



These rental 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 you represent (the '**Customer**', '**you**') will rent the Equipment or Services from TMS Rentals PTY LTD ABN 61 685 352 407 (**TMS Rentals, we, us, our**).

1. **RENTAL FORM, THIS AGREEMENT**

- (a) These rental terms will apply to all the Customer's dealings with TMS Rentals, including being incorporated in all agreements, quotations or orders under which TMS Rentals is to rent equipment 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.
- (b) 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 TMS Rentals after receiving or becoming aware of this agreement or these Rental Terms
- (c) In the event of any inconsistency between these Rental Terms and any Hire Form, the clauses of these Rental 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 Rental Terms to the extent of any inconsistency.

2. **RENTAL**

- (a) TMS Rentals provides to the Customer and the Customer accepts from TMS Rentals the rental of the Equipment and/or Services upon and subject to the provisions of this agreement.

3. **PRE HIRE**

The Customer warrants that they:

- (a) Will send a copy (Front and back) of their valid driver's licence within 24 hours of confirming the booking.
- (b) Will obtain up to date information from the relevant authorities, (i.e. "Before You Dig Australia") about any infrastructure networks at the Job Site; and
- (c) 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.



4. EQUIPMENT USE

(a) The Customer must ensure that the equipment is only used:

- (i) On the job site
- (ii) For the purpose
- (iii) In a proper skilful manner, by personnel who are appropriately trained, licensed, certified and competent
- (iv) In accordance with the equipment manufacturer's requirements, recommendations and instruction manuals provided to the Customer; and
- (v) In accordance with all Laws, rules and regulations applicable to the Equipment and its use.

(b) The Customer must not, and must not allow any Personnel or third party to:

- (i) Tow trailers or trailered equipment with an unsuitable or unroadworthy vehicle
- (ii) Tow trailered equipment on unsealed roads
- (iii) Tow trailers or trailered equipment, if the driver is not the holder of a valid driver's license
- (iv) Use the equipment for any dangerous or illegal purpose
- (v) Use or allow the equipment to be used to carry passengers for any payment of any kind.
- (vi) Make any alterations to the equipment, including unauthorised repair
- (vii) Use or allow the equipment to be used while the operator is under the influence of alcohol or drugs
- (viii) Use the equipment when it is damaged or unsafe
- (ix) Affix or install any accessories, equipment or device on or to the equipment (other than the included attachments set out in the Hire Form) without TMS Rentals prior written consent
- (x) Sub-hire the equipment.



5. MAINTENANCE OBLIGATIONS

- (a) The Customer must, when the equipment is unattended, always keep it locked and keep the keys under their control.
- (b) The customer is responsible for the performance and cost of daily maintenance and care of all Equipment in their possession, including:
 - (i) Daily checking of all fluids (fuel, oil, water etc)
 - (ii) General tightening of any loose nuts, bolts, belts or fittings
 - (iii) The lubrication of all grease points every day the machine has been used and within the manufactures specified time, whichever is the lessor.
 - (iv) If applicable, the adjustment of tracks tension weekly and
 - (v) If, applicable, the lubricant of the slew ring every fifty (25) hours.
- (c) If the customer does not comply with the clauses 5 (b) (iii) and 5 (d) (v) above and TMS Rentals 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 a replacement.

6. OPERATOR

- (a) The customer agrees that they are responsible for the acts and omissions of any other person they allow to use the equipment.

7. FUEL

- (a) The customer must:
 - (i) Ensure that the equipment has a full tank of fuel when it is returned to TMS Rentals If applicable;
 - (ii) Only fill the equipment's specifications; and
 - (iii) Promptly pay to TMS Rentals the costs of refuelling the equipment if the customer fails to comply with clause 7 (a) (i) at \$3.00 per litre of fuel, regardless of the fuel type.

8. PERSONAL PROPERTY

- (a) TMS Rentals is not liable to any person of any loss of, or damage to, personal property that is left in the equipment after its return to TMS Rentals or stolen from the equipment or otherwise lost during the rental term.



9. CLEANING

- (a) 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 will apply.

10. RETURN

10.1 RETURNS

- (a) Unless the services include return of the equipment by TMS Rentals and subject to clause 17, the customer must on the return time specified in the hire form, return the equipment to TMS Rentals at the return address in the same condition as it was in on the start date.
- (b) If the customer does not comply with clause 10.1 (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.

10.2 OFF HIRE

If services include the pick-up of the equipment by TMS Rentals on a return date of the customer's choice (**off hire date**).

- (a) The customer must inform the TMS Rentals before 9:00am on the off-hire date that the equipment is ready to be picked up. The TMS Rentals will then issue the customer an off-hire number.
- (b) If the customer does not comply with clauses 10.2 (a), The customer must pay for the Fees for every additional 24-hour period after the off-hire date until the customer complies with clauses 10.2 (a).
- (c) The TMS Rentals will endeavour to collect the equipment within 2 days of issuing an off-hire number to the customer. However, TMS Rentals does not guarantee any collection times and will not be held liable if the equipment is picked up later than agreed with the customer but within a reasonable time.



11. STAND-DOWN

This clause 11 applies to equipment that is hired on a daily or weekly basis only.

- (a) The TMS Rentals may, at its absolute discretion, apply a stand down rate of 50% of the hire usual hire rate to equipment for a particular date subject to the following:
 - (i) The customer requesting a stand down rate on the grounds that the customer will not be using the equipment on a particular date subject before 9:00am on that date;
 - (ii) The equipment being available; and
 - (iii) The equipment not being subject to a rent to buy agreement.
- (b) The TMS Rentals may, at its absolute discretion, apply a stand down rate of 100% of the usual hire rate to equipment for a particular date subject to the following:
 - (i) The customer requesting a stand down rate on the grounds that the customer will not be using the equipment on a particular date before 9:00am on that date:
 - (ii) The equipment being available; and
 - (iii) The equipment not being subject to a rent to buy agreement.

12. INCIDENTS AND INSURANCE

- (a) The customer acknowledges that TMS Rentals may, in its discretion, hold insurances in relation to the equipment but such insurances may not cover the customer or the customers use of the equipment and TMS Rentals will have no obligation or requirement to ensure the customers use 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.
- (b) If TMS Rentals 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 TMS Rentals insurance invalid or able to be cancelled or which may increase TMS Rentals insurance premiums.
- (c) If the equipment is involved in an accident or claim, damaged, destroyed, stolen or if damaged or loss is sustained to the property of any third party in



connection with the equipment during the rental term, or otherwise when the equipment is in the customer's possession (Incident), the customer.

- (i) Must promptly report the incident to the local police (if required by law).
- (ii) Must report the incident to TMS Rentals in writing within one business day.
- (iii) Will be responsible for the costs of repair or replacement in accordance with clause 13;
- (iv) Must, if such damage, destruction or theft is covered by and compensated to TMS Rentals under an insurance policy, pay the relevant excess amount to TMS Rentals, as well as any other reasonable costs that TMS Rentals incurs in relation to such damage, destruction or theft.
- (v) Must not, without TMS Rentals 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.
- (vi) Must, if requested, permit TMS Rentals or its insurer to bring, defend, enforce or settle any legal proceedings in the customer's name in relation to the incident; and
- (vii) Must, If requested, provide to TMS Rentals, within a reasonable time, any statement, information or assistance which TMS Rentals or its insurer requests, including by attending a lawyer's office or a court to give evidence.



13. REPLACEMENT, LOSS AND DAMAGE

Loss, damage and personal injury

- (a) The customer will be fully responsible to TMS Rentals
 - (i) Any loss or damage to the equipment during the rental term, or otherwise when the equipment is in the customer's possession, and must give reasonable notice to the TMS Rentals in writing of any such loss or damage; and
 - (ii) All damage to the property of any person which is caused or contributed to by the equipment during the Rental Term, or otherwise when the equipment is in the customer's possession.

Replacement

- (b) If TMS Rentals notifies the customer in writing, the customer must replace all parts of the equipment which during the rental 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.

13. DAMAGE WAIVER

TMS Rentals does not provide a Damage Waiver.



14. PAYMENT

15.1 Fees

The customer must pay the Fees to TMS Rentals, in the amounts and at times set out in the hire form or as otherwise agreed in writing.

15.2 TIME FOR PAYMENT

- (a) Unless otherwise agreed in writing:
- (b) The customer must pay for all goods and services upfront when picking up the equipment; and
- (c) In all other circumstances, if TMS Rentals issues an invoice to the customer, payment must be made by the time(s) specified in such invoice.

15.3 PAYMENT METHOD

The customer must pay fees using the fee payment method specified in the hire form.

15.4 LATE PAYMENT

If the client does not pay TMS Rentals the amounts due and payable under an invoice on or before its due date, without limiting any of TMS Rentals other rights under this agreement, the client must pay TMS Rentals 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 TMS Rentals.

15.5 GST

Unless otherwise indicated, amounts stated in a hire form do not include GST. In relation to any GST payable for a taxable supply by TMS Rentals, the customer must promptly pay the GST subject to TMS Rentals providing a tax invoice.

15.6 CARD SURCHARGES

TMS Rentals reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).



15.7 PAYMENTS OTHER THAN FEES

- (a) Immediately on request by TMS Rentals, customer will pay:
 - (i) The price of any equipment which is for whatever reason not returned to TMS Rentals
 - (ii) The full cost of repairing any damage to the equipment caused or contributed to by customer.
 - (iii) All costs incurred by TMS Rentals in delivering and recovering possession of the equipment; and
 - (iv) Any expenses and legal costs (including commission payable to a commercial agent) incurred by TMS Rentals in enforcing this agreement due to the customer's default.
- (b) Without limiting the ability of TMS Rentals to recover all amounts owing to it, the customer authorises TMS Rentals to charge any amounts owing by the customer to any credit card or account details which the customer provides in a hire form.

16. OWNERSHIP, POSSESSION AND TITLE

Ownership

- (a) The equipment is, and will always be and remain, the property of TMS Rentals, not with standing delivery of the equipment to the customer or the possession and use of the equipment by the customer.
- (b) The customer will not have any right, title or interest in or the equipment except as expressly set out in this agreement.

Possession

- (c) The customer must not, without TMS Rentals prior written consent, part with possession of the equipment during the rental term.



Encumbrances

- (d) 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:
 - (i) If a repairers lien arises, the customer must take all necessary steps to have it removed or satisfied, or, at TMS Rentals option, TMS Rentals may remove or satisfy the lien at the customer's cost; and
 - (ii) 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.

16. PERSONAL PROPERTY SECURITIES

The customer grants a security interest in all of its present and after acquired property and in all of present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owned to the customer, in favour of the hirer to secure the performance of its liabilities and obligations hereunder or on any account whatsoever.

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 the security interest created in the hirers favour is a perfected security interest.

The customer must not grant any other security interest in favour of any party until the hirer has perfected its security interest created under these terms,

The customer must not do or permit anything to be done that may result in the security interest granted to the hier ranking in priority behind any other security interest.

The customer acknowledges that these terms constitute a security agreement for purposes of the PPSA and the customer will do all things necessary to enable a security interest to be registered under the PPSA and will comply with all requirements of the PPSA.

To the fullest extent permitted by the PPSA, the customer agrees to contract out of the application of the provisions listed in sections 115 (1) and 115 (7) and the sections listed therein shall not apply.

The customer hereby waives any rights the customer may otherwise have to:



- (a) Receive any notices or statements the customer would otherwise be entitled to receive under sections of the PPSA including for the avoidance of any doubt the sections referred to in sections 115 (1) and 115 (7) of the PPSA;
- (b) Apply to a court for an order concerning the removal of an accession under section 97 of the PPSA;
- (c) Object to a proposal of the customer to purchase or retain any collateral under sections 130 and 135 of the PPSA; and
- (d) Receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest created under this document.

For the purpose of this clause and other relevant clauses in these terms ‘PPSA’ means personal property securities Act 2009 and the expressions “accession”, “collateral”, “financing statement”, “financing change statement”, “security interest”, “security interest”, “perfected security interest”, and ‘verification statement’ have the meanings given to them under, or in the context of the PPSA.

17 **EARLY RETURN**

Notwithstanding any other clause in this Agreement, TMS Rentals may demand the early return of the equipment to the return address, or retake possession of the equipment, if TMS Rentals reasonably suspects that.

- (a) Damage to the equipment or injury to any person in connection with the equipment is reasonably likely; or
- (b) The equipment may be used for an unlawful purpose.

18 **THIRD PARTY GOODS AND SERVICES**

- (a) If providing the equipment to the customer requires TMS Rentals to acquire goods or services supplied by a third party, the customers rental of the equipment may be subject to the terms and conditions of that third party (**Third Party Terms**)
- (b) The customer agrees to any third-party terms applicable to any goods or services supplied by a third party that the customer or TMS Rentals acquires as part of renting the equipment and TMS Rentals will not be liable for any loss or damage suffered by the customer in connection with such Third-Party Terms.



19 LIABILITY, WARRANTIES AND INDEMNITIES

19.1 LIABILITY

(a) To the maximum extent permitted under applicable law, TMS Rentals liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with this agreement.

(i) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits or loss of goodwill; and

(ii) is limited, insofar as concerns other liability, to the total money paid to TMS Rentals under this agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

19.2 WARRANTIES

(a) The customer acknowledges that in deciding to rent the equipment and/or services and in entering into this agreement the customer has not relied on the skill or judgment of TMS Rentals and that the customer has satisfied itself as to the condition and suitability of the equipment and its fitness for the customer's purpose.

(b) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose of performance, or otherwise) not expressly stated in this agreement are excluded.

(c) Where any law (including the competition and consumer Act 2010 (cth) implies a condition, warranty or guarantee which may not lawfully be excluded, then, to the maximum extent permitted by applicable law TMS Rentals liability for breach of that non-excludable condition, warranty or guarantee will be limited to:

(i) In the case of goods, their replacement or the supply of equivalent goods or their repair; and

(ii) In the case of services, the supply of the services again, or the payment of the cost of having them supplied again.



19.3 INDEMNITIES

(a) The customer indemnifies TMS Rentals from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of;

(i) the casual maintenance, use, storage or operation of the equipment during the rental term or otherwise when the equipment is in the equipment is in the customer's possession.

(ii) Injuries to or deaths of persons and damage to property in connection with the equipment during the rental term or otherwise when the equipment is in the customer's possession;

(iii) any breach of this agreement by the customer; or

(iv) any negligent, fraudulent or criminal act or omission of the customer or its personnel.

20. TERMINATION

20.1 TERMINATION BY TMS Rentals

TMS Rentals may terminate this agreement in whole or in part immediately by written notice to the customer, if the customer is in breach of any term of this agreement.

20.2 TERMINATION BY THE CUSTOMER

(a) The customer may terminate this agreement in whole or in part by written notice to TMS Rentals

(b) If the notice under clause 1.1 (d)

(i) 24hours or more prior to the start date, TMS Rentals provide the customer with a full refund of any Fees paid.

(ii) Less than 24hours prior to the start date, TMS Rentals will provide the customer with a full refund of the Fees paid, minus a 10% cancellation fee.



20.3 EFFECT OF TERMINATION

Upon termination of this agreement, the customer must promptly.

- (c) pay any payments required by TMS Rentals in respect of the period of the rental term prior to the date of termination; and
- (d) subject to any contrary direction given by TMS Rentals, deliver the equipment and any other goods included in a Hire form to the return address.

20.4 SURVIVAL

Any provision of this agreement which, by its nature, would reasonable be expected to be performed after the termination, will survive and be enforceable after such termination.

21 DISPUTE RESOLUTION

- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.
- (b) If a party requires resolution of a dispute, it must immediately submit full details of the dispute to the chief executive officer of the other party or, if the party is a individual, that individual.
- (c) The parties acknowledge that compliance with this clause 16 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
 - (i) In the case of applications for urgent interlocutory relief; or
 - (ii) A breach by another party of this clause 16.



22. NOTICES

22.1 FORM OF NOTICE

A notice or other communication to a party under this Agreement must be.

- (a) In writing and in English; and
- (b) Addressed to that party to:
 - (i) The postal address of that party; or
 - (ii) The email address of that party that has been regularly used by the parties to correspond during the term of this agreement (unless such email address is known to be inactive by the party giving notice).

22.2 HOW NOTICE MUST BE GIVEN

A notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below.

Method	When Notice is regarded as given and received
By hand	On delivery
By pre-paid post in the same country	On the third business day after the date of posting
By pre-paid post in another country	On the fifth business day after the date of posting by airmail
By email to the nominated email address	Unless the party sending the email knows or reasonable ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address 24 hours after the email was sent.



23. GENERAL

23.1 GOVERNING LAW

This Agreement is governed by the law applying in Western, Australia.

23.2 JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of Western 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.

23.3 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior consent of each other party (such consent is not unreasonably withheld).

23.4 RELATIONSHIP

(a) Nothing contained in this agreement creates an agency, partnership, joint venture or employment relationship between TMS Rentals and the customer or any of their respective employees, agents or contractors.

(b) Neither party nor any person acting on its behalf may hold itself out as being entitled to contract or accept payment in the name of or on account of the other party.

23.5 AMENDMENTS

This Agreement may only be amended by a document signed by each party.

23.6 WAIVER

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.

23.7 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this agreement.



23.8 ENTIRE AGREEMENT

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.

24. DEFINITIONS

In addition to capitalised terms defined in the agreement details above, capitalised terms used in this agreement will have the following meanings:

Term	Meaning
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 Perth, Western Australia.
Customer	Has the meaning set out in the hire form.
Equipment	Means the machine and the included attachments (as set out in the hire form) included in a hire form.
Machine	Has the meaning set out in the Hire form
Fees	Has the meaning set out in the hire form
Job site	Means the job site specified in the Hire Form.
Late Charge	Means the late charge set out in the Hire Form.
Laws	Means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the sales services are performed or received and includes any industry codes of conduct.
Personnel	Means, in respect of a party, that party's officers, employees, contractors (including subcontractors) and agents.
PPSA	Means the <i>Personal property securities Act 2009 (cth)</i> and PPS Register means



	the register established and maintained under that Act.
Hire Form	Has the meaning set out in clause 1 (a) of these rental terms.
Rental Term	Means the period of equipment rental, from the start date, set out in the hire form
Return Address	Means the return address set out in the Hire Form.
Return Date	Has the meaning set out in the Hire Form.
Services	Means the services Listed in the Hire Form to be provided to the customer by TMS Rentals
Start Date	Has the meaning set out in the Hire Form.
Third Party Terms	Has the meaning set out in clause 18

25. INTERPRETATION

In this agreement, the following rules of interpretation apply.

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender.
- (c) **(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.
- (d) **(person)** a reference to '**person**' 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 trusty and any other entity.
- (e) **(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.
- (f) **(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.
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time.
- (h) **(currency)** a reference to "\$" or "dollar" is to Australian currency



- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation.
- (j) **(includes)** the word “**includes**” and similar words in any form is not a word of limitation; and
- (k) **(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.