



Equipment Hire General Terms and Conditions

**SMALL
HIRE**

These Equipment Hire General Terms and Conditions ("The Terms") apply to the exclusion of any other conditions proposed by the Hirer, unless otherwise agreed by Automobiles Qld Pty Ltd ACN 147720198 Trading As Digger 4 A Day and Small Hire ("The Company") and the Hirer in writing. Automobiles Qld Pty Ltd agrees to hire Equipment to the Hirer on terms set out in this document. If the Hirer wishes to hire Equipment the Hirer must complete and sign (or otherwise accept in the manner required by Automobiles Qld Pty Ltd) a Hire Schedule and such other documents as Automobiles Qld Pty Ltd may require or provide. Each Hire Schedule is not a separate agreement but forms a part of The Agreement between Automobiles Qld Pty Ltd and the Hirer, together with any credit application, guarantee and indemnity or other contractual documents. The Hirer agrees to receive Hire Schedules and all associated documentation by paper or electronic means. Automobiles Qld Pty Ltd may in its absolute discretion decline to hire Equipment to the Hirer at any time if it has reasonable cause to do so.

Interpretation of Words in The Agreement:-

Commencement – The date when the Hirer takes possession of the Equipment.

Equipment – Means any kind of Equipment, vehicles or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: cleaning; cooling and/or heating; entertainment; waste management; landscaping and gardening; plumbing; fencing and covering; lifting; access; air and air compression; pumping and fluid management; welding; compaction; concrete & masonry; flooring; earthmoving; floor care and cleaning, generation and power distribution; ground Equipment and shoring; ladders and scaffolding; propping; lighting; materials handling; offshore pumps; safety Equipment; storage; site accommodation including portable buildings and portable toilets; traffic management including road barriers; signage; vehicles including trucks, vans and trailers, and includes tools and parts and accessories for any of the foregoing.

Hire Charge – The amounts shown on the Hire Schedule payable by the Hirer to hire the Equipment.

Hire Period – Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Hirer requests it and if Automobiles Qld Pty Ltd agrees. Automobiles Qld Pty Ltd may issue and require the Hirer to sign an amended Hire Schedule for any extension of the Hire Period.

Hire Schedule – Means any document which Automobiles Qld Pty Ltd may require the Hirer to sign (or accept in a way Automobiles Qld Pty Ltd requires) including the Dry Hire Rental Agreement, particulars of the Equipment, Hire Period, any extension, invoice and such other information as Automobiles Qld Pty Ltd may require or provide.

Automobiles Qld Pty Ltd – Automobiles Qld Pty Ltd CAN 147720198 Trading As Digger 4 A Day and Small Hire. The business or company listed on the Hire Schedule.

Motor Vehicle – A truck or utility but not any other Equipment such as a scissor lift, trailer or bobcat.

Remote Area- Any location, which is more than 50 Kilometres from the branch where Equipment is hired.

1. Hirer's Warranties

- 1.1 The Hirer agrees that the Hire Period will commence from the commencement date specified in the Hire Schedule and continue for the term specified in the Hire Schedule.
- 1.2 The Hirer is entitled to use the Equipment for the Hire Period. Any extension of the Hire Period must be agreed to by Automobiles Qld Pty Ltd.
- 1.3 The Hirer agrees to return the Equipment to the address of Automobiles Qld Pty Ltd on or before 4:30pm of the end of the Hire Period as outlined in the Hire Schedule and that failure to do so can be criminal theft and may be immediately reported to the police.
- 1.4 The Hirer warrants that:-
 - (i) The Equipment will be used strictly in accordance with The Agreement, the intended purpose of the Equipment and the law;
 - (ii) The particulars in the Hire Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - (iii) The Hirer holds a valid current driver's licence, operating licence or permit valid for the type of Equipment hired;
 - (iv) The Equipment will not be used for any illegal purpose;

- (v) The Hirer's vehicle is suitable for towing the Equipment if required;
- (vi) The Hirer will not, without prior written consent of Automobiles Qld Pty Ltd, tamper with, repair or modify the Equipment in any way, or permit another to do so;
- (vii) The Hirer will not misuse, abuse, wilfully, maliciously, negligently recklessly use and/or overload the Equipment;
- (viii) The Equipment complies with its description, is in merchantable condition and is fit for the Hirer's purpose.
- (ix) The Equipment has been received by the Hirer clean and in good working order.
- (x) The Hirer will not in any way lose or part with possession of the Equipment, nor assign The Agreement, nor remove the Equipment from the State without the prior approval of Automobiles Qld Pty Ltd.
- (xi) The Hirer will return the Equipment to Automobiles Qld Pty Ltd clean, in good repair and in a hiring state.
- (xii) The Hirer will ensure that any person collecting or taking delivery of Equipment on behalf of the Hirer is authorised by the Hirer to do so and the Hirer will not allege that any such person is not so authorised;
- (xiii) The Hirer will ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed;
- (xiv) The Hirer will conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- (xv) The Hirer will safely secure all items loaded in or on the Equipment or in or on the Hirer's vehicle;
- (xvi) The Hirer will operate the Equipment with an adequate Motor Vehicle and/or power source;
- (xvii) The Hirer will not rely upon any representation relating to the Equipment or its operation other than those contained in The Agreement;
- (xviii) The Hirer will not allow any person to drive a Motor Vehicle if the person does not hold a suitable licence to drive that class of Motor Vehicle and or is affected by drugs and/or alcohol.
- (xix) The Hirer will not exceed the recommended or legal load and capacity limits of the Equipment;
- (xx) The Hirer will not use or carry any illegal, prohibited or dangerous substance in or on the Equipment.
- (xxi) The Hirer will not exceed the recommended or legal speed limit for the Equipment.

2. Damage Waiver Fee

- 2.1 Upon payment by the Hirer of the Damage Waiver Fee Automobiles Qld Pty Ltd shall be responsible for the cost of repairs or replacement of the Equipment due to damage occurring during the Hire Period subject to any excess payable by the Hirer.
- 2.2 This clause in no way entitles the Hirer to, or implies the availability of, compensation from Automobiles Qld Pty Ltd for any liability incurred by the Hirer in relation to the use of hired Equipment.
- 2.3 This clause will not continue to operate after the expiration of The Agreement unless an extension by Automobiles Qld Pty Ltd is granted in writing and an additional agreed fee is paid.
- 2.4 This clause will not apply to loss or damage which related to or arises from:
 - (i) Breach of any statutory laws or regulations in connection with the use of the Equipment by the Hirer;
 - (ii) Misuse, abuse, wilful and/or malicious act, negligent and/or reckless use and/or overloading of the Equipment;
 - (iii) Theft, loss or damage by whatever cause to tools and/or accessories supplied with the Equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tie down kits, electric leads, tyres and tubes;



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- (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 Automobiles Qld Pty Ltd in respect of the proper use of the Equipment or in contradiction of the Manufacturer's instructions if supplied with the Equipment at the commencement of hire;
- (vi) Unexplained disappearances of the Equipment;
- (vii) Theft of the 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 Equipment whilst they are left attended;
- (viii) Loading or off-loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of Equipment on any wharf or bridge or over any body of water.

2.5 The Damage Waiver Excess for each item of equipment is the amount equal to:

- \$500 for general Small hire general equipment or (if the replacement cost is less than \$500) the replacement cost of the equipment, OR
- \$500 for Excavation and Bobcat attachments, OR
- \$1000 or 1% of the replacement cost of the excavation machine (whichever is greater) for earthmoving, access equipment, trailers and vehicles.
- Inexperience excess applicable for tipper hire only.
Age/Inexperience Excess/es:
 - (i) Under age of 21 years \$800.
 - (ii) 21 years – 25 years \$600.
 - (iii) 25 years but with less than 2 year's experience.

3. Hire Payment

- 3.1 The Hirer agrees to pay Automobiles Qld Pty Ltd the hire fee specified in the Hire Schedule for the Equipment for the Hire Period including any applicable GST, other taxes or duties, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to The Agreement and the hire.
- 3.2 The required fees must be paid to Automobiles Qld Pty Ltd prior to or on the Commencement of the Hire Period. Account Hirers who do not pay their account on the terms agreed will be deemed to be in default. Equipment not returned on time and in accordance with The Agreement will be subject to a continuance of the agreed rental until return is complete or possession in accordance with Clause 13 has occurred.
- 3.3 Automobiles Qld Pty Ltd may agree to make Equipment delivery and collection arrangements to and from the Hirer's site and the Hirer will pay to Automobiles Qld Pty Ltd any charges and expenses incurred in such delivery, installation and/or collection. Automobiles Qld Pty Ltd will use its best endeavours to deliver the 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.
- 3.4 A cancellation fee may be charged by Automobiles Qld Pty Ltd where Equipment has been reserved by booking and the Hirer cancels the booking without reasonable notice or fails to take delivery of the Equipment.
- 3.5 Automobiles Qld Pty Ltd may charge the Hirer a fee for accepting payment by credit card.
- 3.6 Automobiles Qld Pty Ltd reserves the right at any time without notice to revise the Hire Charges.
- 3.7 Automobiles Qld Pty Ltd may tokenize the Hirers Credit Card or Account details to facilitate credit card or online payments.

4. Use, operation & Maintenance

- 4.1 The Hirer acknowledges and accepts that the use of the Equipment carries with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.

- 4.2 The Equipment shall not be used by anyone other than the Hirer without the express permission of Automobiles Qld Pty Ltd.
- 4.3 The Hirer will ensure that all persons operating or erecting the Equipment are instructed in its safe and proper use and where required hold valid proof of training, permit or are fully licenced to use it.
- 4.4 The Hirer agrees to operate, maintain, store and transport the Equipment in a proper manner and where required strictly in accordance with any instruction provided by Automobiles Qld Pty Ltd and with due care and diligence.
- 4.5 The Hirer agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by Automobiles Qld Pty Ltd or posted on the Equipment in regard to its operation, maintenance and storage;
- 4.6 The Hirer agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.
- 4.7 The Hirer shall ensure the Equipment is returned to Automobiles Qld Pty Ltd clean of all foreign matter or agrees to a reasonable cleaning fee being charged by Automobiles Qld Pty Ltd.
- 4.8 The reasonable costs of fuel or other consumables provided by Automobiles Qld Pty Ltd and used by the Hirer are to be paid to Automobiles Qld Pty Ltd at the completion date.

5. Remote Hire

- 5.1 Where the Equipment is at any time in hire by the Hirer to be located in the Remote Area, the following clauses will apply:
 - (i) The Hirer will pay an additional charge for any delivery, servicing and repair of Equipment, and for any other attendance at the Remote Area by Automobiles Qld Pty Ltd. The remote charges will be calculated on a by Kilometre rate travelled by Automobiles Qld Pty Ltd Staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling costs including airfares and accommodation incurred by Automobiles Qld Pty Ltd Staff in connection with travel to and from the Remote Area;
 - (ii) Multiple items of Equipment hire by a Hirer on one site will be only be charged for one call out fee;
 - (iii) The Hirer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels, etc) and general tightening of any loose nuts, bolts, belts or fittings and lubrication of grease points.

6. Indemnity

- 6.1 The Hirer indemnifies Automobiles Qld Pty Ltd for all injury and/or damage caused or contributed to by the Hirer to persons and property in relation to the Equipment and its operation and will hold sufficient insurance in accordance with Clause 9 to cover all liabilities incurred as a result of the use of the Equipment.
- 6.2 The Hirer indemnifies Automobiles Qld Pty Ltd in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Hirer;
- 6.3 To the full extent permitted by law the Hirer releases, discharges and indemnifies Automobiles Qld Pty Ltd from all claims and demands on Automobiles Qld Pty Ltd arising out of or consequent on the use or misuse of the Equipment during the Hire Period.
- 6.4 Without limiting Clause 2 of The Agreement, the Hirer agrees that to the full extent permitted by law, no warranties are given by Automobiles Qld Pty Ltd in respect of the Equipment. Any liability of Automobiles Qld Pty Ltd pursuant to any warranty which cannot be



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- excluded by law will not exceed either the cost of repairing the Equipment or the cost of resupplying the Equipment, at the discretion of Automobiles Qld Pty Ltd.
- 6.5 Without limiting Clause 2 of The Agreement Automobiles Qld Pty Ltd reserves the right to charge the daily Hire Charge rate until such time as the machine is repaired or replaced and returned to the point of hire.
- 7. Loss, damage or breakdown of plant and Equipment**
- 7.1 Subject only to the obligations of Automobiles Qld Pty Ltd following payment of the Damage Waiver Fee by the Hirer in accordance with Clause 2 the Hirer will be responsible for any loss or damage to the 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 Equipment not returned to Automobiles Qld Pty Ltd.
- 7.3 If there is a breakdown or failure of the Equipment the Hirer shall notify Automobiles Qld Pty Ltd immediately for the appropriate action to be taken.
- 8. Termination**
- 8.1 Without prejudice to any other remedies Automobiles Qld Pty Ltd may have against the Hirer and notwithstanding the period of hire specified in The Agreement, The Agreement may be terminated by Automobiles Qld Pty Ltd as follows;
- (i) Upon giving the Hirer two days written notice of termination at any time during the period of hire;
- (ii) Without notice if the Hirer has a winding-up petition presented against it, or be wound up, or go into voluntary liquidation, or has a receiver of any of its assets appointed, or it makes an assignment/compromise to the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
- (iii) Without notice if the Hirer commits a breach of any part of The Agreement in accordance with Clause 8.
- 9. Insurance**
- 9.1 Automobiles Qld Pty Ltd will maintain current insurance policies in respect of the Equipment to its full insurable value.
- 10. Liability**
- 10.1 The Hirer will assume all risks and liabilities for, and in respect of, the Equipment 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 or transport of the Equipment.
- 11. Disclaimer**
- 11.1 The Hirer acknowledges that Automobiles Qld Pty Ltd retains title to the Equipment and that the Hirer has rights to use the Equipment as a mere bailee ("Bailee") only. The Hirer agrees that the Hirer has no rights to pledge Automobiles Qld Pty Ltd's credit in connection with the Equipment.
- 12. Title to Equipment**
- 12.1 The Hirer acknowledges that Automobiles Qld Pty Ltd retains title to the Equipment and that the Hirer has rights to use the Equipment as a mere Bailee only. The Hirer agrees that the Hirer has no rights to pledge Automobiles Qld Pty Ltd's credit in connection with the Equipment.
- 12.2 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 Equipment and not to conceal or alter the goods or make any addition or alteration to, the Equipment.
- 13. Repossession and remedies on default**
- 13.1 Automobiles Qld Pty Ltd may retake possession of the Equipment if the Hirer breaches any provision of The Agreement, does not pay their account or does not return the Equipment in the time agreed notwithstanding anything else herein contained.
- 13.2 If repossession takes place, Automobiles Qld Pty Ltd shall only charge the hire fee up to and including the time of repossession which may include the time in which the Equipment is returned to the branch from which the Equipment is hired.
- 13.3 All costs incurred by Automobiles Qld Pty Ltd in repossessing due to a breach are to be paid by the Hirer.
- 13.4 In the case of repossession due to a breach of The Agreement the Hirer agrees to grant Automobiles Qld Pty Ltd permission to enter any premises where the Equipment listed in the Hire Schedule is situated to disconnect, decommission and/or remove that Equipment.
- 13.5 In addition to Automobiles Qld Pty Ltd's right to retake possession Automobiles Qld Pty Ltd is entitled in its discretion, following any breach of any provision of The Agreement by the Hirer, to terminate The Agreement and/or sue for recovery of any damages or charges or loss suffered by Automobiles Qld Pty Ltd, and/or to cancel any insurances effective in respect of the Equipment hired; and
- 13.6 All costs incurred in cleaning the Equipment.
- 14. Completion of the Hire Period**
- 14.1 The Hire Period is completed when the Equipment has been returned to Automobiles Qld Pty Ltd in the same condition as when it was hired:
- (i) On or by the date and time outlined in the Hire Schedule, or
- (ii) Will be deemed completed on the date agreed for pick-up by Automobiles Qld Pty Ltd.
- 14.2 Where pick-up is agreed Automobiles Qld Pty Ltd will arrange to pick-up the Equipment within a reasonable period after a request to do so.
- 14.3 The Hirer agrees to maintain the responsibility for the Equipment whilst it is awaiting pick-up.
- 15. Non-merger**
- 15.1 The covenants, agreements and obligations contained in The Agreement will not merge or terminate upon the termination of The Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 16. Severance**
- 16.1 If any provision of The Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, The Agreement must be construed as if that provision or part of a provision had been severed from The Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.
- 17. Governing law**
- 17.1 The 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.
- 18. Privacy Policy**
- 18.1 Automobiles Qld Pty Ltd will comply with the National Privacy Principles in all dealings with Hirers. Information on our privacy policy is available on request.
- 19. Disputes**
- 19.1 Both Automobiles Qld Pty Ltd and the Hirer agree that any disputes arising from the hire and use of the Equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement before litigation is pursued.
- 20. PPS Law**



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- 20.1 This clause applies to the extent that The Agreement provides for a 'security interest' for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("PPS Law").
- 20.2 References to PPS Law in The Agreement include references to amended, replacement and successor provisions.
- 20.3 Automobiles Qld Pty Ltd may register its security interest as a PMSI, The Hirer must do anything (such as obtaining consents and signing documents) which Automobiles Qld Pty Ltd requires for the purposes of:
- Ensuring that Automobiles Qld Pty Ltd's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - Enabling Automobiles Qld Pty Ltd to gain first priority (or any other priority agreed to be Automobiles Qld Pty Ltd in writing) for its security interest; and
- 20.4 Enabling Automobiles Qld Pty Ltd to exercise rights in connection with the security interest. Automobiles Qld Pty Ltd may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.
- 20.5 The rights of Automobiles Qld Pty Ltd under this document are in addition to and not in substitution for Automobiles Qld Pty Ltd's rights under other law (including PPS Law) and Automobiles Qld Pty Ltd may choose whether to exercise rights under this document, and/or under other law, as it sees fit.
- 20.6 To the extent that Chapter 4 of the PPS applies to the security interest under The 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 The 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 Automobiles Qld Pty Ltd 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 Automobiles Qld Pty Ltd 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).
- 20.7 The following provisions of the PPS Law confer rights on Automobiles Qld Pty Ltd: 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). The Hirer agrees that in addition to those rights, Automobiles Qld Pty Ltd 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 Automobiles Qld Pty Ltd may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 20.8 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.
- 20.9 Automobiles Qld Pty Ltd 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 Automobiles Qld Pty Ltd the benefit of section 275(6)(a) and Automobiles Qld Pty Ltd shall not be liable to pay damages or any other compensation or be subject to injunction if Automobiles Qld Pty Ltd breaches this sub-clause.

21. Security interests and sub-hire

- 21.1 The Hirer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the

Equipment other than with the express written consent of Automobiles Qld Pty Ltd.

- 21.2 The Hirer must not lease, hire, bail or give possession ('sub-hire' of the Equipment) to anyone else unless Automobiles Qld Pty Ltd (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Automobiles Qld Pty Ltd and must be expressed to be subject to the rights of Automobiles Qld Pty Ltd under The Agreement.
- 21.3 The Hirer may not vary a sub-hire without the prior written consent of Automobiles Qld Pty Ltd (in its absolute discretion).
- 21.4 The Hirer must ensure that Automobiles Qld Pty Ltd 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 Equipment.
- 21.5 The Hirer must take all steps including registration under PPS Law as may be required to:
- Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - Enabling the Hirer to gain (subject always to the rights of Automobiles Qld Pty Ltd) first priority (or any other priority agreed to by Automobiles Qld Pty Ltd in writing) for the security interest; and
 - Enabling Automobiles Qld Pty Ltd and Hirer to exercise their respective rights in connection with the security interest.
- 21.6 Automobiles Qld Pty Ltd may recover from the Hirer the cost of doing anything under this clause, including registration fees.

22. Provisions of the Hire Agreement Excluded from Consumer Contracts

Where the Customer is an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of the Hire Agreement will not apply:

- Security clause (clause 20).