

# LEPPINGTON EXCAVATION HIRE PTY LTD - ABN. 86 621 648 422

## HIRE AGREEMENT - TERMS AND CONDITIONS

1. -These Terms of Hire, together with:

- (a) any Credit Application You completed and submitted to Us;
- (b) any Guarantee, Indemnity and Charge You completed and submitted to Us;
- (c) each Hire Contract provided to You by Us, whether signed or not;
- (d) and any Special Terms specific to the type of Equipment You have hired attached to Your Hire Contract, make up the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Contract, make up the agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Contract shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. It is important that You read and understand all of the terms and conditions of the Hire Agreement before hiring from Us. If you have any questions please ask Us.

### 2. Definitions

"Customer" means the customer identified in the Hire Agreement and includes the Customers employees, executors, administrators and representatives.

"Date Out" means the date on which the Equipment is rented as specified in the Hire Agreement.

"Dealer" means Leppington Excavation Hire Pty Ltd as specified in the Hire Agreement and includes its officers, employees, agents, successors and related parties.

"Equipment" means the equipment rented by Leppington Excavation Hire Pty Ltd to the Customer from time to time and includes any and all accessories, tools, attachments, parts, manuals, instructions, packing and transportable materials, substitute and replacement Equipment, unless indicated to the contrary in these Hire Agreement Terms.

"Location" means the Location of the Equipment as specified in the Hire Agreement or such other location as agreed by Leppington Excavation Hire Pty Ltd.

"Hire Agreement" means the express terms identified as the

Hire Agreement.

"Hire Charges" means the rental charges charged by Leppington Excavation Hire Pty Ltd to the Customer for the rent of the Equipment and identified in the invoice provided by Leppington Excavation Hire Pty Ltd to the Customer.

"Hire Period" means the period from the Date Out until the termination of the Hire Agreement.

"Bond payment" means an amount paid by the Customer to reduce the Customer's financial liability in the event of loss or damage to the Equipment up to the value of the bond payment.

### 3. Hire Charges and Other Charges

- (a) Hire Charges will be incurred from the Date Out until and including the day on which the Rental Agreement is terminated in accordance with clause 7, whichever is the earlier unless the machinery or equipment is returned prior to 8am in which case there will be no Hire Charge for that day.
- (b) Additional Rental Charges will apply if Equipment usage exceeds eight hours in any day/40 hrs in any week
- (c) You must pay all amounts specified in the invoice including:
  - (i) a charge for delivery and, if necessary, return of the Equipment;
  - (ii) all Equipment operating costs (including fuels, oils and lubricants) incurred, and all consumables used during the Hire Period;
  - (iii) any taxes, duties (including stamp duty), levies, charges or imports on or in connection with the Agreement;
  - (iv) a sum equal to the amount of any goods and services tax (GST) payable by Leppington Excavation Hire Pty Ltd on any supplies made under or in connection with the agreement, calculated by multiplying the GST exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate;
  - (v) any costs or expenses reasonably incurred by Leppington Excavation Hire Pty Ltd in enforcing the Agreement, as a result of the Your breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out (including cleaning costs); and
  - (vi) any bond monies payable under clause 9.
- (e) Where any amount payable under the Agreement becomes

overdue, all outstanding amounts whether due to Leppington Excavation Hire Pty Ltd under the terms of the Agreement or under any other Hire Agreement between Leppington Excavation Hire Pty Ltd and You will become immediately due and payable by You to Leppington Excavation Hire Pty Ltd.

- (f) You agree, accept and authorise all costs and charges incurred in relation to the Hire Contract between Leppington Excavation Hire Pty Ltd and You to be deducted from the credit card details that have been supplied for this purpose.
- (g) Leppington Excavation Hire Pty Ltd may charge You interest calculated on a daily basis and compounded monthly on overdue amounts.
- (h) Credit Account Customers must pay all amounts owing under the Agreement thirty days from the end of month. All Credit Card Account Customers will be billed on commencement of hire, or at monthly intervals. No unit will be released until credit card account has been received by Leppington Excavation Hire Pty Ltd, or a credit account is established.

#### 4. Termination

- (a) Subject to clause 6(b) the Hire Agreement will terminate when the Customer delivers the Equipment to Leppington Excavation Hire Pty Ltd during normal working hours, or, if Leppington Excavation Hire Pty Ltd agrees, when the Equipment is collected by Leppington Excavation Hire Pty Ltd. The Customer irrevocably appoints Leppington Excavation Hire Pty Ltd as its agent and authorises and licences Leppington Excavation Hire Pty Ltd to enter the Location and repossess the Equipment upon termination of the Rental Agreement.
- (b) Leppington Excavation Hire Pty Ltd may terminate any Hire Agreement or the Agreement as a whole and repossess the Equipment at any time by written notice to You if You are in breach of the Agreement and fails to remedy that breach within 7 days of receiving notice requiring You to do so or You become insolvent or otherwise are unable to pay Your debts as they fall due.
- (c) Leppington Excavation Hire Pty Ltd may terminate the Agreement without prejudice to any rights that may or did arise prior to the termination, at any time during the Hire Period by giving two (2) days written notice of such termination to You.

#### 5. Miscellaneous

- (a) The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligations of the parties which survive expiry or termination.
- (b) Time is of the essence for obligations of You under the Agreement.
- (c) Leppington Excavation Hire Pty Ltd may assign or subcontract all or any of the rights under the Agreement. You must not assign or subcontract all or any of its rights under the

Agreement.

- (d) The Agreement is governed by, if signed in Australia, the laws of the States or Territories in which is signed by Leppington Excavation Hire Pty Ltd.
- (e) Time out is time used.
- (f) no waiver, granting of time or other indulgence shall affect Leppington Excavation Hire Pty Ltd rights under this Agreement notwithstanding any rule of law or equity to the contrary.

#### 6. Your Obligations to Leppington Excavation Hire Pty Ltd.

- (a) This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Leppington Excavation Hire Pty Ltd in writing.
- (b) You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for. Subject to clauses 6(b) and 6(c), We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- (c) To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:
  - (i) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - (ii) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current Licence to Perform High Risk Work;
  - (iii) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Leppington Excavation Hire Pty Ltd or the manufacturer;
  - (iv) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
  - (v) conduct a job safety analysis prior to using the Equipment
  - (vi) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
  - (vii) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- (d) It is important to take care of the Equipment during the Hire Period. You must:
  - (i) clean, fuel, lubricate, complete the daily pre-start checklist and keep the Equipment in good condition and in accordance with the manufacturer's and Leppington Excavation Hire Pty Ltd instructions at Your own cost;
  - (ii) not in any way alter, modify, tamper with, damage or repair the Equipment without Leppington Excavation Hire Pty Ltd

prior written consent; and

- (iii) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- (e) At all times during the Hire Period, You must store the Equipment safely and securely and protected from theft, seizure, loss or damage.
- (f) You will allow Leppington Excavation Hire Pty Ltd to enter Your premises and inspect the Equipment from time to time during the Hire Period. You can also request to conduct a joint inspection of the Equipment with Leppington Excavation Hire Pty Ltd at the end of the Hire Period.
- (g) Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Leppington Excavation Hire Pty Ltd and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- (h) You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.
- (i) You must not use the Equipment off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without Leppington Excavation Hire Pty Ltd prior written consent, which may be reasonably withheld.
- (j) You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- (k) You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 6 (g), You must advise Leppington Excavation Hire Pty Ltd of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Leppington Excavation Hire Pty Ltd opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, You will be charged for the new replacement cost of the Equipment.
- (l) Any electrical Equipment provided by Leppington Excavation Hire Pty Ltd will be tested and tagged before it is hired to You, but You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost. We are able to arrange for such re-testing and re-tagging of the electrical Equipment at Your cost. Except where Leppington Excavation Hire Pty Ltd arrange for re-testing and re-tagging of the electrical Equipment, any damage caused to

the Equipment resulting from incorrect testing arranged by You will be at Your cost.

#### 7. What To Do If Equipment Breaks Down

- (a) In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
  - (i) immediately stop using the Equipment and notify Leppington Excavation Hire Pty Ltd;
  - (ii) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - (iii) take all steps necessary to prevent any further damage to the Equipment itself; and
- (b) not repair or attempt to repair the Equipment without Leppington Excavation Hire Pty Ltd written consent Except if clause 6(a), Leppington Excavation Hire Pty Ltd will:
  - (i) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being
  - (ii) notified by You; and
  - (iii) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

#### 8. What To Do If Equipment Is Lost, Stolen or Damaged

- (a) If the Equipment has broken down or become unsafe to use as a result of Your negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:
  - (i) any costs incurred by Us to recover and repair or the full new replacement cost of the equipment and
  - (ii) the hire charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.
- (b) Provided that You pay the costs and charges described in clause 11(2), We will return the Equipment to You once it has been repaired or replaced, and You will continue to pay the hire charges for the remainder of the Hire Period.

#### 9. Bond Payment

- (a) Bond payment is not insurance, but is an agreement by Leppington Excavation Hire Pty Ltd to limit Your liability in certain circumstances for loss or damage to Our Equipment to an amount up to and including the bond amount charged.
- (b) A bond Fee will be automatically charged to You in addition to Your hire charges and is set out in Your Hire Schedule.

(c) Where You have paid the bond Fee, Leppington Excavation Hire Pty Ltd will not waive Our right to claim against You for loss, theft or damage to our Equipment:

For theft or loss you must:

- (i) Have promptly reported the incident to the police and provided Leppington Excavation Hire Pty Ltd with a written police report;
  - (ii) You have co-operated with Leppington Excavation Hire Pty Ltd and provided the details of the incident, including any written or photographic evidence We require;
  - (iii) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 9(1); and
  - (iv) You have paid Leppington Excavation Hire Pty Ltd the bond payment.
- (e) The bond payment for each item of Equipment is an amount no less than:
- (i) \$550.00 or (if the repair cost of the Equipment is less than \$1000.00) the full new replacement cost of the Equipment. This bond payment increases to \$2000 if the operator is under 25 years old or during tipping operations;
- (f) Even if You have paid the bond payment, Leppington Excavation Hire Pty Ltd will not waive Our rights to claim against You for loss, theft or damage to the Equipment and if the loss, theft or damage:
- (i) has arisen as a result of Your breach of a clause of this Hire Agreement;
  - (ii) has been caused by Your negligent act or omission;
  - (iii) has failed to keep the equipment in a securely locked compound;
  - (iv) has arisen as a result of Your use of the Equipment in violation of any laws;
  - (v) has been caused by being lifted by crane or other lifting equipment.
  - (vi) has been caused by Your failure to use the Equipment for its intended purpose or in accordance with Our instructions or the Manufacturer's instructions;
  - (vii) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - (viii) has been caused by a lack of lubrication or a failure to properly service or maintain of Equipment;
  - (ix) has been caused by collision with a bridge, car park, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
  - (x) has been caused by the overloading of the Equipment or any

components thereof; is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;

- (xi) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
- (xii) is caused by vandalism;
- (xiii) is to tyres or tubes; OR
- (xiv) is to glass.

#### 10. Indemnities and Exclusion of Liabilities

- (a) Subject to clause 10(c), and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- (b) Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- (c) Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and Leppington Excavation Hire Pty Ltd are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('Non-Excludable Provision'), and Leppington Excavation Hire Pty Ltd are able to limit Your remedy for a breach of the Non-Excludable Provision, then Leppington Excavation Hire Pty Ltd liability for breach of the Non-Excludable Provision is limited to (at Our election):
  - (i) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- (d) Subject to Leppington Excavation Hire Pty Ltd obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Leppington Excavation Hire Pty Ltd maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Leppington Excavation Hire Pty Ltd aggregate liability under this clause, the parties must include

any amounts paid or the value of any goods or services replaced, repaired or supplied by Leppington Excavation Hire Pty Ltd for a breach of any Non-Excludable Provisions.

- (e) Subject to clauses 10(c) and 10(d), We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- (f) You are liable for and indemnify Leppington Excavation Hire Pty Ltd against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Leppington Excavation Hire Pty Ltd and any environmental loss, cost, damage or expense) in respect of:
- (i) personal injury;
  - (ii) damage to tangible property; or
  - (iii) a claim by a third party, in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Leppington Excavation Hire Pty Ltd breach of the Hire Agreement or Leppington Excavation Hire Pty Ltd negligence causes the liability, claims, damage, loss, costs or expenses.
- (g) Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.
- (h) Leppington Excavation Hire Pty Ltd will not be liable to You for any acts or omissions of any person supplied by Leppington Excavation Hire Pty Ltd where that person is acting under Your direction and control during the Hire Period and you indemnify Leppington Excavation Hire against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Leppington Excavation Hire Pty Ltd and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

#### 11. Privacy

- (a) At Leppington Excavation Hire Pty Ltd, We take Your privacy seriously. Leppington Excavation Hire Pty Ltd will comply with the National Privacy Principles in all dealings with You.
- (b) Leppington Excavation Hire Pty Ltd may need to collect

personal information about You, including but not limited to, Your full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. You consent to Leppington Excavation Hire Pty Ltd using Your personal information in order to:

- (i) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness.
- (ii) provide services to You;
- (iii) prevent theft of Leppington Excavation Hire Pty Ltd Equipment;
- (iv) enter into contracts with You or third parties, and
- (v) to market to You and maintain a client relationship with You.

#### 12. Force Majeure

- (a) Subject to clause 12(b), neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- (b) Nothing in clause 12(a), will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

#### 13. Signing This Hire Agreement

- (a) The person signing any document which forms part of the Hire Agreement for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.

#### 14. Claim for Payment

- (a) This Hire Agreement is a claim for payment 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).

#### 15. Remember, We Own the Equipment

- (a) You acknowledge that Leppington Excavation Hire Pty Ltd owns the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become

bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.

- (b) Except in the circumstances set out in clause 16, You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- (c) In no circumstances will the Equipment be deemed to be a fixture.

#### 16. PPSA

- (a) You consent to Leppington Excavation Hire Pty Ltd affecting and maintaining a registration on the register (in any manner Leppington Excavation Hire Pty Ltd considers appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Leppington Excavation Hire Pty Ltd required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

(b) You undertake to:

- (i) do anything (in each case, including executing any new document or providing any information) that is required by Leppington Excavation Hire Pty Ltd (1) so that Leppington Excavation Hire Pty Ltd acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds, (2) to register a financing statement or financing change statement and (3) to ensure that the Leppington Excavation Hire Pty Ltd security position, and rights and obligations, are not adversely affected by the PPSA;
  - (ii) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Leppington Excavation Hire Pty Ltd prior written consent; and
  - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Leppington Excavation Hire Pty Ltd prior written consent.
- (c) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

- (i) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the

extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

- (ii) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- (d) Unless otherwise agreed and to the extent permitted by the PPSA, You and Leppington Excavation Hire Pty Ltd agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- (e) For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Leppington Excavation Hire Pty Ltd to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.
- (f) Leppington Excavation Hire Pty Ltd may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way Leppington Excavation Hire Pty Ltd determines in their absolute discretion.
- (g) You agree to notify Leppington Excavation Hire Pty Ltd in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.