

Terms and Conditions

Definitions

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1. **Company:** THM Earthmoving and Hire Pty Ltd.
2. **Hirer:** The individual or entity obtaining the Equipment from the Company under this Agreement.
3. **Hire Charges:** The fees payable by the Hirer to the Company for the hire of the Equipment, as specified in the Agreement or any subsequent invoice.
4. **Hire Period:** The duration commencing on the start date and concluding on the end date specified for the hire of the Equipment.
5. **Equipment:** The machinery, tools, and accessories provided by the Company to the Hirer under this Agreement, including but not limited to earthmoving machinery.
6. **Terms:** These Terms and Conditions, including any amendments or modifications made from time to time.

1. Formation of Contract

- 1.1. Unless otherwise agreed by THM Earthmoving and Hire Pty Ltd ("the Company") in writing, these Terms apply exclusively to every agreement between the parties. The Company may vary or amend these Terms at any time, with such variations or amendments applying only to the hire of Equipment transactions between the Company and the Hirer that are entered into after such changes become effective.
- 1.2. Any quotation, price schedule, or price list provided by the Company to the Hirer is valid only for the period indicated by the Company.
- 1.3. An order is accepted by the Company when the Company provides the Hirer with the Equipment or accepts, in writing, an offer from the Hirer. The Company may, at its absolute discretion, refuse to accept any offer.

2. Equipment Hire Process

- 2.1. The Hirer must provide the Company with any necessary information to process the Hirer's order, including but not limited to the quantity and type of Equipment required, the Hire Period, and the premises where the Equipment will be located or installed.
- 2.2. The Hirer shall pay the Company the Hire Charges for the Hire Period in accordance with the Company's invoice. Upon expiration or termination of the Hire Period or these Terms, or at the Company's request, the Hirer must return the Equipment to the Company in good repair, condition, and working order, ordinary wear and tear excepted. The Equipment must also be returned in a clean condition with a full tank of fuel.

3. Payments and Default

- 3.1. All Hire Charges and other charges payable to the Company are strictly net and must be paid as follows:
 - 3.1.1. **For a Hirer who holds an account with the Company:** Full Payment is due within thirty (30) days from the end of the month in which the Company issues its invoice.
 - 3.1.2. **For a Hirer who does not hold an account with the Company:** Full Payment is required no later than the date on which the Hirer collects the Equipment from the company, and in any case, must be made prior to such collection.
- 3.2. Where requested at the time of booking, a non-refundable security deposit is required prior to the hire of the Equipment. The Company will deduct from this deposit any unpaid Hire Charges or other amounts owed by the Hirer.
- 3.3. If payment is not made within the specified period, the Company may charge interest at the rate of ten percent (10%) per annum from the due date until payment is made. The Hirer is liable for all applicable taxes, duties, and charges incidental to the Equipment hire.

4. The Hirer is also liable to pay the Company upon request for:

- 4.1.1. The new list price of any Equipment damaged beyond repair or not returned to the Company.
- 4.1.2. The full cost of repairing any damage to the Equipment.
- 4.1.3. All costs incurred in cleaning the Equipment if it is not returned in a clean condition.
- 4.1.4. All costs incurred by the Company in delivering and recovering possession of the Equipment, including any delays caused by the Hirer.
- 4.1.5. The cost of fuel and consumables supplied by the Company but not returned by the Hirer.
- 4.1.6. Excess usage charges if usage exceeds specified limits.
- 4.1.7. If the Hirer defaults on payment or breaches these Terms, the Company may terminate the agreement and repossess the Equipment without liability. Any termination does not affect the Company's rights accrued before termination.

5. Delivery

- 5.1.1. Unless the Hirer collects the Equipment from the Company's premises, the Company may arrange for delivery at the Hirer's cost. The Company will use reasonable efforts to meet any estimated delivery dates but is not liable for any loss or damage due to delays.
- 5.1.2. The Hirer must notify the Company in writing of any discrepancies or defects within one (1) hour of delivery or taking possession of the Equipment.

6. Use of Equipment and Acknowledgements

- 6.1.1. The Hirer acknowledges that it is satisfied with the suitability, condition, and fitness for purpose of the Equipment and that the Company has made no representations or warranties about the Equipment's suitability for the Hirer's intended purpose.
- 6.1.2. The Hirer must maintain the Equipment in proper working order and condition, following applicable laws and standards, and must not transfer, sell, or encumber the Equipment.
- 6.1.3. The Company has the right to inspect the Equipment during the Hire Period.
- 6.1.4. The Hirer is liable for any damage to or loss of the Equipment during the Hire Period, except for fair wear and tear.
- 6.1.5. The Hirer acknowledges that it does not have any rights, title, or interest in the Equipment other than those granted by the Company under these Terms and must store the Equipment securely as the Company's property.

7. Insurance Requirements

- 7.1.1. If necessary, the Hirer must insure the Equipment for its full insurable value and maintain public liability insurance.
- 7.1.2. The Hirer must provide a certificate of insurance upon request by the Company.
- 7.1.3. The Hirer may choose to secure insurance for their liability concerning the Equipment. This insurance must:
 - 7.1.3.1. Cover loss, theft, or damage to the Equipment during the Hire Period from any cause;
 - 7.1.3.2. Be for the full replacement value of the Equipment as specified in the Hire Schedule;
 - 7.1.3.3. Be with a reputable insurer acceptable to us;
 - 7.1.3.4. Name us as an interested party on the policy; and
 - 7.1.3.5. Remain in effect for the entire Hire Period.
- 7.1.4. The Hirer is responsible for:
 - 7.1.4.1. Paying all premiums, excesses, and other costs associated with their insurance;
 - 7.1.4.2. Covering any shortfall if the insurance proceeds do not fully cover the Hirer's total liability under the Hire Agreement, including but not limited to repair or replacement costs of the Equipment and any Hire Charges incurred during the period when the Equipment is unavailable due to loss, theft, or damage.

8. Personal Property Securities Act

8.1.1. The Hirer consents to the Company registering its security interest in the Equipment and must do all necessary acts to perfect and maintain this security interest.

8.1.2. The Hirer assigns its entitlement to all proceeds from any resale of the Equipment to the Company and holds these proceeds in trust for the Company.

9. Criminal Convictions, Claims, and Insurance

9.1.1. By entering into this agreement, the Hirer warrants that:

9.1.1.1. The Hirer has not had any disclosable criminal convictions that are less than 10 years old for adults or 5 years old for juveniles, or any convictions outside these periods that resulted in a prison sentence greater than 30 months.

9.1.1.2. The Hirer has not been involved in any claims, incidents, or events that could affect the hire or use of the Equipment.

9.1.1.3. The Hirer has not had any insurance policy declined, cancelled, refused, or had special conditions or terms imposed, or claims refused by an insurer.

10. Limitation of Liability and Indemnities

10.1.1. The Hirer uses, operates, and possesses the Equipment at the Hirer's risk. The Company is not liable for any loss or damage to the Hirer's property arising from the use or possession of the Equipment.

10.1.2. To the full extent permitted by law, the Hirer releases the Company from all claims, demands, and losses arising from the Equipment's use, operation, or maintenance.

10.1.3. The indemnities in this clause continue after the termination of these Terms.

10.1.4. Where the law imposes a non-excludable guarantee, term, condition, or warranty, the Company's liability is limited to the repair or replacement of the Equipment, the supply of equivalent goods, or the cost of repairing or replacing the Equipment.

11. Dispute Resolution

11.1.1. If a dispute arises, the parties must follow a dispute resolution process, including mediation, before pursuing legal action. Should legal action become necessary, the hirer will be liable for any associated legal fees if the dispute results from the hirer's fault. This clause does not prevent the Company from taking immediate action where required..

12. Miscellaneous

12.1.1. These Terms are governed by the laws of Victoria, and the parties submit to the non-exclusive jurisdiction of its courts.

12.1.2. The Company's failure to enforce any term does not constitute a waiver.

12.1.3. If any term is unenforceable, it must be read down or severed without affecting the enforceability of the remaining Terms.

12.1.4. Notices must be in writing and sent to the last known address of the addressee.