



Southwest Global FZCO - ABN 81 417 367 490

Australia Equipment Rental Agreement

1. DEFINITIONS

In this document:

ACL means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement has the meaning given in clause 2.1.

Company means Southwest Global FZCO. ABN 81 417 367 490.

Customer means the person or persons, corporation, firm, organisation, trust or other entity hiring Equipment from the Company, as identified in the Rental Agreement.

Date Out means the date the Equipment is rented to the Customer, as specified in the Rental Agreement.

Equipment means the equipment rented by the Company to the Customer from time to time and includes any and all accessories, tools, attachments, machine control guidance devices, parts, manuals, instructions, packing and transportable materials, substitute and replacement equipment, unless indicated to the contrary in these Rental Terms.

Expected End Date means the expected end date of the rental of the Equipment by the Customer, as specified in the Rental Agreement.

GST has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Location means the location specified in the Rental Agreement for delivery of the Equipment to the Customer.

PPSA means the *Personal Property Securities Act 2009* (Cth) (as amended), and in clauses 6.2 and 10 the following words have the meanings given to them respectively in the PPSA: collateral, financing change statement, financing statement, interested person, purchase money security interest, registration, security agreement, security interest and verification statement.

PPSR means the Personal Property Securities Register established under section 147 of the PPSA.

Rental Agreement means the rental agreement between the Company and the Customer containing information including but not limited to the Equipment the Customer has rented, the applicable rental rates and any other relevant charges, the Date Out, the address for delivery of the Equipment and the Expected End Date.

Rental Period in respect of an item of Equipment means the period from and including the Date Out until the Expected End Date, which may only be extended by one or more fixed periods by the Company on request by the Customer.

2. AGREEMENT TO RENT

2.1 The Company agrees to rent the Equipment to the Customer for the Rental Period on the terms of these Rental Terms, the Rental Agreement and any Commercial Credit Application properly completed by the Customer and returned to, and accepted by, the Company (the **Agreement**).

2.2 The Agreement constitutes the entire agreement between the parties. Unless expressly agreed in writing by the Company, no other terms and conditions (including those contained in any purchase order) apply to the rental of any Equipment.

3. RENTAL AND OTHER CHARGES

3.1 The Customer will pay for the rental of the Equipment at the rates specified in the Rental Agreement for the full Rental Period.

3.2 If the Customer wishes to retain the Equipment past the Expected End Date, it must request agreement in writing from the Company to the extension prior to the Expected End Date.

3.3 If the Customer breaches the Agreement by retaining the Equipment past the Expected End Date, without prejudice to any other rights the Company may have, the Customer must pay the Company the rental charge rate for the period after the Expected End Date until the Equipment is returned to the Company.

3.4 The Customer must notify the Company when it no longer wants to rent the Equipment and the Equipment is ready to be immediately returned to, or is ready for collection by, the Company.

3.5 In some cases, the Customer will be charged for a minimum rental period, as notified to the Customer before the Rental Period begins.

3.6 If Equipment hired on a daily basis is used for more than eight hours in any day or if Equipment hired on a weekly basis is used for more than 40 hours in any week, then the Customer may be required to pay additional rental charges which, unless specified otherwise by the Company, will be calculated by multiplying the extra hours the Equipment has been used for by an hourly rate equal to one eighth of the daily rate for Equipment hired on a daily basis, or one fortieth of the weekly rate for Equipment hired on a weekly basis.

3.7 In addition to the rental charges, the Customer must pay: (a) a charge for delivery and, if necessary, return of the Equipment; (b) all Equipment operating costs (including fuels, oils and lubricants) incurred, and all consumables used, during the Rental Period; (c) any taxes, including a sum equal to the amount of any GST payable by the Company on any taxable supplies made by the Company to the Customer under or in connection with the Agreement, any duties (including stamp duty), levies, charges, fines or imposts on or in connection with the Agreement; (d) any costs or expenses reasonably incurred by the Company in enforcing the Agreement, as a result of the Customer's breach of the Agreement or in order to return the Equipment to the same condition as at the Date Out subject to fair wear and tear (including cleaning costs and rental charges if the Equipment cannot be used, or can only be used on a limited basis as a result of the Customer's breach); (e) any environmental charge or levy in respect of waste disposal specified in the Rental Agreement; (f) any Renter Protection payable under clause 10; and (g) any other costs payable under any other provision of this Agreement.

4. PAYMENT

4.1 If the Customer has a commercial credit account with the Company, the Customer must (unless otherwise expressly agreed in writing) pay all amounts that become due and payable under the Agreement within 30 days from the end of the month during which the invoice is issued.

4.2 If the Customer does not have a commercial credit account with the Company: (a) the Customer must pay the rental charges in full prior to the commencement of the Rental Period; and (b) the Customer authorises the Company to charge all amounts payable by the Customer under the Agreement to the Customer's credit card or account details provided to the Company.

4.3 If the Customer fails to pay an invoice in full by the due date, the Company reserves the right to charge interest (in addition to any other legal remedy the Company may have) on the amount outstanding calculated on a daily basis and compounded monthly at the interest rate fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) as at the due date of payment.

4.4 All costs and expenses associated with recovering overdue amounts (including but not limited to legal costs on an indemnity basis) are to be paid by the Customer as a debt due and payable to the Company.

4.5 This Agreement is a claim for payment under the *Building and Construction Industry Security of Payment Act 2002* (Vic) and / or the *Building and Construction Industry Security of Payment Act 2009* (Tas).

5. INSURANCE

The Customer must effect and maintain policies of insurance providing: (a) cover for loss or theft of, or damage to, the Equipment during the Rental Period and until the Equipment is back in the possession and custody of the Company for the full new replacement value of the Equipment; and (b) third party and public liability indemnity cover of not less than \$10,000,000. The Customer will provide a certificate of currency for these policies on request.



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6. EQUIPMENT OWNERSHIP

- 6.1 The Company retains ownership of the Equipment at all times. The Customer has the right to use the Equipment as bailee only.
- 6.2 Except as provided for in clause 11, the Customer must not sublet, transfer, assign, sell, charge, mortgage or create any type of security interest over, or otherwise deal with, the Equipment without the Company's prior written consent. It will be a condition of any consent given by the Company under this clause to a sublease of the Equipment that: (a) the Company approves the form of the sublease; and (b) the Customer takes all steps required at the Customer's cost, including registration on the PPSR, to ensure that any security interest arising under the sublease is enforceable perfected and otherwise effective under the PPSA.
- 6.3 The Company and its representatives have the right (in the name of the Customer) to enter the Location at any time on reasonable prior notice to inspect, maintain and repair the Equipment. The Customer must assist the Company in exercising these rights. If the Company reasonably suspects that the Equipment is located on premises other than the Location, the Company or its agents may enter those premises as the Customer's agent to inspect, maintain and repair the Equipment.

7. RESPONSIBILITY FOR EQUIPMENT AND ITS USE

- 7.1 The Customer is fully responsible for the Equipment during the Rental Period and until the Equipment is back in the possession and custody of the Company and must ensure that the Equipment is stored safely and securely at all times.
- 7.2 Subject to clause 10, the Customer is liable for and indemnifies the Company against: (a) any and all loss or theft of, or damage beyond fair wear and tear to, the Equipment that occurs during the Rental Period and until the Equipment is back in the possession and custody of the Company, including any costs the Company incurs in recovering and repairing or replacing (at the full new replacement cost) the Equipment and rental charges for the period during which the Equipment is being recovered and repaired or replaced; and (b) any and all loss, damage, liability, claim, cost and expense of any kind, whether incurred by or awarded against the Company, arising from the Customer's breach of the Agreement or use of the Equipment, in all cases except to the extent that the Company's breach of the Agreement or negligence causes the relevant loss, damage, liability, claim, cost or expense.
- 7.3 The Customer is responsible for the cost of repairing or replacing flat or damaged tyres and for excessive or accelerated wear and tear to tyres and track gear which in the Company's opinion is caused by the particular use made of those tyres or track gear by the Customer.
- 7.4 The Customer is responsible for all wear and tear to blades, cutting edges, buckets, bucket teeth, rippers, ripper teeth and all other ground engaging tools on hire to the Customer.
- 7.5 The Company may, from time to time, enter the Customer's premises to inspect, copy or take extracts from the books, records and files of any kind relating in any way to the use of the Equipment, its location and any dealings with the Equipment by the Customer or any person.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer agrees that it has satisfied itself before the Date Out as to the condition and suitability of the Equipment for the Customer's intended use. Subject to clause 13.2, the Company makes no representation or warranty as to the suitability of the Equipment for the Customer's intended use.
- 8.2 The Customer must ensure that the Equipment is: (a) operated safely by a suitably trained, licensed, experienced and (if necessary) certified operator, in accordance with all laws, the operator's manual and any instructions the Company gives; (b) used only for its intended purpose, in suitable terrain and in a manner which has regard to the Equipment's capabilities and limitations; (c) not used underground, in a mine or in an area where friable asbestos is present without the Company's prior written consent; (d) not used in, on or over water; (e) not removed from the Location without the Company's prior written consent; and (f) returned to the Company in the same clean condition and good working order it was in when the Customer received it.

- 8.3 The Customer must: (a) ensure that all safety information, operating instructions and notices supplied with the Equipment are attached to (or contained in) the Equipment, conveyed to and observed by any person using the Equipment and not defaced or removed from the Equipment; (b) ensure that all persons using the Equipment wear suitable clothing and protective equipment as required or recommended by the Company or the safety and operating instructions; (c) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment; (d) not use an hydraulic attachment that has not been supplied by the Company without the Company's prior consent; and (e) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the Company's instructions and the operator's manual.
- 8.4 The Customer must use best endeavors to prevent hazardous material (including asbestos) from contaminating the Equipment. Any apparent risk of contamination must immediately be notified to the Company. If Equipment may have been contaminated, the Customer must decontaminate it at its own cost and notify the Company of decontamination processes applied. If in the Company's reasonable opinion the Equipment has not been properly decontaminated or is incapable of effective decontamination, the Customer will be charged for the proper decontamination or the new replacement cost of the Equipment at the option of the Company.
- 8.5 The Customer warrants that all information provided to the Company is true and correct and that the signatory is duly authorized to sign the Agreement on behalf of the Customer. Any person signing any document forming part of the Agreement on behalf of the Customer: (a) warrants that he or she has the Customer's authority to contract with the Company on behalf of the Customer; and (b) indemnifies the Company against all losses, costs and claims incurred by the Company if that person does not have that authority.

9. EQUIPMENT BREAKDOWN

- 9.1 If the Equipment breaks down or becomes unsafe to operate, the Customer must: (a) immediately notify the Company; (b) stop using the Equipment and ensure it does not sustain any further damage; (c) prevent the Equipment from causing injury or damage to any person or property; and (d) not repair or attempt to repair the Equipment without the Company's prior written consent.
- 9.2 The Company will use reasonable endeavors to repair or replace the Equipment at the Company's discretion as soon as reasonably practicable after receiving notice under clause 9.1. If the Equipment has broken down or become unsafe to use as a result of the Customer's negligence or breach of the Agreement, the Customer will be liable for the costs associated with the repair or replacement of the Equipment and for the rental charges for the period during which the Equipment is being repaired or replaced.

10. PPSA

- 10.1 The Customer acknowledges that the Agreement may be a security agreement in respect of which the Equipment is the collateral.
- 10.2 The Customer understands that the Company may effect and maintain registrations on the PPSR in respect of security interests (including purchase money security interests) created or contemplated by the Agreement in the Equipment and any proceeds from dealing in the Equipment.
- 10.3 The Customer waives its right under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest in respect of the Equipment.
- 10.4 The Customer must not without the Company's prior written consent: (a) register a financing change statement in respect of a security interest created or contemplated by the Agreement; or (b) register, or allow to be registered, in a third party's favor a financing statement or financing change statement in respect of the Equipment.
- 10.5 The Customer and the Company agree to contract out of the enforcement provisions referred to in section 115(1) of the PPSA (to the extent permitted by section 115 and if they would otherwise have



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applied to the enforcement of a security interest arising under or in connection with the Agreement).

10.6 The Customer and the Company agree, to the extent permitted by section 115(7) of the PPSA, to contract out of Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)).

11. SECURITY

11.1 In order to secure the Customer's due and punctual performance of all its obligations to the Company (including the payment of all monies owing) under the Agreement or otherwise, the Customer charges all of its legal and beneficial interest (present and future) in any and all real property.

11.2 On the Company's request, the Customer must at its cost execute any documents and do all things reasonably required by the Company to more fully document or better secure a charge arising under clause 12.1 on such terms as the Company sees fit or to register a charge or security interest in respect of any of the Customer's real property. The Customer consents to the Company lodging caveats in respect of any of the Customer's real property.

11.3 The Customer appoints the Company or an authorized officer of the Company to be its attorney for the purpose of executing and registering such documents.

12. TERMINATION AND REPOSSESSION

12.1 Either party may terminate the Rental Agreement or the Agreement as a whole immediately on written notice to the other party if: (a) the other party breaches the Rental Agreement and fails to remedy that breach within 5 days of receiving notice to do so; or (b) the other party becomes insolvent, bankrupt, dies, ceases to carry on business, enters into liquidation or administration or has a receiver appointed to any of its assets.

12.2 The Company may terminate the Rental Agreement or the Agreement as a whole immediately on written notice to the Customer if in the Company's reasonable opinion the Equipment is in imminent danger of destruction or material damage or the Company's interest in the Equipment is likely to otherwise be adversely affected.

12.3 The parties' termination rights are in addition to any other rights or remedies they have under the Agreement or at law or in equity.

12.4 Following termination of the Rental Agreement or the Customer notifying the Company that the Equipment is ready to be immediately returned to, or is ready for collection by. The Customer authorizes the Company to enter the Customer's premises to enable the Company to repossess the Equipment. If the Company reasonably suspects that the Equipment is located on premises other than the Location, the Company or its agents may enter those premises as the Customer's agent to repossess the Equipment. The Customer indemnifies the Company from and against all costs, claims, actions and liabilities the Company suffers or incurs as a consequence of terminating the Rental Agreement or the Agreement or repossessing the Equipment, including legal costs on an indemnity basis.

13. LIABILITY OF COMPANY

13.1 To the maximum extent permitted by law, all warranties, conditions, representations and guarantees (whether express or implied) in respect of the Agreement or the Equipment are excluded. If a condition, representation or guarantee is imposed by law and is not able to be excluded, as far as the law permits the Company's liability for a breach of that condition, representation or guarantee will be limited to the repair or replacement of the Equipment (at the Company's election).

13.2 Nothing in this Agreement affects any rights or remedies the Customer may have under the ACL or any other law if, and to the extent that, those rights or remedies may not lawfully be excluded or modified.

13.3 The Company's liability for consequential, special or indirect loss, loss of profits, loss of expected savings, loss of business or opportunity or business interruption arising under or in connection with the Agreement, whether in contract, tort (including negligence) at law or in equity, and whether or not foreseeable, is excluded to the maximum extent permitted by law.

14. PRIVACY

14.1 The Company will comply with the Australian Privacy Principles (as amended or replaced) in all dealings with the Customer.

14.2 The Customer agrees and acknowledges that the Company will collect personal information about the Customer and may use and/or disclose that information to: (a) provide and market goods and services to the Customer; (b) assess the Customer's credit worthiness; and (c) assist the Company in the collection of overdue payments. If the Customer does not provide the personal information requested then the Company may refuse to enter into the Agreement. The Company may disclose the personal information to other related entities or to Caterpillar Inc and its related entities in Australia, Singapore and the United States of America.

14.3 The Company's Privacy Policy contains information about how the Customer may access the personal information about the individual that is held by the Company and seek correction of such information if required. It also contains information about how the Customer can complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the Company and how the Company will deal with the complaint. The Customer may obtain a copy of the Company's Privacy Policy by request or by visiting www.southwest-global.com.

14.4 For privacy related enquiries, please contact: Southwest Global FZCO, Phone: +9714 3433386, email: info@southwestglobalfzco.com.

15. VARIATION

The Company may vary or replace these Rental Terms at any time by publishing the varied version at www.southwest-global.com. The varied Rental Terms will apply to any Rental Agreement entered into after (but not before) the varied Rental Terms are published. No other variations to the Agreement can be made without the written agreement of the Company and the Customer.

16. NO RELIANCE

Subject to clause 13.2, the Customer acknowledges that neither the Company nor any person acting on behalf of the Company has made any representation or other inducement to the Customer to enter into the Agreement and the Customer has not entered into the Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for any representations contained in this Agreement.

17. EXCLUSIONS FROM CERTAIN CONTRACTS

If the Agreement is a 'consumer contract' or 'small business contract' as defined in the ACL or the *Australian Securities and Investments Commission Act 2001* (Cth), clause 11 will not apply to the Agreement.

18. GENERAL

18.1 The Agreement is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

18.2 If any part of the Agreement becomes void or unenforceable then that part is severed so that all parts which are not void or unenforceable remain in full force and effect.

18.3 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

18.4 Any indemnity under the Agreement is independent and survives termination of this document.

18.5 Time is of the essence in respect of the Customer's obligations under the Agreement.