

Dry Hire Agreement

HIRE TERMS

These Hire Terms, together with any Hire Form (defined in clause 1(a)), set out the agreement (this **Agreement**) under the terms of which you or the company which you represent (the **Customer, you**) will rent the Equipment from the Hirer being Dylan Westlake ABN 97 917 169 438 t/a Westlake Excavations (**Hirer, we, us, our**).

HIRE FORM, THIS AGREEMENT

1. These Hire Terms will apply to all the Customer's dealings with The Hirer, including being incorporated in all agreements, quotations or orders under which The Hirer is to rent equipment and/or provide services to the Customer (each a '**Hire Form**') together with any additional terms included in such a Hire Form (provided such additional terms are recorded in writing). A Hire Form includes the booking details submitted by the Customer as part of The Hirer's online booking process (currently via Calendly), which will set out the applicable Customer, Equipment, Fees, Job Site and other booking-specific details for that hire.
2. The Customer will be taken to have accepted this Agreement if the Customer accepts a Hire Form, or if the Customer orders, accepts or pays for any equipment and/or services provided by The Hirer after receiving or becoming aware of this Agreement or these Hire Terms. The Customer may accept this Agreement electronically, including by ticking an acceptance checkbox as part of The Hirer's online booking process, and any such acceptance will be as effective as signing this Agreement.
3. In the event of any inconsistency between these Hire Terms and any Hire Form, the clauses of these Hire Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in a Hire Form) will prevail over these Hire Terms to the extent of any inconsistency.

HIRE

1. The Hirer provides to the Customer and the Customer accepts from The Hirer the hire of the Equipment upon and subject to the provisions of this Agreement.

PRE HIRE

1. The Customer warrants that they:
 1. will send a copy of their valid driver's licence/s within 24 hours of confirming the booking to The Hirer's contact email address set out in the Hire Form;
 2. have read and understood any instructional materials provided by The Hirer;
 3. will obtain up to date information from relevant authorities, (for example, by using the "Dial Before You Dig" service), about any infrastructure networks at the Job Site; and
 4. ensure that any person collecting or taking delivery of the 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 authorised.

EQUIPMENT USE

Use

1. The Customer must ensure that the Equipment is only used:
 1. on the Job Site;
 2. for the Purpose;
 3. in a proper and skilful manner, by Personnel who are appropriately trained, licensed, certified and competent;
 4. in accordance with the Equipment manufacturer's requirements, recommendations and instructional materials provided to the Customer; and
 5. in accordance with all Laws, rules and regulations applicable to the Equipment and its use and/or relating to the Job Site.
2. The Customer must not, and must not allow any Personnel or third party to:
 1. tow trailered Equipment with an unsuitable or unroadworthy vehicle or on unsealed roads;
 2. tow trailered Equipment, if the driver is not the holder of a valid driver licence;
 3. use the Equipment for any dangerous or illegal purpose;
 4. use or allow the Equipment to be used to carry passengers for payment of any kind and/or for racing;
 5. make any alterations to the Equipment, including by unauthorised repair;
 6. use or allow the Equipment to be used while the operator is under the influence of alcohol or drugs;
 7. use the Equipment when it is damaged or unsafe;
 8. affix or install any accessories, equipment or device on or to the Machine (other than the Included Attachments set out in the Hire Form) without The Hirer's prior written consent;
 9. sub-hire the Equipment; or
 10. use the Equipment for the conveyance or towing of any load.

Maintenance

1. The Customer must, when the Equipment is unattended, always keep it locked and keep the keys under their control.
2. The Customer is responsible for the performance and cost of daily maintenance and care of all Equipment in its possession, including:
 1. daily checking of all fluids (fuel, oil, water, battery levels etc);
 2. general tightening of any loose nuts, bolts, belts or fittings;
 3. the lubrication of all grease points every day the Machine has been used;
 4. if applicable, the adjustment of the tracks tension weekly; and
 5. if, applicable, the lubrication of the slew ring every fifty (50) hours.
3. If the Customer does not comply with clause 4.2(b) above, and The Hirer replaces any of the pins, slew rings and/or tracks within a reasonable time following the return of the Machine, the Customer must promptly pay for such replacement, on demand from The Hirer.
4. If instructed by The Hirer, the Customer must cover the Equipment with waterproof material in wet weather conditions.

Operator

1. The Customer agrees that they are responsible for the acts and omissions of any other person they allow to use the Equipment.

Fuel

1. The Customer must:
 1. ensure that the Machine has a full tank of fuel when it is returned to The Hirer, unless specified otherwise in the Hire Form;
 2. only fill the Equipment with fuel of a type that meets the Machine's specifications; and
 3. promptly pay to The Hirer the costs of refuelling the Machine, at the Fuel Rate for each litre of fuel required to refill the Machine's tank, if the Customer fails to comply with clause 4.4(a) at the Fuel Refill Rate.

Personal Property

1. The Hirer is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after its return to The Hirer or stolen from the Equipment or otherwise lost during the Hire Term.

Cleaning

1. The Customer acknowledges that the Equipment is rented out in a clean condition. The Customer must return the Equipment in the same state of cleanliness (inside and out) it was in on the Start Date (**Clean**). If the Equipment is not Clean upon return, a cleaning fee covering the total cost to The Hirer to clean the Equipment will apply.

RETURN

1. Subject to clause 13, the Customer must on the Return Date and by the Return Time specified in the Hire Form, return the Equipment to The Hirer at the Return Address in the same condition as it was in on the Start Date.
2. If the Customer does not comply with clause 5(a), the Customer must pay the Late Charge for every additional 24 hour period after the Return Time on the Return Date for which the Customer retains possession of the Equipment.
3. If the Customer returns the Equipment before the Return Date:
 1. the discount set out in the Early Return Discount section of the Hire Form will be applied; or
 2. if no Early Return Discount is set out in the Hire Form, the Customer will be liable for the full Fees as if the Equipment was in its possession from the Start Date until the Return Date, notwithstanding any early return of the Equipment.

OFF HIRE

1. This clause only applies to Equipment for which off hire discount rates apply, as set out in the Hire Form. For Equipment this clause 6 applies to, The Hirer will apply the off hire discount rate set out in the Hire Form in respect of that Equipment and for a particular date, subject to the following:
 1. the Equipment not being subject to a rent to buy arrangement; and
 2. The Hirer receiving a written notice from the Customer before 9AM on the relevant date, requesting an off hire rate on one of the following grounds:
 1. wet weather conditions, provided that the Equipment is 1 tonne or over in weight;
 2. the date being a public holiday; or
 3. the date being a rostered day off.

The Hirer will determine in its reasonable discretion whether any of these grounds apply.

FAULTY EQUIPMENT

1. If the Equipment is faulty, breaks down or becomes unsafe to use during the Hire Term (**Breakdown**), the Customer must immediately:
 1. notify The Hirer;
 2. stop using the Equipment;
 3. take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment;
 4. take all steps necessary to prevent the Equipment from sustaining any further damage;
 5. not repair or attempt to repair the Equipment without The Hirer's written consent; and
 6. comply with The Hirer's directions in relation to the return of the Equipment.
2. Subject to clause 7(c), if, upon inspection of the Equipment, The Hirer determines that a Breakdown was:
 1. caused by a fault in the Equipment (not caused or contributed to by the Customer) (**Equipment Fault**) then The Hirer will provide the Customer with a pro-rata refund of any Fees paid for the period of the Hire Term during which the Breakdown persisted; or
 2. not caused by an Equipment Fault, then the Customer will still be required to pay Fees in accordance with the Hire Form.
3. Clause 7(b) does not limit:
 1. any of the Customer's rights under the Competition and Consumer Act 2010 (Cth); or
 2. any rights or remedies The Hirer may have access to in relation to a Breakdown, under this Agreement or otherwise.

REPLACEMENT, LOSS AND DAMAGE

Loss, damage and personal injury

1. The Customer will be fully liable to The Hirer for:
 1. any loss or damage to the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession, and must give reasonable notice to The Hirer in writing of any such loss or damage; and
 2. all damage to the property of any person which is caused or contributed to by the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession.

Replacement

1. If The Hirer notifies the Customer in writing, the Customer must replace all parts of the Equipment which during the Hire Term have become worn out, lost, stolen, damaged beyond repair or permanently rendered unfit for use (fair wear and tear excepted), provided that the Customer must not make any replacement, alteration or addition of any nature which may lead to a material reduction in the value of the Equipment.

INCIDENTS and INSURANCE

Insurance

1. The Customer acknowledges that The Hirer may, in its discretion, hold insurances in relation to the Equipment but such insurances may not cover the Customer or the Customer's use of the Equipment and The Hirer will have no obligation or requirement to insure the Customer's use of the Equipment under this Agreement. The Customer is strongly encouraged to take out adequate insurance to cover all potential liabilities that could arise from their use of the Equipment.
2. If The Hirer notifies the Customer that it holds insurance in relation to the Equipment, the Customer must not do or permit anything to be done which may make The Hirer's insurance invalid or able to be cancelled or which may increase The Hirer's insurance premiums.
3. The Hirer reserves the right to apply any insurance policy it does hold in respect of the Equipment during the Hire Term, to damage or loss caused or contributed to by the Customer, however The Hirer is under no obligation to. If The Hirer chooses to make a claim under an applicable insurance policy in accordance with this clause in respect of any damage or loss during the Hire Term, the Customer will be required to pay any excess payable by The Hirer in respect of such a claim.

Incidents, Loss and Damage

1. Subject to any The Hirer insurance policy that covers the Customer, which The Hirer has indicated it will claim against to cover the Customer (or as otherwise agreed in writing), if the Equipment is lost, damaged, destroyed or stolen during the Hire Term, or otherwise while the Equipment is in the Customer's possession, the Customer must compensate The Hirer for any costs of repair or replacement.

2. If the Equipment is involved in an accident or claim, damaged, destroyed, stolen or if damage or loss is sustained to the property of any third party in connection with the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession (**Incident**), the Customer:
 1. must promptly report the Incident to the local police (if required by Law);
 2. must report the Incident to The Hirer in writing within one Business Day;
 3. must, if such damage, destruction or theft is covered by and compensated to The Hirer under an insurance policy, pay the relevant excess amount to The Hirer, as well as any other reasonable costs that The Hirer incurs in relation to such damage, destruction or theft;
 4. must not, without The Hirer's prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the Incident, except as required by Law;
 5. must, if requested, permit The Hirer or its insurer bring, defend, enforce or settle any legal proceedings in the Customer's name in relation to the Incident; and
 6. must, if requested, provide to The Hirer, within a reasonable time, any statement, information or assistance which The Hirer or its insurer requests, including by attending a lawyer's office or a court to give evidence.

PAYMENT

FEES

1. The Customer must pay the Fees to The Hirer in the amounts set out in the Hire Form or as otherwise agreed in writing.

TIME FOR PAYMENT

1. Unless otherwise agreed in writing or in a Hire Form:
 1. the Customer must pay for all Equipment on or before the Start Date; and
 2. if The Hirer issues an invoice to the Customer, payment must be made by the time(s) specified in such invoice.

PAYMENT METHOD

1. The Customer must pay Fees using the payment method specified in the Hire Form.

LATE PAYMENT

1. If the Customer does not pay The Hirer the amounts due and payable under an invoice on or before its due date, without limiting any of The Hirer's other rights under this Agreement, the Customer must pay The Hirer interest at the rate of 10% per annum on each amount outstanding, from the due date for payment to the date on which the payment is received by The Hirer. However, before applying this interest, The Hirer will provide the Customer with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by The Hirer.

GST

1. Unless otherwise indicated, amounts stated in a Hire Form do not include GST. In relation to any GST payable for a taxable supply by The Hirer, the Customer must promptly pay the GST subject to The Hirer providing a tax invoice.

CARD SURCHARGES

1. The Hirer reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

security bond

1. To hire the Equipment, we require the payment of a Security Bond as set out in the Hire form or as otherwise specified by us, to cover any fees, damage or issues with the Equipment during the Hire Term (**Security Bond**).
2. Upon return of the Equipment, we may claim the Security Bond against any amount owed by the Customer to us under this Agreement.

PAYMENTS OTHER THAN FEES

1. Immediately on request by The Hirer, the Customer will pay:
 1. the price of any Equipment which is for whatever reason not returned to The Hirer;
 2. the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;
 3. all costs incurred by The Hirer in delivering and recovering possession of the Equipment; and
 4. any expenses and legal costs (including commission payable to a commercial agent) incurred by The Hirer in enforcing this Agreement due to the Customers default.
2. Without limiting the ability of The Hirer to recover all amounts owing to it, the Customer authorises The Hirer to charge any amounts owing by the Customer to any credit card or account which the Customer provides in a Hire Form.

OWNERSHIP, POSSESSION AND TITLE

Ownership

1. The Equipment is and will at all times remain the property of The Hirer, notwithstanding delivery of the Equipment to the Customer or the possession and use of the Equipment by the Customer.
2. The Customer will not have any right, title or interest in or to the Equipment except as expressly set out in this Agreement.

Possession

The Customer must not, without The Hirer's prior written consent, part with possession of the Equipment during the Hire Term.

Encumbrances

1. The Customer must not allow any security interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer's lien, except:
 1. if a repairer's lien arises, the Customer must take all necessary steps to have it removed or satisfied, or, at The Hirer's option, The Hirer may remove or satisfy the lien at the Customer's cost; and
 2. a security interest, lien or charge that arises by Law in respect of unpaid rates, taxes, fees or duties of any kind, in which event the Customer must pay any money due so that the Equipment will be free of the lien or charge.

PERSONAL PROPERTY SECURITIES

1. The Customer acknowledges and agrees that:
 1. The Hirer may register any security interest it has in connection with this Agreement (including any security interest over the Equipment arising out of the application of the PPSA to this Agreement) on the PPS Register; and
 2. if requested by The Hirer, the Customer must immediately sign any documents, provide all necessary information and do anything else required by The Hirer to ensure that any security interest created is perfected and to enable The Hirer to gain first priority for its security interest.
2. The Customer agrees to contract out of the application of the following provisions of the PPSA, and these provisions will not apply to this Agreement:
 1. Section 115(7);
 2. Section 117;
 3. Section 118;
 4. Section 120;
 5. Section 121(4);
 6. Section 130;
 7. Section 135; and
 8. Section 143.
3. The Customer acknowledges the application and importance of the following provisions of the PPSA, which shall remain unaffected and continue to apply to this Agreement:
 1. Section 123;
 2. Sections 125, 126, 128, and 129; and
 3. Section 142.
4. In this clause:
 1. **"PPSA"** means the Personal Property Securities Act 2009 (Cth) and its regulations as amended and in force from time to time;
 2. **"PPS Register"** means the Personal Property Securities Register established under the PPSA; and
 3. a term used in this clause is taken to have the meaning defined under the PPSA.

EARLY RETURN

1. Notwithstanding any other clause in this Agreement, The Hirer may demand the early return of the Equipment to the Return Address, or retake possession of the Equipment, if The Hirer reasonably suspects that:
 1. damage to the Equipment or injury to any person in connection with the Equipment is reasonably likely; or
 2. the Equipment may be used for an unlawful purpose.

THIRD PARTY GOODS AND SERVICES

1. If The Hirer is required to acquire goods or services supplied by a third party, the Customer may be subject to the terms and conditions of that third party (**'Third Party Terms'**).
2. The Customer agrees to any Third Party Terms applicable to any goods or services supplied by a third party that the Customer or The Hirer acquires as part of renting the Equipment and The Hirer will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms.

LIABILITY and WARRANTIES

LIABILITY

1. To the maximum extent permitted by law, the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the Customer to The Hirer under the most recent Key Details.

WARRANTIES

1. The Customer acknowledges they have relied on their own judgment and expertise in deciding to rent the Equipment for their intended purpose.
2. To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
3. Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the Competition and Consumer Act 2010 (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by The Hirer, except:

1. in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
2. to the extent this liability cannot be excluded under the Competition and Consumer Act 2010 (Cth);

TERMINATION

TERMINATION FOR CONVENIENCE

Either party may terminate this agreement for convenience by providing notice to the other party.

TERMINATION FOR BREACH

1. Either party may terminate this agreement immediately by written notice if there has been a Breach of this agreement.
2. A “**Breach**” of this agreement means:
 1. a party (**Notifying Party**) considers the other party is in breach of this agreement and notifies the other party;
 2. the other party is given 5 Business Days to rectify the breach; and
 3. the breach has not been rectified within 5 Business Days or another period agreed between the parties in writing.

EFFECT OF TERMINATION

Upon termination of this agreement, each party must:

1. return all Equipment, property and Confidential Information to the other party;
2. comply with all obligations that are by their nature intended to survive the end of this agreement;
3. stop using any materials that are no longer owned by, or licensed to, them when this agreement is terminated; and
4. if the Customer terminates this agreement in accordance with clause 16.1 and there is less than 24 hours before the Start Date, then the Customer must pay The Hirer’s pre-estimated genuine losses as a result of the Customer ending this agreement, being 50% of the Fees.

DISPUTE RESOLUTION

1. A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
2. A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
3. Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

NOTICES

1. A notice or other communication to a party under this Agreement must be:
 1. in writing and in English; and
 2. delivered via email to the other party, to the email address specified in this Agreement, or if no email address is specified in this Agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this Agreement as at the date of this Agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
2. Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 1. 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring Business Day in that state; or
 2. when replied to by the other party,

whichever is earlier.

GENERAL

GOVERNING LAW AND JURISDICTION

1. This Agreement is governed by the law applying in the South Australia, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of the South Australia, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

AMENDMENTS

1. This Agreement may only be amended in accordance with a written agreement between the parties.

WAIVER

1. No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

SEVERANCE

1. Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this Agreement is not limited or otherwise affected.

JOINT AND SEVERAL LIABILITY

1. An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

ASSIGNMENT

1. A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

COUNTERPARTS

1. This Agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this Agreement and all together constitute one agreement.

COSTS

1. Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

ENTIRE AGREEMENT

1. This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this Agreement.

INTERPRETATION

1. (**singular and plural**) words in the singular includes the plural (and vice versa);
2. (**currency**) a reference to \$; or “dollar” is to Australian currency;
3. (**gender**) words indicating a gender includes the corresponding words of any other gender;
4. (**defined terms**) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
5. (**person**) a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
6. (**party**) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
7. (**this Agreement**) a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
8. (**document**) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
9. (**headings**) headings and words in bold type are for convenience only and do not affect interpretation;
10. (**includes**) the word “includes” and similar words in any form is not a word of limitation; and
11. (**adverse interpretation**) no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

DEFINITIONS

1. In addition to capitalised terms defined in the Hire Form, capitalised terms used in this Agreement will have the following meanings:

1. Term	Meaning
1. Business Days	means a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in the Australian Capital Territory, Australia. has the meaning set out in the Hire Form.

1. Term	Meaning
1. Customer	
1. Equipment	means the Machine and the Included Attachments included in a Hire Form.
1. Fees	has the meaning set out in the Hire Form.
1. Hire Form	has the meaning set out in clause 1(a) of these Hire Terms.
1. Hire Term	means the period of Equipment Hire, from the Start Date set out in the Hire Form until the Equipment is returned to The Hirer.
1. Job Site	means the job site specified in the Hire Form.
1. Late Charge	means the late charge set out in the Hire Form.
1. Laws	mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Equipment is provided and includes any industry codes of conduct.
1. Machine	has the meaning set out in the Hire Form.
1. Personnel	means, in respect of a party, that party's officers, employees, contractors (including subcontractors) and agents.
1. PPSA	means the Personal Property Securities Act 2009 (Cth) and PPS Register means the register established and maintained under that Act.
1. Return Address	means the return address set out in the Hire Form.
1. Return Date	has the meaning set out in the Hire Form.
1. Start Date	has the meaning set out in the Hire Form.
1. Third Party Terms	has the meaning set out in clause 14.