



Hire Agreement

ABN 13 600 926 690

TERMS AND CONDITIONS for hiring Equipment from the Supplier.

1. General

- 1.1. By hiring Equipment from the Supplier, the Customer must read, understand, and agree to these terms and conditions by signing this Hire Agreement and any other documents the Supplier may require from time to time.
- 1.2. The Supplier expressly reserves the right to refuse Equipment hire to any Customer at any time (at its sole discretion).
- 1.3. By entering into any transaction with the Supplier, whether conditional or unconditional, the Customer acknowledges and agrees that:
 - a) they have read, understood, and agree to be bound by the terms and conditions of this Hire Agreement; and
 - b) the Supplier is dealing with you on the express basis that the terms and conditions of this Hire Agreement will apply in full to the transaction.

2. Definitions

- 2.1. **“Commencement”** means the date and time the Customer takes possession of the Equipment.
- 2.2. **“Customer or you or your”** means the person, firm, company, government institution, corporation or any other entity (including any personal representatives, agents, or permitted assigns of such) that enters into this Hire Agreement with the Supplier.
- 2.3. **“Equipment”** means any kind of equipment provided to the Customer by the Supplier, including any and all machinery and trailer, accessories, tools, attachments and manuals.
- 2.4. **“Hire Agreement”** means this legally binding agreement between the Customer and the Supplier.
- 2.5. **“Hire Charge”** means the rates and costs payable by the Customer for the hire of Equipment.
- 2.6. **“Hire Period or Wet Hire Period”** means the duration of time from Commencement of hire until the end of the hire shown in Schedule 1 of this Hire Agreement, or the return of Equipment to the Supplier, whichever is later.
- 2.7. **“Supplier”** means *S Bowman Enterprises Pty Ltd* trading as *Excavator Hire Sunshine Coast*.
- 2.8. **“Wet Hire”** means a hire arrangement where the Customer engages the Supplier to provide both the Equipment and an operator to carry out work.

3. Suppliers Obligations

- 3.1. The Supplier may, at its sole discretion, immediately terminate any transaction under this Hire Agreement upon notice to you in any form at any time.
- 3.2. To the extent permitted by law, the Supplier is not obligated to refund any payments made prior to termination under clause 3.1 above.
- 3.3. The Supplier will make reasonable efforts to ensure that the Equipment:
 - a) is in good working order; and
 - b) has a full tank of fuel,prior to Commencement of hire.
- 3.4. For Wet Hire:
 - a) the Supplier will provide a machine operator that will work exclusively under the direction of the Customer;
 - b) it is the Customer's responsibility to obtain a site plan and carry out all *Dial Before You Dig* service checks for the area they wish the Supplier to operate; and
 - c) the Customer is liable for any damages incurred during the of Wet Hire Period.

4. Customer Acknowledgements and Obligations

- 4.1. The Customer and any individual entering this Hire Agreement warrant and represent that:
 - a) they are authorised to sign this Hire Agreement;
 - b) all information provided is true and correct; and
 - c) they have read, understood, and agree to comply with all directions, terms, conditions and safety information provided within this Hire Agreement.
- 4.2. The Customer acknowledges and agrees that all Equipment is at the Customer's risk for the entire Hire Period.
- 4.3. The Customer must not sublease, load, or on-hire the Equipment to any third party without prior written permission given by the Supplier.
- 4.4. The Customer grants the Supplier express permission to enter any premises or location where any Equipment is being used or stored for the purpose of inspection or servicing.
- 4.5. The Customer must not alter, modify, tamper with, damage, or repair any Equipment without prior written approval from the Supplier.
- 4.6. It is the Customer's responsibility to ensure all Equipment loaded on or in Customer's vehicle is secured correctly during transport.
- 4.7. It is the Customer's responsibility before transporting Equipment to ensure trailer is secured correctly and checked for any mechanical issues that may deem it unsuitable for use.
- 4.8. The Customer must not exceed the designed GTM (gross trailer mass) or ATM (aggregate trailer mass) of any trailer used to transport the Equipment.

4.9. The Customer is solely responsible for the vehicle being used to tow any form of Equipment, and for making sure the vehicle meets any legal requirements, including those set by the Department of Transport and Main Roads.

4.10. The Customer must ensure their vehicle is suitable and has the towing capacity required to transport the hired Equipment and any attachments.

4.11. It is the Customer's responsibility to ensure that the hired Equipment is:

- a) stored in a safe, secure area and where possible in a locked yard or shed;
- b) operated safely by a suitably trained, competent, licensed, experienced and (if necessary) certified operator in accordance with all laws, regulations, operator manuals, and any instructions from the Supplier;
- c) used solely for its intended purpose, in suitable terrain, and in a reasonable manner that is within the Equipment's capabilities and limitations;
- d) not used underground, in a mine, or in an area where friable asbestos is present;
- e) not used excessively or improperly, including excessive use of the attachments;
- f) not used in, on, or over water;
- g) not removed from the state of Queensland without prior written consent from the Supplier;
- h) returned to the Supplier in the same clean condition and good working order it was in when received, and with full tanks of clean fuel, filled either directly from fuel station bowser or using a jerry can provided by the Supplier; and
- i) ensure unregistered Equipment (including machinery) is only operated on private property.

4.12. The Customer must ensure that all persons who operate the Equipment:

- a) prior to any use are made aware of all safety information, operating instructions and notices supplied with, attached to, or contained in the Equipment;
- b) do not operate the Equipment while under the influence of any alcohol or drugs;
- c) do not use the Equipment for any illegal activities or purposes;
- d) do not deface or remove any safety information or labels from the Equipment;
- e) wear suitable clothing and protective equipment as required or recommended by the safety and operating instructions, the law or any regulations;
- f) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment;
- g) not use a hydraulic attachment that has not been supplied by the Supplier without prior written agreement from the Supplier; and
- h) re fuel, lubricate and maintain the Equipment in good condition and in accordance with all instructions and the operator's manual.

4.13. The Customer takes full responsibility for any traffic infringements incurred during the Hire Period and must not exceed the recommended or legal speed limits during transport of the Equipment.

- 4.14. The Customer must immediately report all accidents and damage to any Equipment to the Supplier immediately if an accident or damage occurs.
- 4.15. The Customer acknowledges, and the Supplier advises, that the Customer must obtain a “Dial Before You Dig” site plan and council building site plan before any use of Equipment or Wet Hire (information in regard to “Dial Before You Dig” can be found at www.1100.com.au and through local councils).
- 4.16. Under a Wet Hire agreement, the Customer:
- a) must provide direction as to what earthworks are to be completed; and
 - b) accepts and takes full responsibility, and indemnifies the Supplier, for any damages incurred by the Supplier during the Wet Hire Period.

5. Hire Charges

- 5.1. Initial Hire Charges are based on the Hire Period specified in Schedule 1 of this Hire Agreement.
- 5.2. The Customer acknowledges that a one-day-hire is strictly limited to a maximum 10 hour period or return of Equipment by 5:00pm, whichever comes first.
- 5.3. The Customer acknowledges and accepts that if the Equipment is not returned to the Supplier by the conclusion of the Hire Period, then additional charges will apply at a daily rate until the Equipment is returned.
- 5.4. The Customer agrees that Equipment is not to be used continuously for more than 8 hours over a 24 hour period.

6. Payment

- 6.1. Prior to Commencement, the Customer must pay to the Supplier (unless otherwise agreed in writing prior with the Supplier):
- a) Full payment of the Hire Charge, including any costs related to delivery and hire of attachments;
 - b) Provide a valid credit card to the Supplier to be used for all payments pursuant to these terms and conditions.
- 6.2. The Customer may pay to the Supplier a damage excess reduction of \$150.00 plus GST, which, should a damage excess cost become payable, reduces the damages excess from \$2,500 plus GST to \$500 plus GST.
- 6.3. The Customer must pay to the Supplier:
- a) any and all third-party costs, including tolls, fines, levies, penalties or charges payable in respect of this Hire Agreement or arising from the Customer’s use of the Equipment;
 - b) a minimum damage excess cost of \$2,500.00 plus GST for any damage made to Equipment while in the Customer’s possession unless a damage excess reduction is paid prior to hire Commencement, in which case excess costs are reduced to \$500.00 Plus GST;
 - c) the full replacement cost (at new listed price) of any Equipment which is not returned to the Supplier; and
 - d) any legal expenses incurred by the Supplier, on a solicitor and own client (indemnity)

basis, due to the Customer's breach of this Hire Agreement.

6.4. Within three (7) days of demand from the Supplier, the Customer must pay to the Supplier:

- a) all costs incurred by the Supplier to recover, clean, refuel, repair replace, or restore the Equipment due to any actions or omissions by the Customer or any person while the Equipment was hired to the Customer, including insurance costs (i.e. cost of excess on claim, and subject to any damage waiver) and costs of recovery of the Equipment (including repairs to all parts and attachments for the Equipment that are excessively worn or used);
- b) All cleaning costs (charged at \$85 plus GST per hour) and re-fueling costs (charged at a rate of \$3.00 per litre) related to the Equipment (determined at the sole discretion of the Supplier);
- c) Any additional costs, including costs associated with any loss (including potential loss) of business, incurred by the Supplier arising out of or in connection with the Equipment during the Hire Period; and
- d) any other outstanding amounts payable under this Hire Agreement.

6.5. The Customer authorises the Supplier to charge the nominated credit card for any additional costs, including applicable bank fees, beyond the initial Hire Charge pursuant to the terms and conditions of this Hire Agreement.

7. Responsibility for the Equipment

- 7.1. The Customer acknowledges and accepts it is responsible for any loss, theft or damage to the Equipment (regardless of whether a damage waiver has been provided) regardless of the cause, event, or responsible party, while the Equipment is in the Customer's possession.
- 7.2. The Customer indemnifies the Supplier against any loss, cost, or liability arising from clause 7.1 above.

8. Breach of Hire Agreement by the Customer

- 8.1. If the Customer breaches any clause whatsoever of this document, or becomes insolvent, bankrupt or ceases business then the Supplier shall be entitled to:
 - a) immediately terminate the Hire Agreement;
 - b) repossess the Equipment (and is authorised to enter any premises or location where the Equipment is located to do so); and
 - c) institute proceedings against the Customer and/or any guarantor under this Hire Agreement to recover of all outstanding amounts owed.

9. Liability and Indemnity

9.1. It is the Customers responsibility to:

- a) locate all services and infrastructure in the area that the Equipment is to be operated in prior to works commencing;
- b) ensure Equipment is operated in accordance with the manufacturers specifications and only by a competent person;
- c) ensure Equipment is loaded and unloaded safely by a competent person;

- d) supervise all machine operations where required; and
 - e) ensure children do not have access to the job site, work area or Equipment.
- 9.2. The Customer acknowledges that use of the Equipment comes with dangers and risk of injury and the Customer accepts all dangers and risks associated with the use of the Equipment.
- 9.3. The Customer assumes all risks, full responsibility and liability for, and in respect of, the use of the Equipment including, but not limited to:
- a) Any injury or death of any persons or animals;
 - b) Any damage to property or claim by a third party, howsoever arising, from the possession, use, maintenance, repair, or storage of the Equipment (including as a result of the Customer not using the Dial Before You Dig service); and
 - c) Transport of the Equipment, including damage or injuries caused by transport of the Equipment in any way.
- 9.4. Unless limited by a signed written damage waiver provided by the Supplier, the Customer is liable to, and indemnifies and forever keeps indemnified the Supplier against, any and all liabilities, damage, loss, claims, cost and expenses (including, without limitation, legal fees, cost and disbursements on a full indemnity basis, whether incurred or awarded against the Supplier, and any environmental loss, cost, damage or expense) resulting from the supply or use of the Equipment by any person or a breach of any of these terms and conditions.
- 9.5. Upon demand, the Customer must pay the Supplier an amount equal to any claim/s, in respect of which it indemnifies the Supplier under this Hire Agreement.
- 9.6. No delay or 'omission' by the Supplier of its rights under the Hire Agreement or these terms and conditions will impair any such right, power or remedy, nor will it be construed to be a waiver of any rights to take action or make a claim in respect of a continuing breach or default.
- 9.7. The Customer's indemnity obligations extend to all losses, costs, and damages that may not be recoverable due to:
- a) any legal limitation, disability, or incapacity affecting any party;
 - b) any transactions related to those losses being void, illegal, or unenforceable; and
 - c) any other fact or circumstances.
- 9.8. To the fullest extent permitted by law:
- a) the Supplier shall not be liable for any claim arising out of or in connection with the Equipment or its hire, whether in contract, tort (including negligence), equity, legislation, or otherwise;
 - b) all warranties, representations, and guarantees, whether express or implied, are excluded; and
 - c) The Supplier shall not be liable for any indirect, incidental, consequential or special damages, including loss of profits, revenue, or opportunity, even if advised of the possibility of such damages.

10. Guarantor

10.1. The individual signing this Hire Agreement agrees to personally:

- a) guarantee the performance of all the terms and conditions of this Hire Agreement that are imposed on the Customer, in favour of the Supplier; and
- b) indemnify, keep indemnified, and hold harmless the Supplier against any and all breaches of the terms and conditions of this Hire Agreement, as well as any costs incurred by the Customer to the Supplier.

11. Entire Agreement

11.1. The terms and conditions of this Hire Agreement, along with any signed quote or invoice, constitute the entire agreement between the Customer and Supplier, superseding all prior communications, agreements, and representations.

11.2. Any amendment to the terms and conditions of this Hire Agreement must be agreed in writing and signed by both parties.

12. Severability

12.1. If any provision of this Hire Agreement is found to be invalid or unenforceable, the remaining provisions will continue to apply in full force and effect.

SCHEDULE 1 - Customer Details and Signature

By signing below, I acknowledge that I have read and agree to all terms and conditions outlined in this Hire Agreement and will follow all relevant legislative requirements, including Excavator Safe Work Procedures and Safe Work Australia's Excavation Code of Practice.

Customer Name:

Signatory's name:
(If Customer is not an individual)

Machinery Type:

Additional Attachments:

Hire Commencement Date:

Date Equipment to be returned:

Customer Signature: