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Earthmoving Hire Australia Pty Ltd
ABN: 19 042 196 228

New South Wales
Queensland
Victoria

'Australia's Leading Earthmoving Hire Specialists'

HIRE AGREEMENT

HIRE NUMBER:

INVOICE TO:

DELIVERY:

START DATE:

END DATE:

CUSTOMER CODE:

CONTACT:

PHONE:

MOBILE:

ORDER NUMBER:

ORDERED BY:

REPRESENTATIVE:

DEPOSIT:

Strictly 30 days from date on invoice

TERMS:

Qty	Item	Description	Days Per Week	Daily Rate	Weekly Rate	Min Charge	Line Total	Start Date	Expected Off Hire Date
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HIRE RATE EXCLUDES 10% GST

STAND DOWNS MUST BE NOTIFIED BEFORE 9AM.

WE CHARGE FOR TIME OUT, NOT TIME USED.

BY SIGNING THIS HIRE AGREEMENT:

(a) I have read, understood and agreed to be legally bound by the terms and conditions of hire which are set out below this agreement.

(b) I hereby warrant that I can legally bind the above mentioned hire customer to this hire agreement.

Authorised signatory: _____

Name of signatory: _____

Position: _____

Date: _____

'Australia's Leading Earthmoving Hire Specialists'

EHA 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; and
- (d) 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 Customer's employees, executors, administrators and representatives.

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

"Dealer" means Earthmoving Hire Australia Rental & Sales as specified in the Hire Agreement and includes its officers, employees, agents, successors and related parties.

"Equipment" means the equipment rented by Earthmoving Hire Australia 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 Earthmoving Hire Australia.

"De-hire Number" means the number provided by Earthmoving Hire Australia to the Customer when the Customer notifies Earthmoving Hire Australia that the rental of the Equipment has ended.

"Earthmoving Hire Australia" means Earthmoving Hire Australia Pty Ltd – PO Box 239, Gympie, NSW, 2227

"Stand Down Number" means the number provided by Earthmoving Hire Australia to the Customer when the Customer makes a request to

Earthmoving Hire Australia for stand down rates.

"Off Hire Number" means the number provided by Earthmoving Hire Australia to the Customer when the Customer makes a request to Earthmoving Hire Australia for temporary off hire rates.

"Rental Account Application" means the application identified as the Rental Account Application.

"Hire Agreement" means the express terms identified as the Hire Agreement.

"Hire Charges" means the rental charges charged by Earthmoving Hire Australia to the Customer for the rent of the Equipment and identified in the invoice provided by Earthmoving Hire Australia to the Customer.

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

3. Hire Charges and Other Charges

- (a) Hire Charges will be incurred from the Date Out until and including the day on which You receive a De-hire Number from Earthmoving Hire Australia or the Rental Agreement is terminated in accordance with clause 7, whichever is the earlier unless the De-hire Number is issued before 9am, in which case there will be no Hire Charge for that day.
- (b) You must not request a De-hire Number unless the Equipment is ready to be returned to, or collected by, Earthmoving Hire Australia. (c) Additional Rental Charges will apply if Equipment usage exceeds eight hours in any day/40 hrs in any week
- (d) 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 Earthmoving Hire Australia on any supplies made by Earthmoving Hire Australia 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 Earthmoving Hire Australia 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
- (e) Where any amount payable under the Agreement becomes overdue, all outstanding amounts whether due to Earthmoving Hire Australia under the terms of the Agreement or under any other Hire Agreement between Earthmoving Hire Australia and You will become immediately due and payable by You to Earthmoving Hire Australia.
- (f) You agree, accept and authorise all costs and charges incurred in relation to the Hire Contract between Earthmoving Hire Australia and You to be deducted from the credit card details that have been supplied for this purpose.
- (g) Earthmoving Hire Australia may charge You interest calculated on a daily basis and compounded monthly on overdue amounts from the date of the actual receipt of payment at an interest rate which is 4% greater than the rate published by the Commonwealth Bank of Australia or its successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment;
- (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 Earthmoving Hire Australia, or a credit account is established.

4. Stand Down Conditions

- (a) A stand down rate of 50% off normal rates may apply subject to:
 - (i) Machine availability.
 - (ii) Notification to Earthmoving Hire Australia before 9am.
 - (iii) Stand Down Number issued by Earthmoving Hire Australia.
 - (iv) Not applicable for machines hired at 4 + weekly rates or rental/purchase agreements.

5. Off Hire Conditions (Temporary)

- (a) A machine may only be temporarily off hired due to break down, public holiday or RDO. Nil charge applies.
- (b) Wet weather off hire only applies to earthmoving equipment greater than 6T.
- (c) Notification to Earthmoving Hire Australia is required before 9am. (d) Temporary Off Hire Number issued by Earthmoving Hire Australia.
- (e) Not applicable for machines on rental/purchase or 4 + weekly hire.

6. De Hire Conditions (Hire completion)

- (a) De Hire Number must be obtained by You before 9am on day of hire termination.
- (b) You must not request De Hire Number unless equipment is ready to be returned to, or collected by Earthmoving Hire Australia. (c) The equipment remains the responsibility of You until returned to Earthmoving Hire Australia depot.

7. Termination

- (a) Subject to clause 9(b) the Hire Agreement will terminate when the Customer delivers the Equipment to Earthmoving Hire Australia during normal working hours, or, if Earthmoving Hire Australia agrees, when the Equipment is collected by Earthmoving Hire Australia. The Customer irrevocably appoints Earthmoving Hire Australia as its agent and authorises and licences Earthmoving Hire Australia to enter the Location and repossess the Equipment after You receive a De-hire Number or upon termination of the Rental Agreement, whichever is the first to occur.
- (b) Earthmoving Hire Australia 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) Earthmoving Hire Australia 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.

8. 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) Earthmoving Hire Australia 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 Earthmoving Hire Australia.
- (e) Time out is time used.
- (f) no waiver, granting of time or other indulgence shall affect Earthmoving Hire Australia rights under this Agreement notwithstanding any rule of law or equity to the contrary.

9. Your Obligations to Earthmoving Hire Australia

- (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 Earthmoving Hire Australia 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 12(b) and 12(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 Earthmoving Hire Australia 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 Earthmoving Hire Australia instructions at Your own cost;
 - (ii) not in any way alter, modify, tamper with, damage or repair the Equipment without Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia at the end of the Hire Period.

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- (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 Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 9(g), You must advise Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia 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.

10. 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 Earthmoving Hire Australia;
 - (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 Earthmoving Hire Australia written consent Except if clause 12(a), Earthmoving Hire Australia will:
 - (i) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
 - (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.

11. 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 replace 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(a), 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.

13. Indemnities and Exclusion of Liabilities

- (a) Subject to clause 13(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 Earthmoving Hire Australia are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('Non-Excludable Provision'), and Earthmoving Hire Australia are able to limit Your remedy for a breach of the Non-Excludable Provision, then Earthmoving Hire Australia 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 Earthmoving Hire Australia obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia for a breach of any Non-Excludable Provisions.
- (e) Subject to clauses 13(c) and 13(d), Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia breach of the Hire Agreement or Earthmoving Hire Australia 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) Earthmoving Hire Australia will not be liable to You for any acts or omissions of any person supplied by Earthmoving Hire Australia where that person is acting under Your direction and control during the Hire Period and you indemnify Earthmoving Hire Australia 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 Earthmoving Hire Australia and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

14. Privacy

- (a) At Earthmoving Hire Australia, We take Your privacy seriously. Earthmoving Hire Australia will comply with the National Privacy Principles in all dealings with You.
- (b) Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia Equipment;
 - (iv) enter into contracts with You or third parties, and
 - (v) to market to You and maintain a client relationship with You.

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15. Force Majeure

- (a) Subject to clause 15(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 15(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.

16. 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.

17. 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).

18. Remember, We Own the Equipment

- (a) You acknowledge that Earthmoving Hire Australia 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 19, 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.

19. PPSA

- (a) You consent to Earthmoving Hire Australia affecting and maintaining a registration on the register (in any manner Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia (1) so that Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 Earthmoving Hire Australia 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 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.
 - (ii) Unless otherwise agreed and to the extent permitted by the PPSA, You and Earthmoving Hire Australia 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.
- (d) 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 Earthmoving Hire Australia to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.
- (e) Earthmoving Hire Australia 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 Earthmoving Hire Australia determines in their absolute discretion.
- (f) You agree to notify Earthmoving Hire Australia in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.