have made payment via online payment portal. A copy of this agreement will be forwarded to your designated email address.