

TERMS AND CONDITIONS – DIGGER CO.



NOTE TO CUSTOMER

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Digger Co. and the Customer in writing. Digger Co. agrees to hire Equipment to the Customer on terms set out in this document. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Digger Co. and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. Digger Co. may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so. Amendment: These Hire Contract Conditions may be changed by Digger Co. from time to time by Digger Co. giving notice of the amendment to the Customer. Notice is deemed given when Digger Co. does any of the following:

- (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer;
- (b) publishes the amended terms on its website or
- (c) displays the amended terms at premises from which Digger Co. conducts hire operations.

Changes to these Hire Contract Conditions will only apply to Hire Schedules entered into after the change has been notified to the Customer by one of the methods mentioned above.

1. DIGGER CO. OBLIGATIONS

Digger Co. will:

- 1.1 Allow the Customer to take and use the Equipment for the Hire Period;
- 1.2 Provide the Equipment to the Customer clean and in good working order;
- 1.3 Carry out a machine induction to ensure the customer understands how to operate the equipment in a safe manner.

2. OBLIGATIONS OF THE CUSTOMER

The Customer must:

- 2.1 Deliver the Equipment to Digger Co. when it is due back;
- 2.2 Return the Equipment to Digger Co. clean and in good repair;
- 2.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 2.4 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Digger Co. or posted on the Equipment;

3. NOTE TO CUSTOMER:

You MUST advise Digger Co. if you require any further instruction on the operation and safe use of the Equipment

- 3.1 Indemnify Digger Co. for all injury and/or damage to the extent caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- 3.2 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized;
- 3.3 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;
- 3.4 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;
- 3.5 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Digger Co. 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 Customer;
- 3.6 Operate the Equipment with an adequate motor vehicle and/or power source;
- 3.7 Report and provide full details to Digger Co. of any accident or damage to the Equipment within two business days of the accident or damage occurring;
- 3.8 Sign any documentation requested by Digger Co. at such intervals as reasonably stipulated by Digger Co., to confirm the Customer's acceptance of these



Hire Contract Conditions.

The Customer must NOT;

- 3.9 Tamper with, damage or repair the Equipment;
- 3.10 Lose or part with possession of the Equipment;
- 3.11 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 3.12 Allow any person to drive a Motor Vehicle if the person:
 - (a) does not hold a suitable licence to drive that class of Motor Vehicle; or
 - (b) is affected by drugs and/or alcohol.
- 3.13 Exceed the recommended or legal load and capacity limits of the Equipment;
- 3.14 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.
- 3.15 Exceed the recommended or legal speed limit for the Equipment.

4. NO ASSIGNMENT BY CUSTOMER

4.1 This Agreement is personal to the Customer and is not capable of assignment by the Customer, but this shall not prevent employees of the Customer using the equipment in accordance with the terms of this agreement.

4.2 Digger Co. may assign its rights under this agreement without the consent of the Customer or any guarantor.

5 PAYMENTS BY THE CUSTOMER TO DIGGER CO.

5.1 On or before Commencement (or as otherwise specifically agreed in writing with Digger Co.), the Customer will pay the Hire Charge.

5.2 Immediately on request by Digger Co., the Customer will pay:

- (a) the new list price of any Equipment which is for whatever reason not returned to Digger Co.

NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment

- (b) all costs incurred in cleaning the Equipment;
- (c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;
- (d) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;
- (e) all costs incurred by Digger Co. in delivering and recovering possession of the Equipment;
- (g) the Kilometre Charge and any additional Hire Charges;
- (h) the cost of fuels and consumables provided by Digger Co. and not returned by the Customer;
- (i) any expenses and legal costs (including commission payable to a commercial agent) incurred by Digger Co. in enforcing this contract due to the Customer's default;
- (j) all costs of repairing or replacing tyres, including road service;
- (k) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract; and
- (l) Loading costs when equipment hired with an hour meter is used in excess of eight hours per day.

5.3 Without limiting the ability of Digger Co. to recover all amounts owing to it, the Customer irrevocably authorises Digger Co. to charge any amounts owing by the Customer to any credit card or account details of which are provided to Digger Co..

6 OWNERSHIP / RETENTION OF TITLE

All equipment supplied by Digger Co. to the Customer under this agreement shall remain the property of Digger Co..

7 DAMAGE WAIVER

7.1 Damage Waiver is not insurance, but is an agreement by Digger Co. 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.

7.2 Damage Waiver applies to all hires, subject to the conditions below, for no additional fee. 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 Digger Co. using suppliers list prices, whichever is the lesser amount.



DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY in the following circumstances;

- (a) where the Equipment is lost or stolen;
- (b) where the operator is not suitably licensed;
- (c) where the operator is affected by drugs and/or alcohol;
- (d) where the equipment has been wilfully damaged at any time during the Hire Period;
- (e) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
- (f) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;
- (g) where the damage is caused in any way by overloading

8 THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT in the following circumstances;

- (a) where the Customer has failed to keep the Equipment in a securely locked enclosed area, or in the case of a Motor Vehicle, has failed to properly secure or lock the Motor Vehicle; or
- (b) where the Customer has failed to submit to Digger Co. a Police report on the theft within seven days of the theft allegedly occurring. In the event of Theft Waiver applying, hire fees will be charged to the Customer until the Police Report is provided to Digger Co..

8.1 Damage Waiver or Theft Waiver will NOT apply where Digger Co. determines that any of the applicable circumstances respectively have occurred, unless the Customer is able to establish otherwise to the reasonable satisfaction of Digger Co..

9 BREACH OF HIRE CONTRACT BY CUSTOMER

If the Customer breaches any significant provision of this Contract and does not remedy the breach within a reasonable period of time (having regard to the breach), or becomes bankrupt, insolvent or ceases business then;

9.1 Digger Co. shall be entitled to:

- (a) terminate this Contract; and/or
- (b) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 8 is immediately invalidated.

9.2 The Customer indemnifies Digger Co. in respect of any damages, costs or loss, to the extent caused or contributed to by the customer resulting from a breach by the Customer of any provision of this Contract.

<i>I acknowledge that I have read and understood the above hire agreement:</i>	
FULL NAME	
HOME ADDRESS	
PHONE NUMBER	
EMAIL ADDRESS	
SIGNED	DATE