

HIRE CONTRACT



ALL CUSTOMERS must read this Contract carefully. Terms and conditions of this Contract contain clauses where customers may be liable for damage to goods and/or machinery hired by them and liability of WA Excavator Hire, Narrow Access Digger Hire and WA Excavators, and their owners to their customers is excluded in some circumstances.

1. DEFINITION

COMMENCEMENT – The date when the Customer takes possession of the equipment.

CUSTOMER – individual person, organisation, firm, partnership, corporation, trust, company or any other entity hiring the equipment from the Owner.

EQUIPMENT – all equipment, plant, tools, accessories, parts, attachments, and trailers supplied to the Customer.

HIRE CHARGE – amount shown on the Hire Agreement and Schedule payable by the customer.

HIRE PERIOD – The period specified on the Hire Agreement and Schedule or amendment issued in writing by the Owner if an extension is granted.

HIRE AGREEMENT AND SCHEDULE – A document produced by the Owner and provided to the Customer in electronic format or hard copy prior to the commencement of the hire period. This document will include particulars of the equipment and hire period and forms part of this Contract.

OWNER – WA Excavator Hire, Narrow Access Digger Hire or WA Excavators, their legal owner or representative.

REMOTE AREA – Any location located more than 50 kilometres from the Owner's location.

2. CUSTOMER OBLIGATIONS

The Customer must:

- 2.1 Return the equipment to the Owner clean and in good repair;
- 2.2 Deliver the equipment to the Owner by the time stated on the Hire Agreement and Schedule;
- 2.3 Ensure the equipment being hired is suitable for the purpose intended prior to commencement of the hire period;
- 2.4 Follow all safety advice provided by the Owner, the manufacturer or any other qualified person at all times;
- 2.5 Scan the QR code on the equipment and read the contents of the manufacturer's Operator's Manual prior to operating the equipment;
- 2.6 Operate the equipment safely, strictly in accordance with all applicable laws;
- 2.7 Seek further instruction on the use of the equipment, its attachments, loading and unloading if required;
- 2.8 Indemnify the Owner for all injury and damage to property and persons in relation to the equipment and its operation;
- 2.9 Have suitable insurance above and below ground to cover all liabilities incurred as a result of the use of the equipment;
- 2.10 Obtain all documentation identifying underground cables or drainage prior to using the equipment;
- 2.11 Ensure that all equipment is only used, operated, loaded, unloaded, and maintained by

the person named on the Hire Agreement and Schedule;

- 2.12 Only use the equipment at the address stipulated on the Hire Agreement and Schedule unless notifying the Owner in writing and receiving an amended Hire Agreement and Schedule from the Owner;
- 2.13 Conduct a thorough risk assessment identifying all hazards and ensuring adequate mitigators are in place prior to using the equipment;
- 2.14 Follow all instructions on loading/ unloading the equipment, and only use the equipment for its intended use. This information is available on the WA Excavator Hire website;
- 2.15 Comply with all applicable laws when transporting the equipment;
- 2.16 Indemnify the Owner for all traffic infringements, accidents, incidents caused as a direct result of transporting the equipment to the approved location;
- 2.17 Report and provide full details of any accident, incident or damage to the Owner within 24 hours to the occurrence;
- 2.18 Ensure the equipment is secured in its present position if capsized and notify the Owner immediately. The Customer accepts responsibility and associated costs for a qualified mechanic to inspect the equipment and recover the equipment to a safe working state;
- 2.19 Ensure proper Personal Protective Equipment is always used when operating the equipment.

The Customer MUST NOT;

- 2.20 Tamper with, repair or damage the equipment;
- 2.21 Operate the equipment under the influence of any drug or alcohol or without sufficient rest;
- 2.22 Continue to operate the equipment after an incident, accident or damage;
- 2.23 Lose, part with possession, or sub let the equipment to a third party;
- 2.24 Allow any person to operate, load, unload, or attend to the equipment unless qualified and authorised by the Owner;
- 2.25 Use the equipment, or equipment included for the transport of the equipment, for any purpose other than declared on the Hire Agreement and Schedule. This includes using trailers for carriage of any item, equipment or debris other than the equipment provided by the Owner to the Customer;
- 2.26 Exceed the structural limits of the equipment as defined in the manufacturer's Operator's Manual accessible by scanning the QR code on the machine or on the WA Excavator Hire website;



3. OWNER'S OBLIGATIONS

- 3.1 Ensure all equipment is clean and in good working order prior to the commencement of the hire period;
- 3.2 Deliver the equipment at the agreed time to the Customer;
- 3.3 Allow the Customer to take and use the equipment in accordance with the Hire Agreement and Schedule;

NOTE: The Customer MUST return the equipment by the time specified on the Hire Agreement and Schedule unless specific approval has been provided in writing by the Owner. All costs associated with returning the equipment are accepted by the Customer as part of this Contract.

4. Period of Hire

The period of hire shall commence from either

- 4.1 The commencement date and time shown on the Hire Agreement and Schedule; or
- 4.2 The time when the equipment is delivered to the Customer at the address specified on the Hire Agreement and Schedule, whichever is the earlier; and shall terminate
- 4.3 At the time when the equipment is returned to the Owner; or
- 4.4 At the time the Customer notifies the Owner that the equipment is ready for collection by the Owner. Such notification will be deemed to have been properly given only when the Customer has received written confirmation. Charges will continue at the pro-rata rate until the Customer contacts the Owner.
- 4.5 The period of hire shall terminate on whichever is the later event of 4.3 or 4.4. Notification by the Customer that the equipment is ready for collection and the receipt in writing from the Owner shall not relieve the Customer for liability for the equipment until it is collected by the Owner.

5. RETURN OF EQUIPMENT AND TERMINATION

- 5.1 The Customer agrees to return the equipment to the Owner at the same address where the equipment was collected at the time specified on the Hire Agreement and Schedule. The Owner may terminate any agreement at its sole discretion and the Customer authorises the Owner and servants to enter upon such land as may be necessary to recover the equipment.

6. HIRING CHARGES

- 6.1 The Customer will pay the hire charges at the rate specified on the Hire Agreement and Schedule for the time specified.

7. LATE RETURN AND FUEL

- 7.1 If the equipment is not returned to the Owner at the end of the hire period as specified on the Hire Agreement and Schedule, the Customer will be charged, and the Customer agrees to pay, an additional rate for the extra hour(s) or part thereof;

- 7.2 The Customer agrees to return the equipment with the same quantity of fuel as received or the Customer accepts that the Owner will replenish the fuel at a cost of \$2.50 per litre;

- 7.3 The Customer must ensure the equipment is only fuelled with clean fuel as specified in the manufacturer's Operator's Manual.

8. LOADING AND UNLOADING OF EQUIPMENT

- 8.1 The Customer is responsible for the loading and unloading of the equipment;
- 8.2 The trailer must be connected to the towing vehicle at all times whilst loading and unloading the equipment;
- 8.3 The stabilisation stand must be lowered during loading and unloading;
- 8.4 The Customer must ensure all ramps, the stabilisation bar, attachments, etc are secured prior to moving the trailer after loading or unloading of the equipment;
- 8.5 Tie downs provided must be secured prior to towing the equipment;
- 8.6 The Customer must ensure the trailer is roadworthy, safe, registered, and that all lights are operational prior to towing the equipment;
- 8.7 If the Owner, or an employee of the Owner, assists with the loading or unloading of the equipment, the Customer agrees to indemnify the Owner for any property damage or personal injuries in relation to this assistance whether or not due to negligence.

9. EQUIPMENT MAINTENANCE

The Customer agrees to:-

- 9.1 Keep and maintain the equipment in a clean condition and in good repair and working order;
- 9.2 Service the equipment in accordance with the manufacturers Operator's Manual assessable by scanning the QR code on the equipment or on the Owners website;
- 9.3 Supply all fuel necessary for the operation of the equipment at its own expense;
- 9.4 Ensure fuel is the correct type and grade for the equipment hired and that it is added to the correct location;
- 9.5 Repair or replace damaged tyres or tracks on the equipment, including the trailer if supplied as part of the Hire Agreement and Schedule;
- 9.6 Give the Owner access to the equipment for inspection at any reasonable time without the Owner giving prior notice.

10. EQUIPMENT FAILURE

- 10.1 The Customer must cease all operations and notify the Owner immediately if the equipment becomes unsafe or in a state of disrepair;
- 10.2 The Customer must not attempt to repair the equipment without the consent of the Owner and will immediately return the equipment to the Owner's premises if required to do so by the Owner;
- 10.3 If the failure is caused by reasonable wear and tear the Owner agrees, in its discretion, to repair the equipment within a reasonable time, make similar equipment available, or adjust the rental charge accordingly;
- 10.4 The Owner shall in no circumstances be liable for any loss sustained by the Customer.



11. ACCIDENT

11.1 The Customer will notify the Owner of any accident or damage including breakdown involving its equipment.

12. CLEANING AND REPAIR

12.1 The Customer is responsible to return the equipment in clean condition and good repair and working order;

12.2 The Owner may at its absolute discretion charge the Customer for all reasonable costs of cleaning the equipment, restoring it to good repair and working order, or replacement of equipment which cannot reasonably be repaired.

13. LOSS

13.1 The Customer will be liable for the full cost of replacement of the equipment, including the trailer if included in the Hire Agreement and Schedule, if lost, damaged or stolen while in its possession;

13.2 The Owner does not provide any form of insurance on plant and equipment without prior arrangement;

13.3 The Customer agrees to incur all costs associated with recovering and or replacing the equipment. This may include insurance costs or excesses.

14. WAIVER

The Customer takes full responsibility for any loss or damage which in any way relates to or arises out of:

14.1 Burglary, theft or vandalism;

14.2 Breach of any statutory laws or regulations in connection with the use of the hired equipment by the Customer;

14.3 Misuse, abuse, wilful and or malicious acts, negligent and or reckless use and or overloading of the hired equipment;

14.4 Theft, loss or damage by whatever cause to tools and or accessories and attachments supplied with the hired equipment including but not limited to hoses, points, straps, slings, chains, shackles, jerry cans, grease guns, electrical leads, spare wheels and tyres;

14.5 Lack of lubrication or non-adherence to other normal maintenance regimes that could reasonably be expected of the Customer under the Hire Agreement and Schedule;

14.6 Disregard for instructions given to the Customer by the Owner in respect to proper use of the equipment or in contradiction of the manufacturer's Operator's Manual instructions found on the Owners website or by scanning the QR code on the equipment;

14.7 Unexplained disappearance of the hired equipment;

14.8 Loading or off-loading of equipment using any lifting device causing the hired equipment to leave the Earth's surface of any sort for any reason.

15. PAYMENT

15.1 Non account customers must make payments prior to the hire period or upon delivery of the equipment;

15.2 Accounts are due and payable at the end of the hire period or 14 days whichever occurs first for the case of long-term hires.

16. LATE PAYMENT

16.1 Interest is payable on any accounts outstanding at the end of the hire period at the rate of 15% per annum calculated daily.

17. COLLECTION COSTS

17.1 The Customer agrees to pay all reasonable costs of collection or legal proceedings brought to recover any amounts outstanding after the end of the hire period.

18. SUBLEASE, LOANS OF EQUIPMENT, ASSIGNMENTS, APPOINTMENTS TO ACT FOR A COMPANY

18.1 The Owner may assign its rights under the contract without the Customer's permission but will remain bound by its terms;

18.2 The Customer may not sublease or loan the equipment without the Owner's written permission and any purported assignment shall be void;

18.3 A person whom accepts this agreement of hire on behalf of a company also accepts as an individual they will be liable for full costs in the event a company fails to or is unable to provide payment.

19. EXCLUSIONS OF WARRANTIES

19.1 This Contract contains no express or implied warranties other than those which appear in this agreement;

19.2 No warranty is given that the equipment is suited for its intended use;

19.3 The Customer warrants that it has made its own independent inspection and has not relied on any representations by the Owner.

20. INDEMNITY

20.1 The Customer agrees to accept full responsibility for all claims in respect of any injury to persons, loss of productivity or loss or damage to property, arising out of the delivery, servicing, storage, possession, use or failure of the equipment during the hire period whether or not due to the negligence of the Owner, its employee or agent or any other person and agrees to indemnify the Owner with respect to these claims.

20.2 The Customer will not allow any lien to be created over the equipment nor sell, transfer, mortgage or charge the equipment and will indemnify the Owner against any losses or expenses incurred as a result of its loss of possession of the equipment for any of these reasons.

21. SEVERABILITY

21.1 The provisions of this Contract shall be severable, so that the invalidity, unenforceability, or waiver of any of the provisions shall not affect the remaining provisions.

22. JURISDICTION

22.1 The law relating to this agreement shall be the law of the State of Western Australia.