

L & D EARTHMOVING LTD'S TERMS AND CONDITIONS OF HIRE

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1. INTRODUCTION

1.1 For the purposes of this Agreement: "Agreement" is these terms and conditions of hire; "Charges" are all costs incurred by the Hirer for the Equipment hire; "Dry Hire" is the hire of the Equipment without the provision by the Subcontractor of a driver or operator; "Equipment" is all equipment delivered to the Hirer; "Hire Period" is the period of hire initially estimated by the Hirer notified to L & D and excludes all lunch breaks; "the Hirer" is the party hiring the Equipment; "Job Docket" is the delivery advice or tax invoice; "L & D" is L & D EARTHMOVING LTD A.B.N. 48 010 241 513. References to L & D include the Subcontractor; "Site" is the location where the Equipment is to be used; "Subcontractor" is the earthmoving subcontractor and Equipment owner and operator. References to Subcontractor include L & D; "Wet Hire" is the hire of the Equipment with the provision by the Subcontractor of a driver or operator; and "Work" is the earthmoving associated services supplied by the Subcontractor to the Hirer by the hire of the Equipment.

2. AGENCY/FORM OF HIRE

2.1 L & D acts as the agent for the Subcontractor who has entered into this Agreement with the Hirer and whose name is on the front of the Job Docket.

2.2 This Agreement applies to Wet Hire, or when applicable, Dry Hire.

3. HIRE PERIODS

3.1 L & D will let the Equipment to the Hirer and, when applicable, provide a driver or operator for the Equipment, and the Hirer will hire the Equipment and, when applicable, accept the driver or operator subject to this Agreement.

3.2 Hire commences at the time, noted by L & D, the Equipment arrives at the Site and ceases at the time, noted by L & D, that the Equipment is loaded for transportation and the Job Docket is signed by the Hirer, and includes all the time during that period (including public holidays, Site non-working days and inclement weather or other events not due to L & D's default) when the Equipment is available for hire but unused.

3.3 The hire rate is based upon:

(a) in respect of Wet Hire, a minimum of 1 hour being spent in transporting the Equipment to the Site and the Equipment being hired for a minimum period of 2 hours;

(b) in respect of Dry Hire where the Equipment is on Site when the Hire Period commences, the Equipment being hired for a minimum period of 2 hours;

(c) in respect of Dry Hire where the Equipment is not on Site when the Hire Period commences, a minimum of 1 hour being spent in transporting the Equipment to the Site and the Equipment being hired for a minimum period of 5 hours.

3.4 The Hirer must pay L & D a surcharge to allow for overtime costs (rates on application) if the Hire Period includes delivery on weekends, statutory or gazetted public holidays.

3.5 L&D's records are deemed conclusive, in the absence of manifest error, as to the time hire commences and concludes.

3.6 If the Hirer, its employees or agents are not present when the Equipment is to be delivered or collected by L & D, the Hirer authorises L & D to so deliver or collect the Equipment and the Hirer accepts L & D's report as to the quantity, quality and condition of the Equipment delivered or returned.

4. HIRE CHARGES

4.1 The Hirer must pay L & D on completion of the Hire Period for the following:

(a) all hire of the Equipment for the Hire Period at the rates set out in the Job Docket;

(b) in respect of Dry Hire, for any damaged, lost, stolen or unreturned Equipment (whether or not resulting from the Hirer's or third parties' misuse or negligence) until it is repaired and fit for re-hire, or replaced, and for, at L & D's option, repairs or replacement costs. If L & D requires, the Hirer must pay the L & D's estimate of reasonable repair costs prior to the repairs commencing;

(c) goods and services tax and any other tax, duty or impost imposed by any government authority on the hiring of the Equipment;

(d) all charges including all travel, freight, low loader and other charges incurred in transporting the Equipment or loading and unloading the Equipment at the Site;

(e) the amount of tolls, levies, fees, including traffic and parking fees, or similar charges paid or payable to any government authority in respect of use of the Equipment; and

(f) all other Charges payable in accordance with this Agreement.

4.2 The Hirer must pay all Charges within 30 days of L & D's invoice date, if L & D grants the Hirer a credit account; or upon completion of the Hire Period or weekly, whichever is the sooner.

4.3 If the Hirer fails to pay the Charges in full on the payment date, the Hirer must pay to L & D:

(a) interest on the outstanding amount from the due date until payment in full has been made, at the rate of 15% per annum calculated on a daily basis; and

(b) all costs incurred by L & D in attempting to recover the outstanding Charges, including any debt collection and legal costs incurred in enforcing payment.

5. EQUIPMENT

5.1 The Hirer is responsible for the unloading and reloading of the Equipment at the Site.

5.2 All equipment remains the property of L & D.

5.3 The Hirer acknowledges that, to the extent permitted by law, no warranty is given by L & D as to the Equipment's fitness for any particular purpose.

5.4 The Hirer acknowledges that:

(a) it has carried out, or has had the opportunity to carry out, its own inspection and testing of the Equipment;

(b) the Hirer takes the Equipment on an 'as is' basis; and

(c) L & D has made no representation, that there has been no reliance by the Hirer on L & D, as to the Equipment's condition, state of repair, performance, operation, or suitability and the Hirer indemnifies L&D against any claim by the Hirer for additional costs, expenses and loss incurred resulting from the Equipment's condition, state of repair, performance, operation or suitability.

6. THE HIRER'S RESPONSIBILITIES

6.1 The Hirer must:

(a) provide a safe Site suitable and ready for the Equipment's delivery and removal. The Hirer must also provide L & D with clear access to the Site, suitable for the delivery and collection of the Equipment. The Hirer must also obtain any third party's consent necessary for L&D to enter the Site;

(b) use in, or direct the use of, the Equipment in a safe, proper and skilful manner;

(c) consult with L & D to determine the condition and suitability of the Equipment hired for the purpose required before the commencement of the Hire Period.

(d) in respect of Dry Hire, during the Hire Period securely store the Equipment on Site and maintain and return it in the condition received, including cleanliness, fair wear and tear excepted;

(e) obtain all necessary permits, approvals and/or plans and pay any fees payable to any government authority in relation to the hire and use of the Equipment;

(f) be responsible for any loss or damage to the Equipment if that loss is caused by the negligence of the Hirer or any persons under the Hirer's control;

(g) not alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;

(h) be liable for any costs if the Equipment, as a result of instructions given by the Hirer, becomes bogged, including the Charges and the additional hire of whatever equipment is necessary to recover the Equipment;

(i) keep all persons, including the Hirer, away from the Equipment, while in operation;

(j) not alter, modify, tamper, repair or attempt to repair or cause any repair to be made to the Equipment without the prior written consent of L & D.

(k) not assign this Agreement, or sell, encumber, re-hire or deal with the Equipment in any manner, or move it from the Site without L & D's prior written consent;

(l) ensure that all persons using, or directing the use of, the Equipment, comply with all laws (including all workplace health and safety requirements and mandatory and advisory standards) regarding the hire and use of the Equipment; and

(m) ensure that the Equipment is not driven or operated by any person not duly authorised under relevant laws to drive or operate that Equipment for the purpose for which it is hired. The Hirer must take all reasonable precautions to prevent bodily injury or damage to property and to comply with all laws for the safety of persons or property as if the Hirer was the owner of the Equipment.

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7. INSURANCE

7.1 If the Hire of the Equipment is Dry Hire, the Hirer must arrange and maintain during the Hire Period policies of insurance issued by an insurer acceptable to L & D. The Hirer must punctually pay all insurance premiums and excesses on those policies.

7.2 Prior to the commencement of the Hire Period and at other times at the request of L & D, the Hirer must provide to L & D copies of certificates of currency for the policies on which L & D's interest in the Equipment is noted.

7.3 The Hirer must immediately inform L & D if there is any event or circumstance which gives rise or may give rise to the need for the Hirer to notify or make a claim for loss, damage or injury under those policies of insurance.

8. DEFAULT

8.1 The Hirer acknowledges that the due and punctual payment of Charges is a fundamental obligation of the Hirer. 8.2 The Hirer is deemed to be in default and the hiring will terminate with immediate effect if the Hirer:

- (a) fails to pay the Charges by the payment date;
- (b) breaches any provision of this Agreement;
- (c) being an individual, becomes bankrupt, or being a corporation, is subject to an order for winding up, or has a controller, administrator, receiver, receiver and manager, agent in possession, trustee or guardian of its assets appointed;
- (d) enters into a compromise or arrangement with creditors;
- (e) ceases to be able to pay debts as they fall due; or
- (f) if applicable, fails to insure the Equipment in accordance with Clause 7 and pay for that insurance.

8.3 On the occurrence of any event stated in clause 8.2 all unpaid Charges become immediately due and payable.

8.4 L & D's waiver of any default is not a waiver of any subsequent default. Termination of the hiring for default does not effect L & D's right to recover from the Hirer the Charges or damages for breach of this Agreement.

9. INDEMNITIES

9.1 The Hirer indemnifies L & D against all actions, claims (including, without limitation, claims for death, personal injury and damage to property, and claims for loss of profit, indirect or consequential loss), demands, losses, damages, costs and expenses which L & D may or, but for this provision, would incur during or after the Hire Period or any subsequent period of hire in respect of:

- (a) the provision of the Equipment by L & D;
- (b) delivery, servicing, storage, and possession of the Equipment;
- (c) L & D entering the Site;
- (d) the Hirer's or any third parties' delivery, servicing, storage, possession use or misuse of the Equipment; or
- (e) breach by the Hirer, its agents or employees of any provision of this Agreement.
- (f) L & D Earthmoving Pty Ltd is not responsible for damage to underground services not exposed and identified to the operator.
- (g) Claims or complaints not recognized unless received within 7 days of incident or occurrence.

10. BREAKDOWN

10.1 In respect of Dry Hire:

- (a) any breakdown or unsatisfactory working of any part of the Equipment must be notified immediately to L & D by facsimile. Any claim for breakdown time will only be considered from the time and date shown on such facsimile;
- (b) full allowance will be made to the Hirer for any stoppage due to the breakdown of Equipment caused by the development of an inherent fault in the Equipment or fair wear and tear and for all stoppages for normal running repairs;
- (c) the Hirer is responsible for all expense involved arising from any breakdown and all loss or damage incurred due to the Hirer's negligence, misdirection or misuse of the Equipment, whether by the Hirer or its servants, and for the payment of the Charges at the appropriate idle time rate during the period the Equipment is necessarily idle due to that breakdown.

11. DISPUTES

11.1 The Hirer must, within 7 days from the completion of the Hire Period, notify L & D in writing of any alleged dispute. If the Hirer fails to comply with this provision, the Hire Period will be conclusively presumed to have been completed satisfactorily and free from any dispute.

12. PRIVACY

12.1 The Hirer authorises L & D to collect, retain, record, use and disclose commercial and/or consumer information about the Hirer, in accordance with the Privacy Act 1988, to persons and/or legal entities that are a solicitor or any other professional consultant engaged by L & D, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.

12.2 The Hirer also authorises L & D to make enquiries with respect to the Hirer's commercial and/or consumer credit worthiness; to exchange information with other credit providers in respect to previous commercial and/or consumer defaults of the Hirer and to notify other credit providers of a commercial and/or consumer default by the Hirer.

13. LIABILITY

13.1 To the extent permitted by law, L&D's liability for breach is limited, at L & D's option, to the re-supplying of the Equipment or payment of the cost of re-supplying the Equipment.

13.2 Despite any other provision of this Agreement, L & D is in no circumstances (whatever the cause) liable in contract, tort, including without limitation, negligence or breach of statutory duty or otherwise, to compensate the Hirer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings; or
- (c) any loss or expense resulting from a claim by a third party.

14. GST

14.1 If any supply made by a party under this Agreement is a taxable supply (as defined in the A New Tax System (Goods and Services Tax) Act 1999) then the recipient of the supply must pay, in addition to the consideration for the supply, an amount equal to the goods and services tax payable in connection with that supply.

15. FORCE MAJEURE

15.1 L & D has no liability to the Hirer in relation to any loss, damage or expense caused by the Subcontractor's failure to complete the work as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war or the inability of the Subcontractor's normal suppliers to supply necessary material or any other matter beyond the Subcontractor's control.

16. SEVERABILITY

16.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

17. GOVERNING LAW & JURISDICTION

17.1 This Agreement governed by the laws of the State of Queensland and all disputes arising between the Hirer and L & D will be submitted to the Brisbane registry of any competent court.

18. AUTHORITIES

18.1 Any officer, employee or agent of the Hirer who signs this Agreement or any document in connection with it is taken by L & D as having, and is deemed to have, full authority to so sign and binds the Hirer accordingly. If the Hirer is a corporation, any person signing this Agreement warrants to L & D that he or she has the Hirer's full authority to so sign.