

TACEX HIRE AGREEMENT

1 The Hire Agreement

These Terms of Hire, together with each Hire Schedule provided to You by Us, whether signed or not; and any Special Conditions specific to the type of Machinery/Equipment You have hired, set out the terms of the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement

2 Interpretation of Words in this Contract

"ACL" means the Australian Consumer Law <https://consumer.gov.au/consumers-and-acl>

"Chain of Responsibility" means Chain of Responsibility Laws 2018 <https://nhvr.gov.au/law-policies/heavy-vehicle-national-law-and-regulations>

"Consumer" means a consumer as that term is defined in the ACL.

"Consumer contract" has the same meaning as in the ACL.

"Consumer Guarantees" means the guarantees relating to the supply of goods and services contained in the ACL.

Commencement – The date when the Customer takes possession of the Equipment/Machinery.

Customer–refers to the person, firm, organisation, partnership, corporation or other entity (including trust) hiring the Equipment/Machinery from TACEX Hire as identified in the Hire Schedule.

"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment. "Email Address" means the email address you registered with us upon booking of a hire.

"Equipment" – Means any kind of accessory equipment, tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: Drilling; trenching, hammering, sleeper grabbing, landscaping, plumbing, fencing, lifting, welding, face mask, compaction, concrete and masonry, generation and power distribution and includes tools and parts and accessories for any of the above mentioned equipment.

"Fair Wear and Tear" – is defined in <https://www.workplacecompliance.com.au/fair-wear-and-tear-training>

"Fuel Charge" – The amount payable for the Fuel used by diesel/petrol powered machinery in the reasonable opinion of TACEX HIRE during the Hire Period. This fuel charge can be negated by pre-purchasing a Fuel Credit during the initial hire booking. Any additional fuel charge will be referenced from the Consumer Business Services Fuel Pricing Website https://fuelprice.io/sa/adelaide/?fuel_type=diesel on the completion day of hire to hire the Equipment/Machinery;

"Hire Charge" or "Hire Charges" means the rates and charges payable by You for the hire of the Equipment.

"Hire Completion Date" Is the date chosen during online booking via the TACEXHIRE.com.au website by You as the Hire Period to end. This date is set out in the Hire Schedule which will be forwarded electronically to the email address provided to us.

Hire Period–will be defined as the Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended utilising the tacexhire.com.au website. When a Customer requests an amendment and if TACEX HIRE agrees, TACEX HIRE will issue an amended electronic Hire Schedule for any extension of the Hire Period.

"Hire Schedule" will be emailed by Us to You which includes details of the Equipment/Machinery You have hired, the Hire Charge, any other applicable charges, the Hire Commencement and Completion Date and time, specific maintenance requirements of the hired equipment/machinery, links to safe operating procedures, maintenance requirements "OBMS" if required, additional fuel charges, delivery or pick up locations, a link to the Terms & Conditions, Hire Terms and any other pertinent information deemed appropriate from time to time.

Long Term Hire-is defined as twenty two days or greater. This length of hire period is only available via negotiation between you the customer and Tacex Hire management.

Machinery – A Mini Excavator, Excavator, Scissor lift, Plant Trailer or Skid Steer Loader.

“PPSA” means the Personal Property Securities Act 2009 <https://www.legislation.gov.au/Details/C2014C00273> and any other legislation and regulations in respect of it. Hire Agreement clause’s 9.2, 10 and 31 have the respective meanings given to them in the PPSA:

- A financing change statement,
- financing statement,
- purchase money security interest (or “PMSI”),
- register,
- registration; and
- security interest.

Remote Area – Any location which is more the 100 kilometres from the TACEX HIRE branch from where the Equipment/Machinery is hired.

Soiled – An item of Machinery that has been returned at the end of the Hire Schedule and has mulch, soil, mud, grasses embedded within the running tracks/wheels or within the enclosed cabin. **NOTE TO CUSTOMER:** A pre purchased Soiling Fee can be purchased at the time of booking to avoid excess Soiled or Heavily Soiled additional charges being applied.

(Heavily) Soiled – An Item of Machinery that has been returned at the end of the hire schedule and has visible salty sand, concrete splatter, gyproc powder or visible metal grinder filings.

NOTE TO CUSTOMER: A pre purchased soiling fee can be purchased at the time of booking to avoid excess Soiled or Heavily Soiled Charges being applied. [Clause 10](#) applies to Contaminated Machinery.

“New Replacement Cost” means the cost to replace the Equipment/Machinery with a new item of the same Equipment/Machinery, or if the same is not available, then the cost to replace the Equipment/Machinery with a new item of Equipment/Machinery of the same quality, function and capacity.

“OBMS” is the TACEX HIRE “Off-Base Maintenance Schedule” carried out by Us (or Our contracted agent) for any Long Term Hire of Excavator, Mini Excavator Plant Trailer, Skid Steer Loader, Auger, Hammer, Drilling or Welding Bundle. The OBMS involves Pre Notified attendance on site by Our service team to conduct routine Equipment/Machinery servicing and general maintenance requirements.

“Regulatory Authority” means any public authority or government agency responsible for regulating the performance of works described.

“Related Body Corporate” has the same meaning as in the Corporations Act 2001 Section 50.

“Road Law” means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the Heavy Vehicle National Law.

“Small Business Contract” has the same meaning as in the ACL (as amended).

“Transport Movement” means the period of time during a delivery in which Equipment is being transported by road, which is governed by Road Law and is subject to the Chain of Responsibility.

TACEX HIRE –means company TACEX HIRE PTY LTD ABN 53 652 094 570

“We/Us/Our” means TACEX HIRE PTY LTD ABN 53 652 094 570 PO Box 159 Mitcham SA 5062 any Related Body Corporate and their successors and assigns.

“You/Your” refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment/Machinery from Us. The reference to “You/Your” includes any of your employees, agents or contractors.

3 The Hire Period

- 3.1 The Hire Period commences on the earlier of the following:
 - 3.1.1 when You take possession of the Equipment/Machinery; or
 - 3.1.2 if You request delivery and collection of the Equipment/Machinery, the time We deliver the Equipment to the address in the Hire Schedule.
 - 3.1.3 The Hire Period is for an indefinite term and ends when the Equipment is back in Our control or possession.
 - 3.1.4 The Hire Period includes weekends and public holidays.
- 3.2 A minimum Hire Period may apply in respect of certain items of Equipment (“Minimum Hire Period”). We will advise you at the time of hiring if a Minimum Hire Period applies. If You return the Equipment to Us before the expiration of the Minimum Hire Period, You are required to pay all Hire Charges in respect of the Minimum Hire Period.

4 Calculation of Hire or Additional Charges

- 4.1 You will pay Us for the hire of the Equipment/Machinery at the Hire Charge set out in the Hire Schedule in Australian Dollars.
- 4.2 The Hire Schedule will specify the rate which will apply to You and the method of calculation.
- 4.3 Additional Hire Charges as set out in the Hire Schedule will apply if an Excavator is used for more than 8 hours per day.
- 4.4 Additional Hire Charges as set out in the Hire Schedule will apply if the Excavator Attachment B1S Hammer is used for more than 3 hours per day.
- 4.5 Additional Hire Charges as set out in the Hire Schedule will apply if the Excavator Attachment Auger A11 is used for more than 5 hours per day.

Note to Customer: Evidence of use is taken from the CAT Link which supplies Excavator Engine operating times and applicable Auxiliary accessories operation times if attached.

- 4.6 You will be charged for the hire of Equipment/Machinery for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges after the expected Hire Completion Date if You have not returned the Equipment to Us by the Hire Completion Date. This obligation survives termination of the Hire Agreement.
- 4.7 Hire Charges will commence from the Hire Period and continue until the date You either return the Machinery/Equipment to the location you collected it from, or if at the time of booking a Delivery/Pick up was purchased the collection time afforded will be 45mins.

Example 1. A 1 day hire with delivery has been scheduled for 7:00am on Monday 3rd the pick up collection time will be on Tuesday the 4th between 7:00am +2hrs. This gives the TACEX ground Handling Agent time to arrive at the pick up location. When the TACEX Ground Handling Agent arrives 45 minutes will be afforded to ensure a secure load of the Mini Excavator onto the trailer, collect all hired equipment, service accessories stated on the Hire Schedule. If the Mini Excavator/Machinery is not available for collection at the time the TACEX Ground Handling Agent arrives for collection additional fees may be payable. These fees will be stated on the Hire Schedule emailed at the time of booking.

5 Additional Charges if Required

- 5.1 In addition to the Hire Charges You agree to pay:
- 5.1.1 if You do not return the Equipment in clean and good working condition, Soiled or Heavily Soiled charges may be applied.
 - 5.1.2 for any consumables, fuel, brake pads
 - 5.1.3 if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You. Refer to [Clause 4.7 Example 1](#)
 - 5.1.4 a charge for refilling fuel tanks;
 - 5.1.5 any stamp duty or GST arising out of this Hire Agreement;
 - 5.1.6 any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
 - 5.1.7 charges for payment made by credit card;
 - 5.1.8 an environmental charge in relation to any item of Equipment/Machinery, as detailed in the Hire Schedule;
 - 5.1.9 any reasonable charges incurred by Us if we are unable to carry out "OBMS" on the Equipment during normal working hours.

6 Payment

- 6.1 For hire periods of time less than or equal to 21 days You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement at the time of booking online.
- 6.2 For Long Term Hire periods You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement each 14 day period. The first 21 days will be paid in full at the time of booking and every 14 days of hire thereafter will be deducted from your nominated form of payment.
- 6.3 If these hire charges are not paid a reminder notice will be emailed detailing instructions to remedy the oversight
- 6.4 If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:
- 6.4.1 interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
 - 6.4.2 any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.
- 6.5 We are entitled to set off against any amount We owe You any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.

7 Your Obligations to US

NOTE TO CUSTOMER: Prior to your first Hire of Equipment/Machinery you will be required to watch the related TACEX HIRE safety/operational video/s appropriate to the Hire which provides instruction on the Safe operation of the Machinery or Equipment.

- 7.1 This Hire Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us via email at info@tacexhire.com.au
- 7.2 You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment/Machinery is used only for the purpose for which it was designed by the manufacturer. Subject to [clauses 13.2 and 13.3](#), We make no representations and give no guarantee or warranty that the Equipment/Machinery is suitable for Your intended purpose.
- You must:**
- 7.3 Report and provide full details to Tacex Hire of any accident or damage to the Equipment/Machinery on the day of the accident or damage occurring. To be provided via an email to info@tacexhire.com.au;
- 7.4 By providing payment and electronically confirming the Terms & Conditions during the online booking process You confirm acceptance of these Hire Agreement Conditions;
- 7.5 operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- 7.6 ensure persons operating the Equipment/Machinery are suitably trained in its safe and proper use, qualified to use and where necessary, hold a current licence to operate Machinery on public area's;
- 7.7 wear suitable clothing and protective equipment when operating the Equipment/Machinery as required or recommended by Us or the manufacturer;
- 7.8 ensure that no persons operating the Equipment/Machinery are under the influence of drugs or alcohol;
- 7.9 conduct a job safety analysis prior to using the Equipment/Machinery;
- 7.10 ensure that no persons carry illegal, prohibited or dangerous substances in or on the Machinery; and
- 7.11 display all safety signs and instructions (as required by law) ensuring that all instructions and signs are observed by operators of the Equipment/Machinery;
- 7.12 clean, re-fuel, lubricate and keep the Machinery or Equipment in good condition and in accordance with the manufacturer's and Our instructions provided to you at Your own cost;
- 7.13 not in any way alter, modify, tamper with, damage or repair the Equipment/Machinery without Our prior written consent;
- 7.14 not deface, remove, vary or erase any identifying marks, plate, number, notices, QR Codes or safety information, on the Equipment;
- 7.15 not remove fuel or oil tank caps, bund plugs or seals without replacing immediately after replenishment from the Equipment and ensure that they are in place when You return the Equipment; and
- 7.16 At all times during the Hire Period, You must store the Equipment safely and securely;
- 7.17 You will allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during normal working hours. If We cannot inspect or maintain the Equipment/Machinery during normal working hours, then additional charges may apply. You can also request to conduct a joint inspection of the Equipment/Machinery with Us at the end of the Hire Period;
- 7.18 Whenever You are moving Equipment/Machinery, You must ensure the safe loading, securing and transporting in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe the safety directions advised by Us and/or the manufacturer of the Equipment/Machinery to ensure its safe loading and handling;

- 7.19 You must not remove the Machinery/Equipment from the State or Territory in which You hired it without Our consent. Consent may be obtained via email at info@tacexhire.com.au;
- 7.20 Excavators, Skid Steer Loaders and Welders contain on-board devices (each a GPS Device) which enable them to be connected to the internet and to send commands to and receive certain geolocation data from a global positioning system and other data including but not limited to speed, battery voltage and ignition status, Auxiliary attachment use
- 7.20.1 Keys provided to customers for machinery will have an Apple **AirTag** keyring attached. The Apple **Airtag** is designed to discourage unwanted tracking. When you take our Tacex **AirTag** your iPhone will notice it's travelling with you and send you an alert. After a while, if you still haven't deactivated this message on your Iphone the **AirTag** will start playing a sound to let you know it's there. The **AirTag** is not there to track your movements however if you misplace the keys we here at Tacex Hire might be able to locate them using the Apple **AirTag** .*(We hope this will not be an inconvenience to you)*
- 7.21 By hiring from TACEX HIRE, the Customer expressly consents to TACEX HIRE's use of the GPS Device on hired Equipment/Machinery to collect, use and retaining information from the GPS Device in accordance with our Privacy Policy, and that TACEX HIRE is the owner of that data subject to your rights as set out in our Privacy Policy.
- 7.22 You must not use the Equipment/Machinery off-shore, in a mine, in an area where known asbestos removal is being undertaken or move the Equipment over water without Our prior written consent, which may be reasonably withheld.
- 7.23 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- 7.24 You must use best endeavours to ensure that the Equipment/Machinery is not contaminated with any hazardous substances (including asbestos, chemicals or substances as stated in the Dangerous Substances (Dangerous Goods Transport) Regulations 2008. Subject to [clause 10.1](#), You must advise Us of any risks of:
- 7.24.1 hazardous substance contamination to the Equipment/Machinery as soon as they become apparent. Where Equipment/Machinery may have been subjected to contamination, You must effectively decontaminate, as well as provide Us with video footage/ photographic evidence showing details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment/Machinery has not been decontaminated, You will be charged for decontamination charges by a suitable organisation capable of safely and effectively cleaning the hired Equipment/Machinery.
- 7.24.2 If, in Our opinion acting reasonably, the Equipment/Machinery has is not capable of being decontaminated, You will be charged for replacement value of the hired Equipment/Machinery.
- 7.24.3 Any electrical equipment provided by Us will be tested and tagged before it is hired to You, however during the Hire Period, You are responsible for arranging the re-testing and re-tagging of any electrical equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost. You will be liable for any damage caused to the Equipment resulting from incorrect testing.
- 7.25 Indemnify TACEX HIRE for any injury loss/or damage to the extent caused or contributed to by the Customer to persons or property in relation to the Equipment/Machinery and its operation and have adequate finances to cover all liabilities incurred as a result of the use of the Equipment/Machinery; Insurance coverage is not compulsory however highly recommended to cover the customer in the event of total loss, theft or fire.
- 7.26 The hirer is responsible for 'dial before you dig'. The hirer is responsible for locating any underground services and for any damage caused to same while operating the hired Equipment/Machinery. *(Caution dial before you dig does not provide location information accurately and we recommend you utilise the services of a frequency underground cable locater)*

8 Ownership Of The Equipment/Machinery

- 8.1 Except as detailed in [clause 8.4](#), You acknowledge that We own the Equipment/Machinery and in all circumstances We retain title to the Equipment. Your rights to use the Equipment are as a bailee only. (Bailee is a person or party to whom goods are delivered for a purpose, such as custody or repair, without transfer of ownership). The hirer is Bailee.
- 8.2 Except in the circumstances set out in [clause 9](#), You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way;
- 8.3 In no circumstances will the Equipment/Machinery be deemed to be a fixture.
- 8.4 You acknowledge that We may hire or lease Equipment/Machinery from a third party if we cannot provide them to You ("Third Party Owner"), and if this occurs, title in the Equipment/Machinery remains with the Third Party Owner.

9 Personal Properties Security Act

You:

- 9.1 acknowledge that We may register any actual or impending PMSI under the PPSA in respect of all Machinery; and
- 9.2 consent to Us registering our PMSI under the PPSA and will do all things reasonably necessary to assist Us to register Our security interest. We will be responsible for:
 - 9.2.1 the preparation and registration of the financing statement or financing change statement; and payment of any fees associated with the registration, and You waive the right to receive from Us verification of the registration pursuant to section 157(3)(b) of the PPSA.
- 9.3 If You sub-hire the Equipment to Your agent, contractor subcontractor or any third party ("Sub-hire") and the Sub-hire is a security interest under the PPSA, You agree that You will protect Our interests in the Equipment by:
 - 9.3.1 registering a security interest itself; or
 - 9.3.2 assigning, by this clause, to Us all rights as bailor, to enforce against an agent, contractor or subcontractor.
- 9.4 You have an obligation to give Us notice if another party with a security interest in the Equipment seizes or otherwise deals with Our PMSI in the Equipment. Notice will be considered as received if you forward an email with the relevant details to info@tacexhire.com.au
- 9.5 If You grant any security interest in the Equipment to another party, that other party must acknowledge the priority of Our PMSI.
 - 9.5.1 The parties agree that neither party is required to give notice to the other under the PPSA unless the obligation to give the notice cannot be excluded.

10 Responsibility of the Equipment or Machinery

- 10.1 You are responsible for any loss, theft or damage to the Equipment or Machinery from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by Our actions.

11 Return Of Equipment

- 11.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment or in Our view (acting reasonably) the Equipment is not decontaminated, We will charge You a Soiled or Heavily Soiled cost in accordance with clause 7.24 and You may be liable to continue to pay the Hire Charges for that portion of the Hire Period during which the Equipment is being cleaned by Us.
- 11.2 Except in the circumstances set out in [Clause 12.1](#) below, it is Your responsibility to return the Equipment to the Tacex Hire branch You hired it from during normal business hours.
- 11.3 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

12 What To Do If Equipment/Machinery Breaks Down

- 12.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
 - 12.1.1 immediately stop using the Equipment/Machinery and notify Us by closely following the instructions provided in the Hire Schedule emailed to you at the time of online booking;
 - 12.1.2 take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - 12.1.3 take all steps necessary to prevent any further damage to the Equipment/Machinery itself; and
 - 12.1.4 not repair or attempt to repair the Equipment/Machinery without Our written consent.
 - 12.1.5 Except if [clause 12.1](#) applies, upon receiving notice from You under [clause 12.1.1](#), We will:
 - a) take all reasonable steps to repair the Equipment/Machinery or provide suitable substitute Equipment/Machinery as soon as reasonably possible after being notified by You; and
 - b) not impose a Hire Charge for that portion of the Hire Period for which the Equipment/Machinery was broken down or unsafe; nor
 - c) the costs associated with any repair or replacement of the Equipment/Machinery.

13 What To Do If Equipment Is Lost, Stolen Or Damaged

- 13.1 If the Equipment/Machinery is damaged, unsafe to use as a result of Your acts or omissions, (or the acts or omissions of Your employees or contractors) or if the Equipment/Machinery is lost, stolen or damaged beyond [fair wear and tear](#) during the Hire Period, You will be liable for:
 - 13.1.1 any costs incurred by Us to recover and repair or replace the Equipment; and
 - 13.1.2 the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced,
- 13.2 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
 - a) personal injury;
 - b) damage to property; or
 - c) a claim by a third party,
- 13.3 in respect of Your hire or use of the Equipment/Machinery or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

- 13.4 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement;
- 13.5 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

14 Remote Area Maintenance

- 14.1 This clause 14 applies if You hire Equipment for use at a Remote Area Location.
- 14.2 The "OBMS" for all long Term Machinery Equipment located at a Remote Area Location will be subject to a per kilometer charge both to and from the premises nominated by You. There will be no charge for the first 50 km either way.
- 14.3 The "OBMS" for multiple items of Machinery or Equipment which are located at the Remote Area Location will only be charged as one call out.
- 14.4 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Machinery and Equipment in accordance with [clause 7.12](#), including but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.), checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 14.5 If the Equipment breaks down at a Remote Area Location, You will also pay Us the costs associated with any attendance to the Remote Area Location in addition to any other costs payable under this Hire Agreement.

15 Recovery of Machinery or Equipment

- 15.1 If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under [clause 16](#), We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

16 Termination of Hire Agreement

- 16.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- 16.1.1 that other party breaches any term of the Hire Agreement (including for breach of payment terms pursuant to [clause 6.2](#) and fails to remedy the breach within 7 days of written notification of the breach; or
 - 16.1.2 that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights You may have under the Corporations Act 2001.
- 16.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.
- 16.3 We may terminate the Hire Agreement immediately if You or any third party has made a false statement in, or breached any provision of the Relevant Documents.
- 16.4 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

17 Equipment That Is Collected Or Delivered In A Damaged or Defective Condition

- 17.1 If You collect or receive the Equipment and find that it is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

18 Security

- 18.1 Except where [clause 30](#) applies:
- 18.2 as security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property;
- 18.3 without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property (“Charged Property”) and against the event that You fail to do so within a reasonable time of being so requested, You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments. You consent to the lodgement by Us of a Caveat noting our interest on the Charged Property; and
- 18.3.1 You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage document.

19 Governing Law

- 19.1 The Hire Agreement is governed by the laws of South Australia and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

20 Privacy

- 20.1 We will comply with the Australian Privacy Principles in all dealings with You.
- 20.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, Builders Licence Number, Plant Equipment Insurance Policy details. You consent to Us using Your personal information in order to:
- 20.3 fulfill functions associated with the hire of Equipment:
- 20.3.1 provide services to You;
- 20.3.2 prevent theft of Our Equipment;
- 20.3.3 enter into contracts with You or third parties, and
- 20.3.4 to market to You and maintain a client relationship with You.
- 20.3.5 You also consent to Us disclosing Your personal information:
- 20.3.6 to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- 20.3.7 You have the right to access the personal information We hold about You.
- 20.3.8 Copies of Our Privacy Policy are available on our website tacexhire.com.au under Legals

21 Chain of Responsibility Obligations

You must:

- 21.1 comply with all Chain of Responsibility legislation and must ensure that any activity relating to the Machinery (including scheduling, load restraint, Transport Movement) is undertaken in accordance with Your Chain of Responsibility obligations;
- 21.2 ensure that any of Your subcontractors (where You subcontract any Transport Movement under this Hire Agreement) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 21

22 Force Majeure

- 22.1 Subject to clause 22.2, neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- 22.2 Nothing in clause 22.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

23 Entire Agreement

- 23.1 The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with [clause 25](#).

24 No Reliance

- 24.1 You acknowledge that neither We nor any person acting on Our behalf have made any representation promises, agreements or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for statements contained in this Hire Agreement.

25 Variation to Hire Agreement

- 25.1 To the extent that a variation to this Hire Agreement is not detrimental to You, from time to time, We may vary this Hire Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms via email to the address provided by You to Us. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Hire Agreement must be agreed in writing by You and Us.

26 No Waiver of Rights

- 26.1 No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

27 Severability

- 27.1 If any part of this Hire Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

28 Signing This Hire Agreement

- 28.1 The person signing or accepting the terms of any document which forms part of the Hire Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.
- 28.2 Except where clause 31 applies, the person signing or accepting the terms of this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.
- 28.2.1 Signing this hire agreement is considered as complete when a payment for hire has been made via our website or upon accepting the Equipment/Machinery upon delivery, or at the location of pick up.

29 Claim for Payment

- 29.1 This Hire Agreement is a claim for payment under the Building & Construction Industry Security of Payments Act
- 29.2 Security of Payments Act SA 2009

30 Assignment

- 30.1 We may assign this Hire Agreement to any third party without Your consent (including a Related Body Corporate).
- 30.2 Where You are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, then we may assign this Hire Agreement to a Related Body Corporate providing that Related Body Corporate has the financial and operational resources to comply with the terms of the Hire Agreement. If You have reasonable grounds to believe the assignment will be detrimental to Your rights, You may terminate this Hire Agreement without penalty by giving Us 28 days written notice that You wish to terminate the Hire Agreement.

31 Provisions of This Agreement Excluded from Consumer Contracts and Small Business Contracts

- 31.1 The following provisions will not apply if the Hire Agreement is a consumer contract or a small business contract:
- a) clause 16.2 (Termination on 24 hours' notice)
 - b) clause 18 (Security);
 - c) clause 28 (Signing this Hire Agreement); and
 - d) clause 30.2 (Assignment).