

TIMECH

H I R E

Dry Hire Terms and Conditions

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Welcome to Timech Hire!

What are these terms about?

These Hire Terms, together with any Hire Schedule (defined in clause 1), set out the agreement (**this Agreement**) under the terms of which you or the company which you represent (**the Customer, you**) will hire the Equipment from Timech Hire Pty Ltd ABN 37 699 851 780 (**Timech Hire, we, us, our**).

These Hire Terms apply when you submit a request through our website, timech.com.au (**Website**) to hire Equipment from Timech Hire. The current version of these Hire Terms is always available at timech.com.au/terms.

We may update these Hire Terms from time to time. An updated version applies only to bookings made after it is published on our Website, and each hire is governed by the version of these Hire Terms accepted by the Customer at the time of booking.

How do I accept these terms?

You agree to these Hire Terms when you submit a booking request through our Website after clicking the acceptance box.

A binding Agreement is formed when you accept these Hire Terms and your payment is successfully processed. We will then email you a Hire Schedule setting out the commercial particulars of the hire.

The Hire Term commences on the Start Date stated in the Hire Schedule and continues until the Equipment has been returned to, or collected by, Timech Hire in accordance with this Agreement.

HIRE TERMS

1 BOOKING REQUESTS AND THIS AGREEMENT

- (a) These Hire Terms apply to each request submitted by a Customer for Timech Hire to hire Equipment to that Customer, including any request submitted through the Website, by email, by telephone or otherwise agreed in writing (**Booking Request**).
- (b) By submitting a Booking Request, accepting these Hire Terms and completing payment, the Customer:
 - (i) agrees to be bound by these Hire Terms;
 - (ii) warrants that the information provided in the Booking Request is complete and accurate;
 - (iii) authorises Timech Hire and the Payment Provider to process or authorise payment in accordance with clause 10.3.
- (c) A binding agreement is formed when the Customer accepts these Hire Terms and the Customer's payment is successfully processed.
- (d) Timech Hire will then issue the Customer written confirmation of the Booking Request setting out the commercial terms of the hire in a Hire Schedule (**Hire Schedule**). The Customer must promptly notify Timech Hire if any information in the Hire Schedule is incorrect or does not reflect the Booking Request.
- (e) Despite clause 1(c), Timech Hire may cancel a confirmed Booking Request prior to the Delivery of the Equipment if:
 - (i) the Equipment is unavailable or unsuitable for the proposed Job Site;
 - (ii) the delivery or access requirements cannot reasonably be met; or
 - (iii) information provided by the Customer is incomplete, inaccurate or misleading.
- (f) If Timech Hire rejects a Booking Request after any payment has been processed, Timech Hire will refund that payment using the original payment method.
- (g) Each agreement consists of:
 - (i) these Hire Terms;
 - (ii) the accepted Booking Request; and
 - (iii) the Hire Schedule issued by Timech Hire,together, the **Agreement**.
- (h) If there is any inconsistency between the documents forming the Agreement, the Hire Schedule prevails to the extent it accurately records the accepted Booking Request, and these Hire Terms otherwise prevail. Despite the foregoing, any special conditions expressly set out in the Hire Schedule prevail over these Hire Terms and the Booking Request to the extent of any inconsistency.

2 HIRE OF EQUIPMENT

Timech Hire provides to the Customer and the Customer accepts from Timech Hire the hire of the Equipment upon and subject to the provisions of this Agreement.

3 PRE HIRE

The Customer warrants that they:

- (a) must provide their valid driver's licence number when submitting the Booking Request and, on request, provide a copy of that licence before delivery of the Equipment;
- (b) have read and understood any instructional materials provided by Timech Hire;
- (c) will, before any excavation, obtain current underground service information for the Job Site through Before You Dig Australia (byda.com.au or 1100), positively locate all services in the work area and plan the work to avoid them; and
- (d) ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised.

4 EQUIPMENT USE

4.1 Use

- (a) The Customer must ensure that the Equipment is only used:
 - (i) on the Job Site;
 - (ii) for the Purpose;
 - (iii) in a proper and skilful manner, by Personnel who are appropriately trained, licensed, certified and competent;
 - (iv) in accordance with the Equipment manufacturer's requirements, recommendations and instructional materials;
 - (v) in accordance with any additional operating, safety or use requirements provided by Timech Hire for the relevant type of Equipment;
 - (vi) within any operating limits specified for the Equipment, including any applicable slope, load, lifting or capacity limits;
 - (vii) in accordance with all Laws, rules and regulations applicable to the Equipment and its use and/or relating to the Job Site.
- (b) The Customer must not, and must not allow any Personnel or third party to:
 - (i) transport, tow or relocate the Equipment from the Job Site to another location, or remove the Equipment from Western Australia, unless expressly approved by Timech Hire in writing;
 - (ii) tow trailered Equipment using an unsuitable or unroadworthy vehicle or on unsealed roads;
 - (iii) tow trailered Equipment, if the driver is not the holder of a valid driver licence;
 - (iv) use the Equipment for any dangerous or illegal purpose;
 - (v) use or allow the Equipment to be used to carry passengers for payment of any kind and/or for racing;
 - (vi) make any alterations to the Equipment, including by unauthorised repair;
 - (vii) use or allow the Equipment to be used while the operator is under the influence of alcohol or drugs;
 - (viii) use the Equipment when it is damaged or unsafe;

- (ix) affix or install any accessories, equipment or device on or to the Machine (other than the Included Attachments set out in the Hire Schedule) without Timech Hire's prior written consent;
- (x) sub-hire the Equipment;
- (xi) use the Equipment for the conveyance or towing of any load;
- (xii) use the Equipment at any asbestos-affected or contaminated site without Timech Hire's prior written approval;
- (xiii) disable, remove, interfere with or fail to use any rollover protective structure, seatbelt, guard, safety device or other protective feature fitted to the Equipment;
- (xiv) use the Equipment outside any operating or safety limits specified by the manufacturer or Timech Hire; and
- (xv) allow the Equipment to become contaminated with any hazardous substance (including asbestos, chemicals, sewage or fuel spills).

4.2 MAINTENANCE

- (a) The Customer must, when the Equipment is unattended, always keep it locked and keep the keys under their control and take reasonable steps to keep it safe, secure and protected from theft, damage and the elements.
- (b) Before using the Equipment, the Customer must visually inspect it for any apparent damage, leaks, warning indicators or other unsafe condition.
- (c) The Customer must not service, maintain, tighten, lubricate, adjust or repair the Equipment unless expressly instructed by Timech Hire in writing. However, on multi-day hires, the Customer may carry out any basic daily care instructed by Timech Hire, including visual checks, checking fluid levels, adding the correct fluids and greasing specified points.
- (d) If the Customer becomes aware that the Equipment may require maintenance or repair, the Customer must immediately stop using it and notify Timech Hire.

4.3 OPERATOR

- (a) The Customer must not allow any person to operate the Equipment unless that person:
 - (i) is at least 21 years old;
 - (ii) is competent and appropriately trained and experienced to operate the Equipment safely;
 - (iii) holds any licence, ticket, certification or other qualification required by Law;
 - (iv) has received and understood the manuals, safety information, instructions and familiarisation materials provided by Timech Hire; and
 - (v) is not under the influence of alcohol or drugs.
- (b) The Customer must ensure that each person permitted to operate the Equipment complies with this Agreement.
- (c) The Customer is responsible for the acts and omissions of each person it permits to operate, use, transport, tow, handle or possess the Equipment as if those acts and omissions were those of the Customer.
- (d) On request, the Customer must promptly provide Timech Hire with the name, age, licence details and any other reasonably requested information concerning each person who operated the Equipment during the Hire Term.

4.4 FUEL AND CLEANING

- (a) The Customer acknowledges that Timech Hire will provide the Equipment with a full tank of fuel at the start of the Hire Term. The Customer must not add any fuel, fluid, lubricant or additive to the Equipment unless directed or approved by Timech Hire in writing.
- (b) If Timech Hire directs or approves the Customer to do so, the Customer must:
 - (i) only use fuel, fluid, lubricant or additives that meet the Machine's specifications; and
 - (ii) be responsible for any loss or damage caused by the Customer or any person for whom the Customer is responsible using an incorrect fuel, fluid, lubricant or additive.
- (c) Subject to the Customer not contaminating the Equipment during the Hire Term in accordance with clause 4.1(b)(xv), the Customer is not required to clean or refuel the Equipment before it is collected by Timech Hire.
- (d) The Customer must pay Timech Hire's reasonable costs of removing any contamination caused during the Hire Term.

4.5 ENGINE HOURS

- (a) Where an engine hour allowance and excess usage rate are specified in the Hire Schedule, that engine hour allowance will apply during the Hire Term.
- (b) The engine hour allowance will be calculated in aggregate by reference to each 24 hour period of the scheduled Hire Term.
- (c) If the Customer exceeds the engine hour allowance, the Customer must pay the excess usage rate specified in the Hire Schedule for each additional engine hour or part thereof.
- (d) The Customer must not tamper with, disable or interfere with any hour meter or usage tracking device fitted to the Equipment. If an hour meter or usage tracking device is damaged, disabled or interfered with during the Hire Term, Timech Hire may reasonably estimate the Equipment's usage having regard to available records and usage data.

4.6 GPS TRACKING

The Customer:

- (a) acknowledges that the Equipment may contain on-board GPS and usage tracking devices (each a GPS and Usage Device) which enable the Equipment to send commands to and receive certain information from the Equipment, including but not limited to updates on the Equipment and Machine location, daily start and finish times, fuel usage and fault codes;
- (b) agrees that data from the GPS and Usage Device (**GPS and Usage Data**) may be used to create a report of operator's behaviour and usage of Equipment during the Hire Term; and
- (c) acknowledges that Timech Hire may rely on the GPS and Usage Data for the purpose of this Agreement and that the reliance is a material term of this Agreement.

4.7 **PERSONAL PROPERTY**

Timech Hire is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after its return to Timech Hire or stolen from the Equipment or otherwise lost during the Hire Term.

5 **DELIVERY AND COLLECTION**

5.1 **DELIVERY**

- (a) Timech Hire will deliver the Equipment to the Delivery Address on the date and at or around the time selected by the Customer in the Booking Request and as confirmed in the Hire Schedule (**Start Date** and **Start Time**).
- (b) The Customer must ensure that:
 - (i) Timech Hire has safe, lawful and unobstructed access to the Delivery Address for delivery and collection of the Equipment;
 - (ii) the Delivery Address and any access route are suitable for the safe delivery and unloading of the Equipment, including having adequate clearance, stable ground and a safe gradient;
 - (iii) an authorised person is available to receive the Equipment and complete any handover requirements, unless otherwise agreed in writing; and
 - (iv) on Timech Hire's request, the person receiving the Equipment provides a valid driver licence that matches the driver licence details provided in the Booking Request.
- (c) It is the Customer's responsibility to ensure that the Delivery Address is correct and that an authorised person is available to receive the Equipment. Any delay in delivery or acceptance of the Equipment due to the Customer's fault will not delay the Start Date or reduce the Fees.
- (d) Timech Hire may refuse or delay delivery or unloading if it reasonably considers that:
 - (i) the Delivery Address or access route is unsafe or unsuitable;
 - (ii) there is inadequate access or clearance, or the ground is soft, unstable or excessively sloped;
 - (iii) delivery or unloading may expose any person, vehicle, property or the Equipment to an unreasonable risk; or
 - (iv) the Customer has not complied with clause 5.1(b).
- (e) If Timech Hire is unable to complete delivery because of a matter referred to in clause 5.1(d), then Timech Hire may, acting reasonably:
 - (i) treat the Booking Request as cancelled by the Customer at that time, in which case the applicable Cancellation Fee will apply;
 - (ii) agree to attempt delivery again, in which case the Customer must pay:
 - (A) a failed attendance fee of \$50 for each unsuccessful delivery attempt; and
 - (B) any reasonable re-delivery costs notified by Timech Hire, (**Redelivery Costs**).
- (f) The Customer must inspect the Equipment at delivery and notify Timech Hire of any defect, damage or missing item apparent on reasonable inspection within 2 hours of delivery. If no such notice is given, the Equipment is taken to have been received in good order and condition as recorded at handover. This clause does not affect the Customer's rights in respect of latent defects or under the Australian Consumer Law.

5.2 **COLLECTION AND RETURN**

- (a) Timech Hire will collect the Equipment from the Delivery Address on the date and at or around the time selected by the Customer in the Booking Request and as confirmed in the Hire Schedule (**Return Date** and **Return Time**).
- (b) By the Return Time, the Customer must ensure that the Equipment is:
 - (i) in the same condition as at the Start Date, Fair Wear and Tear excepted, but the Customer is not required to clean or refuel the Equipment unless otherwise required under this Agreement; and
 - (ii) safe, accessible and ready for collection at the Delivery Address.
- (c) If the Equipment is not available and ready for collection in accordance with clause 5.2(b), the Customer must pay the Late Charge until the Equipment is collected by Timech Hire.
- (d) The Customer may request that Timech Hire collect the Equipment before the Return Date. If Timech Hire agrees to the early collection, the Customer will receive a refund equal to 50% of the Daily Rate for each complete 24 hour period between the time the Equipment is collected and the Return Time, unless a different Early Return Discount is specified in the Hire Schedule. The refund will be calculated and confirmed after collection of the Equipment.
- (e) The Customer must not deliver or return the Equipment to Timech Hire, or arrange for any third party to do so, unless expressly approved by Timech Hire in writing.

6 **OFF HIRE AND STAND DOWN DISCOUNTS**

6.1 **OFF HIRE**

- (a) This clause 6.1 only applies where:
 - (i) the Hire Term is at least seven (7) days; and
 - (ii) an Off Hire Rate is specified in the Hire Schedule.
- (b) The Customer may request that the Off Hire Rate apply for a particular day by contacting Timech Hire before 9:00am on that day.
- (c) Timech Hire may, acting reasonably, approve or reject the request and will notify the Customer of its decision.
- (d) The Off Hire Rate may only apply for a maximum number of days equal to 50% of the Hire Term.
- (e) The Customer remains responsible for the Equipment and must continue to comply with this Agreement while any Off Hire Rate applies.

6.2 STAND DOWN

- (a) This clause 6.2 only applies where:
 - (i) the Hire Term is at least seven (7) days; and
 - (ii) a Stand Down Rate is specified in the Hire Schedule.
- (b) The Customer may claim the Stand Down Rate for a particular day where adverse weather conditions prevent the Customer from using the Equipment on that day.
- (c) The Customer must submit the claim through its account on the Website before 9:00am on the relevant day and confirm that the Equipment will not be used on that day.
- (d) The Stand Down Rate may only apply for a maximum number of days equal to 50% of the Hire Term.
- (e) Timech Hire may request reasonable evidence supporting a claim made under this clause 6.2.
- (f) The Customer remains responsible for the Equipment and must continue to comply with this Agreement while any Stand Down Rate applies.
- (g) The Customer may not claim or receive both the Off Hire Rate and the Stand Down Rate for the same day. The combined total of days for which the Off Hire Rate and the Stand Down Rate apply during a Hire Term must not exceed 50% of the Hire Term.

7 FAULTY EQUIPMENT

- (a) If the Equipment is faulty, breaks down or becomes unsafe to use during the Hire Term (**Breakdown**), the Customer must immediately:
 - (i) notify Timech Hire;
 - (ii) stop using the Equipment;
 - (iii) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment;
 - (iv) take all steps necessary to prevent the Equipment from sustaining any further damage;
 - (v) not repair or attempt to repair the Equipment without Timech Hire's written consent; and
 - (vi) comply with Timech Hire's directions in relation to the collection or return of the Equipment.
- (b) Subject to clause 7(c), if, upon inspection of the Equipment, Timech Hire reasonably determines that a Breakdown was:
 - (i) caused by a fault in the Equipment (not caused or contributed to by the Customer) (**Equipment Fault**) then Timech Hire may:
 - (A) repair the Equipment;
 - (B) provide replacement Equipment, where reasonably available;
 - (C) provide the Customer with a credit; or
 - (D) provide the Customer with a pro-rata refund of any Fees paid for the period of the Hire Term during which the Breakdown persisted; or
 - (ii) caused or contributed to by the Customer, then the Customer will remain required to pay the Fees in accordance with the Hire Schedule.
- (c) Clause 7(b) does not limit:
 - (i) any of the Customer's rights under the *Competition and Consumer Act 2010* (Cth); or
 - (ii) any rights or remedies Timech Hire may have access to in relation to a Breakdown, under this Agreement or otherwise.

8 REPLACEMENT, LOSS AND DAMAGE

8.1 LOSS, DAMAGE AND PERSONAL INJURY

Subject to clause 9, the Customer will be fully liable to Timech Hire for:

- (a) any loss or damage to the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession, and must give reasonable notice to Timech Hire in writing of any such loss or damage; and
- (b) all damage to the property of any person which is caused or contributed to by the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession.

8.2 REPLACEMENT

If Timech Hire notifies the Customer in writing, the Customer must replace, or pay Timech Hire's reasonable costs of replacing, any part of the Equipment which, during the Hire Term has become worn out, lost, stolen, damaged beyond repair or permanently rendered unfit for use (Fair Wear and Tear excepted). Where the whole of an item of Equipment has become lost, stolen, damaged beyond repair or permanently rendered unfit for use, the cost of replacing it is its New Replacement Cost. The Customer must not make any replacement, alteration or addition of any nature which may lead to a material reduction in the value of the Equipment.

8.3 LOSS OF USE

- (a) If loss of or damage to the Equipment caused or contributed to by the Customer prevents Timech Hire from hiring the Equipment to another customer, the Customer must compensate Timech Hire for its loss of use of the Equipment.
- (b) Subject to clause 8.3(c), loss of use will be calculated at the Daily Rate for each 24 hour period, or part thereof, commencing when the Equipment becomes unavailable for hire and ending when:
 - (i) the Equipment is repaired and reasonably available for hire; or
 - (ii) where the Equipment cannot reasonably be repaired, replacement equipment is reasonably available for hire.
- (c) Timech Hire must take reasonable steps to mitigate its loss, including arranging repair or replacement within a reasonable time. The Customer will not be liable under this clause to the extent that any delay was caused by Timech Hire's failure to take those steps.
- (d) Timech Hire may not recover under this clause 8.3 to the extent that the same loss is recovered under an insurance policy or from another person.

9 INCIDENTS, INSURANCE AND DAMAGE WAIVER

9.1 INSURANCE

- (a) The Customer must, for the duration of the Hire Term, maintain adequate insurance covering:
 - (i) loss of or damage to hired plant and equipment, including the Equipment while in the Customer's possession or control; and
 - (ii) liability for personal injury, death or damage to third-party property arising from or in connection with the Customer's possession or use of the Equipment; and
 - (iii) any minimum requirements specified in the Hire Schedule.
- (b) The Customer must, on request, promptly provide Timech Hire with a current Certificate of Currency evidencing the insurance required under clause 9.1(a).
- (c) Timech Hire may refuse to deliver the Equipment, suspend the hire or require the Equipment to be returned if the Customer fails to provide a Certificate of Currency in accordance with clause 9.1(b), or fails to maintain the required insurance during the Hire Term.
- (d) The Customer acknowledges that:
 - (i) Timech Hire may, in its discretion, hold insurances in relation to the Equipment but such insurances may not cover the Customer or the Customer's use of the Equipment;
 - (ii) Timech Hire has no obligation or requirement to insure the Customer's use of the Equipment under this Agreement; and
 - (iii) the Customer remains liable under this Agreement regardless of whether the Customer's insurer accepts or rejects any claim.
- (e) Timech Hire arranges insurance of the Equipment against loss or damage under its equipment insurance policy from time to time. The Customer is not a co-insured, additional insured or beneficiary under that policy, acquires no rights under it and must not rely on it. Nothing in this Agreement limits any right of recovery or subrogation of Timech Hire or its insurers against the Customer in respect of loss of or damage to the Equipment, except to the extent the Damage Waiver applies under clause 9.2.
- (f) If Timech Hire notifies the Customer that it holds insurance in relation to the Equipment, or if the Customer has paid a Damage Waiver Fee, the Customer must not do or permit anything to be done which may make Timech Hire's insurance invalid or able to be cancelled or which may increase Timech Hire's insurance premiums.
- (g) Timech Hire reserves the right to apply any insurance policy it does hold in respect of the Equipment during the Hire Term, to damage or loss caused or contributed to by the Customer, however Timech Hire is under no obligation to. Subject to clause 9.2, if Timech Hire chooses to make a claim under an applicable insurance policy in accordance with this clause in respect of any damage or loss during the Hire Term, the Customer will be required to pay any excess payable by Timech Hire in respect of such a claim.

9.2 DAMAGE WAIVER

- (a) If a Damage Waiver Fee is set out in the Hire Schedule, and the Customer pays this amount to Timech Hire before the Start Date, then the Customer's liability for accidental physical damage to the Equipment to which the Damage Waiver applies will be limited to the Reduced Excess, subject to this clause 9.2.
- (b) The Customer's liability in relation to the Equipment will only be reduced to the Reduced Excess amount set out in the Hire Schedule, if:
 - (i) the liability was not caused or contributed to by any unlawful act or omission (including any unlawful use of the Equipment), or a breach of this Agreement; and
 - (ii) Timech Hire's relevant insurance policy covers that liability.
- (c) The Customer's liability in relation to the Equipment will not be reduced to the Reduced Excess amount set out in the Hire Schedule, even if the Customer has paid the Damage Waiver Fee, if the loss or damage is:
 - (i) occasioned by the Customer failing to take reasonable care of the Equipment;
 - (ii) caused to the Equipment as a result of any illegal activity, misappropriation or wrongful conversion of the Equipment by the Customer;
 - (iii) caused by the Customer's misuse, abuse, overloading, exceeding the rated capacity or improper servicing or repairs of the Equipment;
 - (iv) caused by the exposure of the Equipment to corrosive substances, salt water or toxic materials;
 - (v) to the Included Attachments and/or tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes and other similar accessories, ground engaging tools, tracks, tyres and glass;
 - (vi) occurred while the Equipment was in transit, including during loading and unloading;
 - (vii) arising in circumstances where a claim has been made by or against a third party;
 - (viii) theft, loss, misappropriation or non-return of the Equipment; or
 - (ix) personal injury, death or damage to third-party property.
- (d) The Customer acknowledges and agrees that the Damage Waiver:
 - (i) is not insurance and does not relieve the Customer from its obligation to maintain insurance under clause 9.1; and
 - (ii) will not apply unless the Customer notifies Timech Hire of the relevant damage as soon as reasonably practicable and otherwise complies with clause 9.3.

9.3 INCIDENTS, LOSS AND DAMAGE

- (a) Subject to clause 9.2, if the Equipment is lost, damaged, destroyed or stolen during the Hire Term, or otherwise while the Equipment is in the Customer's possession, the Customer must compensate Timech Hire for any costs of repair or replacement (calculated, where the Equipment is lost, stolen, destroyed or damaged beyond economical repair, at the New Replacement Cost).
- (b) If the Equipment is involved in an accident or claim, damaged, destroyed, stolen or if damage or loss is sustained to the property of any third party in connection with the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession (**Incident**), the Customer:

- (i) must, if the Equipment is stolen, lost or maliciously damaged, report the Incident to the police within 48 hours and provide Timech Hire with the police report number, and must otherwise report the Incident to the police where required by Law;
- (ii) must report the Incident to Timech Hire in writing within one Business Day;
- (iii) must pay any applicable insurance excess and any uninsured reasonable costs incurred by Timech Hire in connection with the Incident, subject to clause 9.2;
- (iv) must not, without Timech Hire's prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the Incident, except as required by Law;
- (v) must, if requested, provide all reasonable authority and assistance required for Timech Hire or its insurer to bring, defend, enforce or settle any legal proceedings in relation to the Incident; and
- (vi) must, if requested, provide to Timech Hire, within a reasonable time, any statement, information or assistance which Timech Hire or its insurer requests, including by attending a lawyer's office or a court to give evidence.

9.4 INDEMNITY

The Customer indemnifies Timech Hire against any claim, liability, loss, damage, cost or expense, including reasonable legal costs, arising from or in connection with the Customer's or its Personnel's possession or use of the Equipment, except to the extent caused or contributed to by Timech Hire's negligence, breach of this Agreement or breach of any non-excludable guarantee under the Australian Consumer Law.

10 PAYMENT

10.1 FEES

- (a) The Customer must pay the Fees and any other amounts payable under this Agreement in the amounts and at the times specified in the Hire Schedule or any invoice issued by Timech Hire.
- (b) Unless otherwise stated, all amounts are in Australian Dollars and are calculated per item of Equipment.

10.2 TIME FOR PAYMENT

Unless otherwise agreed in writing or in a Hire Schedule:

- (a) the Customer must pay for all Equipment on or before the Start Date; and
- (b) if Timech Hire issues an invoice to the Customer, payment must be made by the time(s) specified in such invoice.

10.3 ONLINE PAYMENT PARTNER

We may use third-party payment providers such as Stripe and SumUp (**Payment Providers**) to collect payments under this Agreement. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider accessible at clause 11 and, to the maximum extent permitted by law, we will not be liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.

10.4 CARD AUTHORISATION

- (a) Providing valid payment card details is a condition of hire. The Customer authorises Timech Hire and its respective payment providers to verify the Customer's card details and to place a reasonable pre-authorisation hold on the card.
- (b) The Customer authorises Timech Hire to charge the card, or any other card or account the Customer provides for:
 - (i) the Fees and any other fixed or agreed charges when they become due; and
 - (ii) any other amount reasonably payable under this Agreement, subject to clause 10.4(c).
- (c) For any other amounts payable by the Customer under this Agreement that are assessed or determined by Timech Hire (including charges for loss or damage, and any costs of recovery or enforcement), Timech Hire will, before charging the card, give the Customer written notice itemising the amount, at least 7 days before charging it, unless the Customer has already agreed the amount. The Customer authorises Timech Hire to charge the card with those amounts in accordance with this clause.
- (d) Timech Hire will only charge amounts that are reasonably due under this Agreement. Charging an amount to the card does not affect the Customer's right to dispute it, and Timech Hire will promptly refund any amount charged that is later agreed or determined not to have been properly payable. This clause does not limit Timech Hire's other rights to recover amounts owing to it.
- (e) The Customer must ensure the card details provided remain valid throughout the Hire Term and must promptly provide updated details on request. This clause does not limit the Customer's obligation to pay any amount by its due date.

10.5 LATE PAYMENT

If the Customer does not pay Timech Hire the amounts due and payable under an invoice on or before its due date, without limiting any of Timech Hire's other rights under this Agreement, the Customer must pay Timech Hire interest at the rate of 10% per annum, calculated daily, on each amount outstanding, from the due date for payment to the date on which the payment is received by Timech Hire. However, before applying this interest, Timech Hire will provide the Customer with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by Timech Hire.

10.6 GST

Unless otherwise indicated, amounts stated in a Hire Schedule do not include GST. In relation to any GST payable for a taxable supply by Timech Hire, the Customer must promptly pay the GST subject to Timech Hire providing a tax invoice.

10.7 CARD SURCHARGES

Timech Hire reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including American Express).

10.8 SECURITY BOND

- (a) To hire the Equipment, we may require a Security Bond as set out in the Hire Schedule or as otherwise specified by us, to cover any fees, damage or other amounts payable under this Agreement during the Hire Term (**Security Bond**).
- (b) The Security Bond may be paid to Timech Hire or provided by way of a pre-authorisation hold on the Customer's payment card.
- (c) Upon collection or return of the Equipment, we may apply the Security Bond against any amount owed by the Customer to us under this Agreement.
- (d) Timech Hire will release any unused pre-authorisation hold, or refund any remaining balance of the Security Bond within a reasonable time after:
 - (i) the Equipment has been collected or returned and inspected; and
 - (ii) all amounts payable by the Customer have been determined and paid.
- (e) The Customer acknowledges that applying the Security Bond does not limit the Customer's liability for any amount exceeding the Security Bond.

10.9 PAYMENTS OTHER THAN FEES

- (a) Immediately on request by Timech Hire, the Customer will pay:
 - (i) the New Replacement Cost of any Equipment which is for whatever reason not returned to Timech Hire;
 - (ii) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;
 - (iii) all costs incurred by Timech Hire in delivering and recovering possession of the Equipment; and
 - (iv) any expenses and legal costs (including commission payable to a commercial agent) incurred by Timech Hire in enforcing this Agreement due to the Customer's default.
- (b) Without limiting the ability of Timech Hire to recover all amounts owing to it, the Customer authorises Timech Hire to charge any amounts owing by the Customer to any credit card or account which the Customer provides in a Hire Schedule.

11 THIRD PARTY SERVICES

- (a) If Timech Hire is required to acquire goods or services supplied by a third party in connection with a Booking Request or the hire of the Equipment, the Customer may be subject to that third party's terms and conditions (**Third Party Terms**). This may include:
 - (i) Stripe: <https://stripe.com/au/legal/ssa>;
 - (ii) SumUp: <https://www.sumup.com/en-us/terms/>;
 - (iii) Traccar: <https://www.traccar.org/terms/>.
- (b) Provided that Timech Hire has notified the Customer of the Third Party Terms and provided the Customer with, or access to, a copy of those terms, the Customer agrees to comply with any Third Party Terms applicable to goods or services supplied by a third party that the Customer or Timech Hire acquires in connection with the Booking Request or hire of the Equipment.
- (c) To the maximum extent permitted by law, Timech Hire will not be liable for any loss or damage suffered by the Customer in connection with the Third Party Terms or the acts or omissions of the relevant third-party provider, except to the extent caused or contributed to by Timech Hire.

12 OWNERSHIP, POSSESSION AND TITLE

12.1 OWNERSHIP

- (a) The Equipment is and will at all times remain the property of Timech Hire, notwithstanding delivery of the Equipment to the Customer or the possession and use of the Equipment by the Customer.
- (b) The Customer will not have any right, title or interest in or to the Equipment except as expressly set out in this Agreement.

12.2 POSSESSION

The Customer must not, without Timech Hire's prior written consent, part with possession of the Equipment during the Hire Term.

12.3 ENCUMBRANCES

The Customer must not allow any security interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer's lien, except:

- (a) if a repairer's lien arises, the Customer must take all necessary steps to have it removed or satisfied, or, at Timech Hire's option, Timech Hire may remove or satisfy the lien at the Customer's cost; and
- (b) a security interest, lien or charge that arises by Law in respect of unpaid rates, taxes, fees or duties of any kind, in which event the Customer must pay any money due so that the Equipment will be free of the lien or charge.

13 PERSONAL PROPERTY SECURITIES

- (a) The Customer acknowledges and agrees that:
 - (i) Timech Hire may register any security interest it has in connection with this Agreement (including any security interest over the Equipment arising out of the application of the PPSA to this Agreement) on the PPS Register; and
 - (ii) if requested by Timech Hire, the Customer must immediately sign any documents, provide all necessary information and do anything else required by Timech Hire to ensure that any security interest created is perfected and to enable Timech Hire to gain first priority for its security interest.
- (b) The Customer agrees to contract out of the application of the following provisions of the PPSA, and these provisions will not apply to this Agreement:
 - (i) Section 115(7);
 - (ii) Section 117;
 - (iii) Section 118;
 - (iv) Section 120;

- (v) Section 121(4);
- (vi) Section 130;
- (vii) Section 135; and
- (viii) Section 143.
- (c) Notwithstanding any exclusions in this clause, the Customer acknowledges the application and importance of the following provisions of the PPSA, which shall remain unaffected and continue to apply to this Agreement:
 - (i) Section 123;
 - (ii) Sections 125, 126, 128, and 129; and
 - (iii) Section 142.
- (d) In this clause:
 - (i) “**PPSA**” means the Personal Property Securities Act 2009 (Cth) and its regulations as amended and in force from time to time;
 - (ii) “**PPS Register**” means the Personal Property Securities Register established under the PPSA; and
 - (iii) a term used in this clause is taken to have the meaning defined under the PPSA.

14 EARLY RETURN

Notwithstanding any other clause in this Agreement, Timech Hire may demand the early return of the Equipment, or retake possession of the Equipment, if Timech Hire reasonably suspects that:

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

Where Timech Hire is entitled under this Agreement to retake possession of the Equipment, the Customer authorises Timech Hire and its agents to enter any premises where the Equipment is located, or is reasonably believed to be located, at any reasonable time to inspect or retake possession of the Equipment, and must procure any third-party consents required for that entry.

15 LIABILITY, WARRANTIES AND INDEMNITIES

15.1 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 15.1(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the total Fees paid or payable by the Customer to Timech Hire under all Hire Schedules during the 3 months immediately preceding the event giving rise to the liability.
- (b) This liability cap in 15.1(a) does not apply to the Customer's liability in respect of loss or damage sustained by Timech Hire arising from the Customer's:
 - (i) breach of clauses 3, 4, 5, 7, 8, 9, 10, 11, and 13;
 - (ii) liability for any loss of, damage to, or failure to return the Equipment, including any amount payable under clause 8 or clause 9; or
 - (iii) fraud, negligence, wilful misconduct, or any criminal act or omission.

15.2 WARRANTIES

- (a) The Customer acknowledges they have relied on their own judgment and expertise in deciding to rent the Equipment for their intended purpose.
- (b) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (c) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the Competition and Consumer Act 2010 (Cth) (ACL). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods provided.

15.3 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods provided by Timech Hire, except:

- (a) for any amount payable by the Customer under clause 8.3;
- (b) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (c) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

16 TERMINATION

16.1 TERMINATION FOR CONVENIENCE

- (a) Subject to clause 16.3(e), the Customer may terminate this Agreement before the Start Date by giving Timech Hire written notice. After the Start Date, either party may terminate this Agreement for convenience by giving 10 Business Days' written notice.
- (b) This clause does not limit Timech Hire's rights to require the return of, or retake possession of, the Equipment under this Agreement.

16.2 TERMINATION FOR BREACH

- (a) Either party may terminate this agreement immediately by written notice if there has been a Breach of this agreement.
- (b) A “**Breach**” of this agreement means:
 - (i) a party (**Notifying Party**) considers the other party is in breach of this agreement and notifies the other party;
 - (ii) the other party is given 10 Business Days to rectify the breach; and

- (iii) the breach has not been rectified within 10 Business Days or another period agreed between the parties in writing.

16.3 EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) the Customer must immediately stop using the Equipment and make it available for collection by Timech Hire;
- (b) each party must return any property of the other party in its possession, and stop using any materials that are no longer owned by, or licensed to, them when this agreement is terminated;
- (c) each party must comply with all obligations that are by their nature intended to survive the end of this agreement, including without limitation liability caps and payment obligations;
- (d) the following payment consequences apply:
 - (i) **if the Customer terminates this Agreement for convenience under clause 16.1 after the Start Date, the Fees for the scheduled Hire Term remain payable and the Customer will receive a refund calculated in accordance with clause 5.2(d) (Early Return Discount) for each complete 24 hour period between collection of the Equipment and the Return Time, and no other refund;**
 - (ii) **if Timech Hire terminates this Agreement for convenience after the Start Date, the Customer must pay all Fees and other amounts payable up to the date the Equipment is collected and Timech Hire will refund any prepaid Fees for the period after collection; and**
 - (iii) **in any other case, the Customer must pay all Fees and other amounts payable up to the date the Equipment is collected or otherwise returned to Timech Hire; and**
- (e) if the Customer terminates this Agreement before the Start Date, the Customer must pay a cancellation fee (**Cancellation Fee**) equal to:
 - (i) **20% of the Fees**, if Timech Hire receives notice more than 72 hours before the Start Time;
 - (ii) **50% of the Fees**, if Timech Hire receives notice at least 48 but no more than 72 hours before the Start Time;
 - (iii) **100% of the Fees**, if Timech Hire receives notice less than 48 hours before the Start Time.

Timech Hire may, in its discretion, permit the Customer to reschedule the Booking Request instead of paying the Cancellation Fee.

17 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, unless that party has complied with the requirements of this clause, except for proceedings:
 - (i) seeking urgent interlocutory relief; or
 - (ii) recovery or repossession of the Equipment.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, the parties must refer the dispute to mediation administered by a recognised mediation body in Western Australia, with the costs of the mediator shared equally. If the dispute is not resolved within 21 days after referral to mediation (or such other period as agreed by the parties in writing), any party to the dispute may take legal proceedings to resolve the dispute.

18 NOTICES

- (a) A notice or other communication to a party under this Agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this Agreement, or if no email address is specified in this Agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this Agreement as at the date of this Agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring Business Day in that state; or
 - (ii) when replied to by the other party, whichever is earlier.

19 GENERAL

19.1 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law applying in Western Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

19.2 AMENDMENTS

This Agreement may only be amended in accordance with a written agreement between the parties. This clause does not prevent Timech Hire from publishing updated Hire Terms that apply only to bookings made after publication.

19.3 WAIVER

No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

19.4 SEVERANCE

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this Agreement is not limited or otherwise affected.

19.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

19.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

19.7 COUNTERPARTS

This Agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this Agreement and all together constitute one agreement.

19.8 COSTS

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

19.9 FORCE MAJEURE

Neither party is liable for any delay or failure to perform an obligation (other than an obligation to pay money) caused by an event beyond its reasonable control, including fire, flood, storm, natural disaster, epidemic or government action. Fees continue to accrue while the Equipment remains in the Customer's possession or control. If such an event prevents Timech Hire from delivering the Equipment, the Customer may choose a full refund of all amounts paid or a reschedule to a new available date.

19.10 PRIVACY

Timech Hire collects personal information about the Customer and persons taking delivery of the Equipment, including driver licence details, identification photographs and GPS and Usage Data, to verify identity, perform this Agreement, process payments, protect and recover the Equipment, make insurance claims and police reports, recover amounts owed and comply with Law. Timech Hire handles that information in accordance with its Privacy Policy available on the Website, and discloses it only as needed for those purposes, including to its insurer and broker, payment providers, legal or debt-collection advisers, and police or other authorities.

19.11 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this Agreement.

19.12 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or "dollar" is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

20 DEFINITIONS

In addition to capitalised terms defined in the Hire Schedule above, capitalised terms used in this Agreement will have the following meanings:

Term	Meaning
Business Days	a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Western Australia.
Customer	has the meaning set out in the Hire Schedule.
Daily Rate	the daily hire rate for the relevant Equipment specified in the Hire Schedule.
Damage Waiver	the contractual reduction of the Customer's liability for accidental physical damage to the Equipment under clause 9.2, subject to the Customer paying the Damage Waiver Fee and satisfying the conditions of that clause.

Damage Waiver Fee	the fee specified in the Hire Schedule which the Customer must pay to obtain the benefit of the Damage Waiver.
Delivery Address	the address for delivery and collection of the Equipment specified in the Hire Schedule.
Equipment	the Machine and the Included Attachments included in a Hire Schedule.
Fair Wear and Tear	gradual and even deterioration resulting from the proper use of the Equipment in accordance with this Agreement, but excludes accidental or abnormal damage, including cuts, punctures, gouges or chunking to tyres or tracks.
Fees	has the meaning set out in the Hire Schedule.
Hire Schedule	has the meaning set out in clause 1(d) of these Hire Terms.
Hire Term	the period of Equipment Hire, from the Start Date set out in the Hire Schedule until the Equipment is collected by or returned to Timech Hire.
Incident	has the meaning set out in clause 9.3.
Job Site	the job site specified in the Hire Schedule.
Late Charge	an amount equal to twice the Daily Rate for each additional 24 hour period, or part thereof, that the Equipment remains uncollected after the Return Time, plus Timech Hire's reasonable costs of attempting to collect or recover the Equipment. The parties agree that the Late Charge is a genuine pre-estimate of Timech Hire's loss arising from the unavailability of the Equipment for other hires and additional administration, and is not a penalty.
Laws	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Equipment is hired and includes any industry codes of conduct.
Machine	has the meaning set out in the Hire Schedule.
New Replacement Cost	the cost of replacing the Equipment with a new item of the same make and model or, where the same model is unavailable, a new item of equivalent quality, function and capacity, including delivery and any on-road or registration costs.
Personnel	in respect of a party, that party's officers, employees, contractors (including subcontractors) and agents.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth) and PPS Register means the register established and maintained under that Act.
Purpose	the intended use or use case specified in the Hire Schedule.
Reduced Excess	the amount specified in the Hire Schedule as the maximum amount payable by the Customer for each occurrence of accidental physical damage to the Equipment to which the Damage Waiver applies.
Return Date	the date for collection of the Equipment selected by the Customer in the Booking Request and confirmed in the Hire Schedule.
Return Time	the time for collection of the Equipment selected by the Customer in the Booking Request and confirmed in the Hire Schedule.
Start Date	the date for delivery of the Equipment selected by the Customer in the Booking Request and confirmed in the Hire Schedule.
Start Time	the time for delivery of the Equipment selected by the Customer in the Booking Request and confirmed in the Hire Schedule.