

T C HIRE



Terms & Conditions

T C Hire Aust Pty Ltd – ABN [16 689 910 987]

Terms & Conditions of T C Hire Aust Pty Ltd

1. INTERPRETATIONS OF WORDS IN THIS CONTRACT

COMMENCEMENT – The date when the Customer takes possession of the Equipment.

EQUIPMENT – Means any kind of hired apparatus, vehicles or tools hired including but not limited to the following: 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; power distribution; scaffolding; lighting; offshore pumps; storage; safety equipment; site accommodation (portable buildings and toilets); traffic management (road barriers); signage; vehicles (trucks, vans, trailers); tools and accessories.

CUSTOMER – Refers to the person, firm, organisation, partnership, corporation or entity (including trust) hiring Equipment from T C Hire Aust Pty Ltd as identified in the Credit Application or Hire Schedule.

HIRE CHARGE – The amounts shown on the Hire Schedule payable by the Customer.

HIRE PERIOD – From Commencement until the end date on the Hire Schedule (may only be extended if requested by the Customer and agreed by T C Hire Aust Pty Ltd).

HIRE SCHEDULE – Document issued by T C Hire Aust Pty Ltd detailing particulars of the hire.

T C HIRE AUST PTY LTD – The company or companies listed on the Hire Schedule.

Kilometre Charge – Amount payable for kilometres travelled by a Motor Vehicle.

Motor Vehicle – Truck or utility, not including scissor lift, trailer or skid steer loader.

Remote Area – Servicing metropolitan areas only. Locations outside these areas are subject to pricing upon application.

2. T C HIRE AUST PTY LTD OBLIGATIONS

T C Hire Aust Pty Ltd will:

2.1 Allow the Customer to take and use the Equipment for the Hire Period.

2.2 Provide the Equipment clean and in good working order.

2.3 Collect the Equipment within five days of request if issued 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.

3. OBLIGATIONS OF THE CUSTOMER

3.1 Deliver the Equipment to T C Hire Aust Pty Ltd when it is due back.

3.2 Return the Equipment clean and in good repair.

3.3 Confirm at Commencement that the Equipment is suitable for its purpose.

3.4 Operate the Equipment safely, in accordance with the law and manufacturer's instructions.

3.5 Indemnify T C Hire Aust Pty Ltd against all injury and/or damage caused by use of the Equipment.

3.6 Ensure anyone collecting Equipment is authorised.

3.6 Ensure operators are properly licensed or certified.

3.8 Conduct hazard and risk assessments.

3.9 Secure all loads and indemnify T C Hire Aust Pty Ltd against loss/damage.

3.10 Operate Equipment with adequate vehicle/power source.

3.11 Report all accidents/damage within 2 business days.

3.12 Sign documentation as required by T C Hire Aust Pty Ltd for the hire.

NOTE TO CUSTOMER: You must advise T C Hire Aust Pty Ltd if you require further instruction on the operation and safe use of the Equipment.

The Customer must NOT:

3.13 Tamper with, damage, or repair Equipment.

3.14 Lose or part with possession of Equipment.

3.15 Rely on representations not in this Contract.

3.16 Allow unlicensed or impaired persons to drive a Motor Vehicle or operate equipment/machinery

3.17 Exceed load and capacity limits.

3.18 Carry illegal, prohibited, or dangerous substances.

3.19 Exceed speed limits.

4. PAYMENTS BY THE CUSTOMER TO T C HIRE AUST PTY LTD

4.1 On or before Commencement (or as otherwise specifically agreed with **T C Hire Aust Pty Ltd**), the Customer will pay the Hire Charge.

4.2 Immediately on request by **T C Hire Aust Pty Ltd**, the Customer will pay:

(a) the new list price of any Equipment which is for whatever reason not returned to **T C Hire Aust Pty Ltd**.

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

(b) all costs incurred in cleaning the Equipment;

(c) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;

(d) 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;

(e) all costs incurred by **T C Hire Aust Pty Ltd** in delivering and recovering possession of the Equipment;

(f) Interest for late payment of amounts owing by the customer, at the pre-judgement Interest rate set by the Local Court of VIC from time to time;

(g) the Kilometre Charge in excess of 100km per day and any additional Hire Charges;

(h) the cost of fuels and consumables provided by **T C Hire Aust Pty Ltd** and not returned by the Customer;

(i) any reasonable expenses and legal costs (including commission payable to a commercial agent) incurred by **T C Hire Aust Pty Ltd** in enforcing this Contract due to the Customers default;

(j) all costs of repairing or replacing tyres, including road service;

(k) If any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

(l) loading costs when equipment hired with an hour meter is used in excess of 8 hours per day

4.3 Without limiting the ability of **T C Hire Aust Pty Ltd** to recover all amounts owing to it, the Customer authorises **T C Hire Aust Pty Ltd** to charge any amounts owing by the Customer to any credit card or account details of which are provided to **T C Hire Aust Pty Ltd**.

4.4 **T C Hire Aust Pty Ltd** may tokenise the Customers Credit Card or Account details to facilitate credit card or online payments.

5. PPS LAW

5.1 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.

5.2 **T C Hire Aust Pty Ltd** may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which **T C Hire Aust Pty Ltd** requires for the purposes of:

(a) ensuring that **T C Hire Aust Pty Ltd's** security interest is enforceable, perfected and otherwise effective under the **PPS Law**;

(b) enabling **T C Hire Aust Pty Ltd** to gain first priority (or any other priority agreed to by **T C Hire Aust Pty Ltd** in writing) for its security interest; and

(c) enabling **T C Hire Aust Pty Ltd** to exercise rights in connection with the security interest.

5.3 The rights of **T C Hire Aust Pty Ltd** under this document are in addition to and not in substitution for **T C Hire Aust Pty Ltd's** rights under other law (including the **PPS Law**) and **T C Hire Aust Pty Ltd** 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 **T C Hire Aust Pty Ltd's** security interest will attach to proceeds.

5.4 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 **T C Hire Aust Pty Ltd** 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 **T C Hire Aust Pty Ltd** 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).

5.5 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 **T C Hire Aust Pty Ltd**. Customer agrees that in addition to those rights, **T C Hire Aust Pty Ltd** 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 **T C Hire Aust Pty Ltd** may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

5.6 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 156 of the **PPS Law**.

5.6 **T C Hire Aust Pty Ltd** and the Customer agree not to disclose Information of the kind that can be requested under section 265(1) of the **PPS Law**. The Customer must do everything necessary on its part to

ensure that section 265(6)(a) of the **PPS Law** continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to **T C Hire Aust Pty Ltd** the benefit of section 265(6)(a) and **T C Hire Aust Pty Ltd** 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.

5.8 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 **T C Hire Aust Pty Ltd**.

5.9 Customer must not lease, hire, ball or give possession (‘sub-hire’) of the Equipment to anyone else unless **T C Hire Aust Pty Ltd** (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to **T C Hire Aust Pty Ltd** and must be expressed to be subject to the rights of **T C Hire Aust Pty Ltd** under this agreement. Customer may not vary a sub-hire without the prior written consent of **T C Hire Aust Pty Ltd** (which may be withheld in its absolute discretion).

5.10 Customer must ensure that **T C Hire Aust Pty Ltd** 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.

5.11 Customer must take all steps including registration under **PPS Law** as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the **PPS Law**;
- (b) enabling the Customer to gain (subject always to the rights of **T C Hire Aust Pty Ltd**) first priority (or any other priority agreed to by **T C Hire Aust Pty Ltd** in writing) for the security interest; and
- (c) enabling **T C Hire Aust Pty Ltd** and the Customer to exercise their respective rights in connection with the security interest.

6. DAMAGE WAIVER

6.1 Damage Waiver is not Insurance, but is an agreement by **T C Hire Aust Pty Ltd** 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**.

6.2 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 **T C Hire Aust Pty Ltd** 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:

- (a) where the Equipment is lost or stolen;
- (b) where the operator is not suitably licensed;
- (c) where the operator is affected by drugs and/or alcohol;
- (d) where the equipment has been wilfully damaged at any time during the Hire Period;
- (e) 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;
- (f) 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;
- (g) where the damage is caused in any way by overloading; or
- (h) where the damage is caused to a truck pantech or truck crane.

6.3 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;

- (a) reduce the **Damage Waiver Excess** in relation to Motor Vehicles;
- (b) cover damage to a pantech or van body above cab height; and
- (c) add a **Theft Waiver** component for Motor Vehicles. **Theft Waiver** is not insurance, but is an agreement by **T C Hire Aust Pty Ltd** 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**.

T C Hire Aust Pty Ltd 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 **T C Hire Aust Pty Ltd** 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.

6.4 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 **T C Hire Aust Pty Ltd** at the time of hire), which will;

- (a) reduce the **Damage Waiver Excess** in relation to medium and large equipment; and
- (b) add a **Theft Waiver** component for medium and large machinery. **Theft Waiver** is not insurance, but is an agreement by **T C Hire Aust Pty Ltd** 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**.

T C Hire Aust Pty Ltd 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.

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.

6.5 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;

(a) 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

(b) where the Customer has failed to submit to **T C Hire Aust Pty Ltd** 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 **T C Hire Aust Pty Ltd**.

6.6 Damage Waiver or **Theft Waiver** will NOT apply where **T C Hire Aust Pty Ltd** determines that any of the applicable circumstances in clauses 6.2(b)-(h) or 6.4(a)-(b) respectively have occurred, unless the Customer is able to establish otherwise to the reasonable satisfaction of **T C Hire Aust Pty Ltd**.

7. EXCLUSION OF WARRANTIES AND LIABILITIES

7.1 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.

7.2 Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, **T C Hire Aust Pty Ltd's** 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.

7.3 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, **T C Hire Aust Pty Ltd** 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.

8. 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;

(a) 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 **T C Hire Aust Pty Ltd** (**'Remote Area Charges'**). The

Remote Area Charges will be calculated on a per kilometre rate travelled by **T C Hire Aust Pty Ltd** 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 **T C Hire Aust Pty Ltd** and its staff in connection with travel to and from the **Remote Area**;

(b) Multiple Items of Equipment hired by a Customer on the one site will only be charged for one call out fee;

(c) 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.

9. 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:

9.1 T C Hire Aust Pty Ltd shall be entitled to:

(a) terminate this Contract; and/or

(b) sue for recovery of all monies owing by the Customer; and/or

(c) 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.

9.2 The Customer indemnifies **T C Hire Aust Pty Ltd** 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.

10. DISPUTES

10.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to **T C Hire Aust Pty Ltd** in writing within 7 days of the Hire Contract

date. In the event that no communication is received from the Customer within that 7 day period, the Hire Charges are deemed to be accepted by the Customer.

10.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to **T C Hire Aust Pty Ltd**), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

11. EQUIPMENT DATA

T C Hire Aust Pty Ltd 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 **T C Hire Aust Pty Ltd**, the Customer expressly consents to **T C Hire Aust Pty Ltd**'s use of the **GPS Device** on such Equipment during the Hire Period and to **T C Hire Aust Pty Ltd** collecting, using and retaining Information from the **GPS Device** in accordance with our Privacy Policy, and that **T C Hire Aust Pty Ltd** is the owner of that data subject to your rights as set out in our Privacy Policy.

12. PRIVACY

T C Hire Aust Pty Ltd will comply with the Australian Privacy Principles in all dealings with Customers. A copy of the **T C Hire Aust Pty Ltd** Privacy Statement is available upon request or by visiting www.tchire.com.au/privacy-policy

13. GOVERNING LAW

13.1 This Hire Contract is a payment claim under the Building and Construction Industry Security of Payment Act 1999 VIC, 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.

13.2 Except where **T C Hire Aust Pty Ltd** in its discretion takes action against the Customer under any of the Building and Construction industry legislation referred to in this clause, **T C Hire Aust Pty Ltd** and the Customer agree that this Contract is governed by the law of the state of VIC, and the parties submit to the jurisdiction of the courts of that State.

14. CONTACTLESS COLLECTION AND RETURN

14.1 **T C Hire Aust Pty Ltd** may in its discretion, and subject to satisfactory identification of the Customer and its authorised representatives, issue a Personal Identification Number ("**PIN**") to an individual authorised representative of the Customer to allow self-collection and self-return of the Equipment by the Customer from and to a **T C Hire Aust Pty Ltd** branch ("the **Branch**"). The **PIN** may be withdrawn by **T C Hire Aust Pty Ltd** in its discretion at any time. The Customer must comply with all requirements stipulated from time to time by **T C Hire Aust Pty Ltd** for entry to the **Branch** using the **PIN**, including that the Customer must;

- (a) follow all directions given by **T C Hire Aust Pty Ltd** as to the procedure for obtaining access to the **Branch**;
- (b) enter the **Branch** at its own risk, and any injuries or death or damage to equipment or property that may occur while loading or unloading Equipment are the responsibility of the Customer;
- (c) ensure that the main gate of the **Branch** is closed and locked when leaving the **Branch**, failing which the Customer will be liable for any theft or attempted theft of equipment from the **Branch**, or for any damage to equipment at the **Branch**, or damage to the **Branch** itself;
- (d) consent to being filmed or photographed by CCTV while at and entering and leaving the **Branch**;
- (e) Before it enters the **Branch**, ensure that it has requested and obtained from **T C Hire Aust Pty Ltd** any assistance it may require as to the operation and safe use of the Equipment;
- (f) at all times keep confidential the **PIN**, and ensure that the **PIN** is only used by the person to whom it is issued and that no other persons are given access to the **Branch** at any time; and

(g) only take into their possession, Equipment detailed on an active Hire Schedule provided to the Customer by **T C Hire Aust Pty Ltd**.

T C Hire Aust Pty Ltd

ABN: 16 689 910 986

6 Kimberly Road

Dandenong VIC 3165

Phone: 03 9562 8330

Email: accounts@tchire.com.au