

TERMS AND CONDITIONS OF HIRE

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Eastern Diggers and the Customer in writing. Eastern Diggers agrees to hire Equipment to the Customer on terms set out in this document. If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Eastern Diggers) a Hire Schedule and such other documents as Eastern Diggers may require. Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Eastern Diggers and the Customer, together with any credit application, guarantee and indemnity or other contractual documents. The Customer agrees to receive hire schedules and all associated documentation by electronic means. Eastern Diggers 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 Eastern Diggers from time to time by Eastern Diggers giving notice of the amendment to the Customer. Notice is deemed given when Eastern Diggers does any of the following:

- sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer;
- publishes the amended terms on its website www.easterndiggers.com.au or
- displays the amended terms at premises from which Eastern Diggers 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.

- **INTERPRETATION OF WORDS IN THIS CONTRACT;**

COMMENCEMENT – The date when the Customer 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 and 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.

CUSTOMER – refers to the person, firm, organisation, partnership, corporation or other entity (including trust) hiring the Equipment from Eastern Diggers Hire as identified in the Credit Application or Hire Schedule

HIRE CHARGE – The amounts shown on the Hire Schedule payable by the Customer 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 Customer requests it and if Eastern Diggers agrees. Eastern Diggers may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

HIRE SCHEDULE – Means a document which Eastern Diggers may require the Customer to sign (or accept in a way Eastern Diggers requires) including particulars of the Equipment and the Hire Period and such other information as Eastern Diggers may decide to require.

EASTERN DIGGERS – The company or companies listed on the Hire Schedule. **KILOMETRE CHARGE** – The amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Eastern Diggers, travelled during the Hire Period.

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 the 50 kilometres from the Eastern Diggers branch from where the Equipment is hired.

- **EASTERN DIGGERS OBLIGATIONS**

Eastern Diggers will:

- 2.1 Allow the Customer to take and use the Equipment for the Hire Period;
- 2.2 Provide the Equipment to the Customer clean and in good working order;
- 2.3 Collect the Equipment within 5 days of being requested to do so by the Customer and issuing to the Customer a Customer Pick Up Number. **NOTE TO CUSTOMER: You must return the Equipment at your expense when due back unless you obtain a Customer Pick Up Number from Eastern Diggers.**

- **OBLIGATIONS OF THE CUSTOMER**

The Customer must:

- Deliver the Equipment to Eastern Diggers when it is due back;
- Return the Equipment to Eastern Diggers clean and in good repair;
- Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 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 Eastern Diggers or posted on the Equipment;
- Indemnify Eastern Diggers 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;
- 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;
- 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;

- 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;
- Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Eastern Diggers 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;
- Operate the Equipment with an adequate motor vehicle and/or power source; Report and provide full details to Eastern Diggers of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

The Customer must NOT;

- Tamper with, damage or repair the Equipment;
 - Lose or part with possession of the Equipment;
 - Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
 - Allow any person to drive a Motor Vehicle if the person:
 - does not hold a suitable licence to drive that class of Motor Vehicle; or
 - is affected by drugs and/or alcohol.
 - Exceed the recommended or legal load and capacity limits of the Equipment;
 - Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.
 - Exceed the recommended or legal speed limit for the Equipment.
- **PAYMENTS BY THE CUSTOMER TO EASTERN DIGGERS**
- On or before Commencement (or as otherwise specifically agreed with Eastern Diggers), the Customer will pay the Hire Charge.
 - Immediately on request by Eastern Diggers, the Customer will pay:
 - the new list price of any Equipment which is for whatever reason not returned to Eastern Diggers. (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),
 - all costs incurred in cleaning the Equipment;
 - the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;
 - 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;

- all costs incurred by Eastern Diggers in delivering and recovering possession of the Equipment;
 - Interest for late payment of amounts owing by the customer, at the prejudgement interest rate set by the Local Court of NSW from time to time;
 - the Kilometre Charge in excess of 100km per day and any additional Hire Charges;
 - the cost of fuels and consumables provided by Eastern Diggers and not returned by the Customer;
 - any reasonable expenses and legal costs (including commission payable to a commercial agent) incurred by Eastern Diggers in enforcing this Contract due to the Customers default; and
 - all costs of repairing or replacing tyres, including road service;
 - if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.
 - Loading costs when equipment hired with an hour meter is used in excess of 8 hours per day
 - Without limiting the ability of Eastern Diggers to recover all amounts owing to it, the Customer authorises Eastern Diggers to charge any amounts owing by the Customer to any credit card or account details of which are provided to Eastern Diggers.
 - Eastern Diggers may tokenise the Customers Credit Card or Account details to facilitate credit card or online payments.
- **PPS LAW**
 - This clause applies to the extent that this Contract provides for a 'security interest' for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.
 - Eastern Diggers may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Eastern Diggers requires for the purposes of:
 - ensuring that Eastern Diggers' security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - enabling Eastern Diggers to gain first priority (or any other priority agreed to by Eastern Diggers in writing) for its security interest; and
 - enabling Eastern Diggers to exercise rights in connection with the security interest.
 - The rights of Eastern Diggers under this document are in addition to and not in substitution for Eastern Diggers' rights under other law (including the PPS Law) and Eastern Diggers may choose whether to exercise rights under this document, and/or

under such other law, as it sees fit. To avoid any doubt about it Eastern Diggers security interest will attach to proceeds.

- To the extent that Chapter 4 of PPSA applies to any security interest under this 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 this 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 Eastern Diggers to give a notice to the Customer); 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 Eastern Diggers to give a notice to the Customer); 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).
- The following provisions of the PPS Law: 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) confer rights on Eastern Diggers. Customer agrees that in addition to those rights, Eastern Diggers shall, if there is default by Customer, 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 Customer agrees that Eastern Diggers may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- The Customer 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.
- Eastern Diggers and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer 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 purpose of allowing to Eastern Diggers the benefit of section 275 (6)(a) and Eastern Diggers shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- Customer must not dispose or purport to dispose of, or create or 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 Eastern Diggers.
- Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Eastern Diggers (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Eastern Diggers and must be expressed to be subject to the rights of Eastern Diggers under this agreement. Customer may not vary a subhire without the prior written consent of Eastern Diggers (which may be withheld in its absolute discretion).
- Customer must ensure that Eastern Diggers 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.

- Customer 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 Customer to gain (subject always to the rights of Eastern Diggers) first priority (or any other priority agreed to by Eastern Diggers in writing) for the security interest; and
 - enabling Eastern Diggers and the Customer to exercise their respective rights in connection with the security interest.

- **DAMAGE WAIVER**

- Damage Waiver is not insurance, but is an agreement by Eastern Diggers 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.
- 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 Eastern Diggers 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;

- where the Equipment is lost or stolen;
 - where the operator is not suitably licensed;
 - where the operator is affected by drugs and/or alcohol;
 - where the equipment has been wilfully damaged by the Customer or its employees or agents;
 - 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;
 - 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; or
 - where the damage is caused in any way by overloading.
 - Where damage is caused to a truck pantech or truck crane.
- The Customer may pay an additional Vehicle Waiver Plus Fee (Excluding Customers driving with "P" plate licences) in relation to the hire of Motor Vehicles, which will;
 - reduce the Damage Waiver Excess in relation to Motor Vehicles; cover damage to a pantech or van body above cab height; and

- add a Theft Waiver component for Motor Vehicles. Theft Waiver is not insurance, but is an agreement by Eastern Diggers that the Customer's liability for theft or loss of the Motor Vehicle can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Eastern Diggers may ask the Customer to pay the Vehicle Waiver Plus Fee on the hire of Motor Vehicles, but the Customer may decide to opt out of that payment.

Credit account customers will have the Vehicle Waiver Plus applied to all relevant hires unless the Customer has declined the Waiver on the credit application or opted out by providing notice to Eastern Diggers in writing.

The reduced Damage Waiver Excess and the Theft Waiver Excess apply to Motor Vehicles when the Vehicle Waiver Plus Fee is paid this will be shown on the Hire Contract and will vary for different classes of vehicles.

- The Customer may pay an additional Equipment Waiver Plus Fee in relation to the hire of medium and large equipment (being such Equipment as determined by Eastern Diggers at the time of hire), which will;
 - reduce the Damage Waiver Excess in relation to medium and large equipment; and
 - add a Theft Waiver component for medium and large machinery. Theft Waiver is not insurance, but is an agreement by Eastern Diggers that the Customer's liability for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Eastern Diggers may ask the Customer to pay the Equipment Waiver Plus Fee on the hire of medium and large equipment, but the Customer may decide to opt out of that payment. Credit account customers will have the Equipment Waiver Plus applied to all relevant hires unless the Customer has declined the Waiver on the credit application form or have opted out by providing notice to Eastern Diggers in writing.

- The reduced Damage Waiver Excess and the Theft Waiver Excess which apply to medium and large equipment when the Equipment Waiver Plus Fee is paid will be shown on the Hire Contract and will vary for different types of machinery. **THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT** in the following circumstances;
 - 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
 - where the Customer has failed to submit to Eastern Diggers a Police Report on the theft within 7 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 Eastern Diggers. Damage Waiver or Theft Waiver will **NOT** apply where Eastern Diggers determines that any of the applicable circumstances in clauses 6.2(a)-(h) or 6.5(a)-(b) respectively have occurred, unless the Customer is able to establish otherwise to the reasonable satisfaction of Eastern Diggers.

- **EXCLUSION OF WARRANTIES AND LIABILITIES**

- Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded;
- Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, Eastern Diggers liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.
- To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply. Eastern Diggers makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.

- **REMOTE HIRE**

Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions;

- The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by Eastern Diggers ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometre rate travelled by Eastern Diggers staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by Eastern Diggers and its staff in connection with travel to and from the Remote Area;
- Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee;
- The Customer is responsible at its cost for daily maintenance and care of all Multiple items of Equipment hire by a Customer on the one site will only be fittings and lubrication of all grease points.

- **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:

- Eastern Diggers shall be entitled to:
 - terminate this Contract; and/or
 - sue for recovery of all monies owing by the Customer; and/or
 - repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.

- The Customer indemnifies Eastern Diggers 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.

- **DISPUTES**

- The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Eastern Diggers in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.
- If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Eastern Diggers), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

- **EQUIPMENT DATA**

Eastern Diggers' Equipment may contain on-board devices (each a GPS Device) which enable the Equipment to be connected to the internet and to send commands to and receive certain information from the Equipment, including geolocation data from a global positioning system and other data including but not limited to speed, battery voltage and ignition status of such Equipment. By hiring any Equipment from Eastern Diggers, the Customer expressly consents to Eastern Diggers' use of the GPS Device on such Equipment during the Hire Period and to Eastern Diggers collecting, using and retaining information from the GPS Device in accordance with our Privacy Policy, and that Eastern Diggers is the owner of that data subject to your rights as set out in Eastern Diggers' Privacy Policy.

- **PRIVACY**

Eastern Diggers will comply with the Australian Privacy Principles in all dealings with Customers. A copy of the Eastern Diggers Privacy Statement is available upon request or by visiting www.easterndiggers.com.au

- **GOVERNING LAW**

- This Hire Contract is a payment claim under the *Building and Construction Industry Security of Payment Act 1999 (NSW)*, the *Building and Construction Industry Security of Payment Act 2002 (VIC)*, the *Building and Construction Industry Payments Act 2004 (QLD)*, the *Building and Construction Industry Security of Payment Act 2009 (SA)*, the *Construction Contracts Act 2004 (WA)*, the *Building and Construction Industry (Security of Payment) Act 2009 (ACT)*, the *Building and Construction Industry Security of Payment Act 2009 (TAS)*, and/or the *Construction Contracts (Security of Payments) Act 2009 (NT)*.
- Except where Eastern Diggers in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause,

Eastern Diggers and the Customer agree that this Contract is governed by the law of the state of Victoria, and the parties submit to the jurisdiction of the courts of that State.