

TACEX HIRE AGREEMENT

1 The Hire Agreement

These Terms of Hire, together with each Hire Schedule provided to you by Tacex Hire, and any Special Conditions specific to the type of Vehicle, Machinery, Trailer or Equipment You have hired, set out the terms of the hire agreement (the "Hire Agreement") between you and Tacex Hire. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Tacex Hire, 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>

"**Authorised Operator**" - means an individual granted approval to operator a Vehicle/Machinery/Trailer or hired equipment by the person, company or entity accepting the Hire Agreement.

"**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.

"**Class C Licence**" - refer to the <https://www.sa.gov.au/topics/driving-and-transport/licences/licence-details/driver-s-licence-classes>

"**Commencement**" - The date when the Customer takes possession of the Vehicle, Machinery, Trailer or Equipment.

"**Contamination**" - Evidence of a Dangerous Goods spill within or over a Vehicle/Machinery/Trailer or item of Equipment as described by the Transport of Dangerous Goods manual

"**Customer**" - refers to the person, firm, organisation, partnership, corporation or other entity (including trust) hiring the Vehicle, Machinery, Trailer or Equipment 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 by the Tacex Hire Fair Wear and Tear policies located at www.tacexhire.com.au.

"**Fuel Charge**" - The amount payable for the fuel used by diesel/petrol powered vehicle/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, or by returning the fuel tank full. Any additional Fuel Charges 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 Vehicle/Machinery or Equipment with an addition of \$15 administration fee.

"**Hire Charge(s)**" - means the rates and charges payable by You for the hire.

"**Hire Completion Date**" - Is the date chosen during booking 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.

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

"**Long Term Hire**" - is defined as seven days or greater. This length of hire period can be negotiation between you the customer and Tacex Hire management.

"**Late Return Charge**" means a single charge payable by You if You do not return the Vehicle on the date and by the time shown on the Hire Schedule or an alternative return date and time as agreed with Tacex Hire

"**Damage Waiver Basic**" - means the Damage Waiver described on the Hire Schedule as "DWB" which reduces Your

financial responsibility for damage of hired "Equipment" to the quoted repair value or 40% of the items replacement cost.

"Damage Waiver Tacex Plus" "DWTP" - limits the liability of the customer to \$1000 (vehicles requiring class C license) or \$2000 (Vehicles/Machinery requiring other than class C license).

"Machinery" - A Mini Excavator, Excavator, Scissor lift, or Skid Steer Loader.

"Pre Hire Inspection" - Conducted by an authorised Tacex Hire Employee or Subcontractor whom confirms the safety and operational condition of the hire Vehicle, Machinery, Trailer or Equipment prior to the customers collection.

"OBMS - is the Tacex Hire "Off-Base Maintenance Schedule" - carried out by Us (or Our Subcontracted 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 Vehicle, Machinery, Trailer or Equipment servicing and general maintenance requirements.

"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.

"Remote Area" - Any location which is more the 100 kilometers from the Tacex Hire branch from where the Vehicle, Machinery, Trailer or Equipment is hired.

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

"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).

"Terrorist Act" has the meaning in section 100.1 of the Criminal Code Act 1995 (Cth) as at 1 March 2018;

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

"Soiled" - a Vehicle, Machinery, Trailer or Equipment that has been returned at the end of the Hire Schedule and has mulch, soil, mud, grasses embedded within the running tracks/wheels, within the enclosed cabin or buckets or auger drills. Pictures of soiled Machinery are available on www.tracexhire.com.au. A pre purchased "Cleaning Fee" can be purchased at the time of booking to avoid excess Soiled or Heavily Soiled additional charges being applied.

"Heavily Soiled" - not to be confused with Soiled, A Heavily Soiled Vehicle, Machinery, Trailer or Equipment will show signs of visible salty sand, concrete splatter, gyproc powder, visible metal grinder filings, paint splatter, excessive mud splattered over cabin, booms or attached accessories including hammers or augers. This also includes excessive mud, clay or any salt on a trailer used to transport machinery or equipment.

"Tacex Hire" - means company TACEX HIRE PTY LTD ABN 53 652 094 570 PO Box 159 Mitcham SA 5062 any Related Body Corporate and their successors and assigns.

"Trailer" - means any registered unpowered vehicle towed by another for the purpose of transporting machinery, equipment, or any other goods.

"Vehicle" - means the vehicle described on the Hire Schedule (or any substitute vehicle), and includes its parts, components, keys, remote opening devices, any tag or device for paying electronic tolls, all Accessories and contents supplied by Tacex Hire unless the context requires otherwise;

"You/Your" - refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Vehicle, Machinery, Trailer or Equipment 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 Vehicle, Machinery, Trailer or Equipment; or

- 3.1.2 if You request delivery and collection of the Vehicle, Machinery, Trailer or Equipment, at the time We deliver 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.

4 Calculation of Hire or Additional Charges

- 4.1 You will pay Us for the hire of the Vehicle, Machinery, Trailer or Equipment as per 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 or Skid steer Loader is used for more than 8 engine hours per day.
- 4.4 Evidence of use is taken from the CAT Link which supplies Excavator Engine operating times You will be charged for the hire of Vehicle/Machinery or Equipment 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.
- 4.5 Hire Charges will commence from the Hire Period and continue until the date You either return the Vehicle, Machinery, Trailer or 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.
- 4.6 *A 1 day hire with delivery has been scheduled for 8:00am on Monday 3rd the pick up collection time will be on Tuesday the 4th between 8:00am +2hrs. This gives the Tacex hire ground Handling Agent time to arrive at the pick up location. When the Tacex hire Ground Handling Agent arrives 45 minutes will be afforded to ensure a secure load of the Machinery onto the trailer, collect all hired equipment, service accessories stated on the Hire Schedule. If the 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. It is the customers responsibility to ensure a safe area for collection.*
- 4.7 *A 2 day hire with a collection scheduled for 8:00am on Monday 3rd returning on Tuesday the 4th time between 3:00pm +2hrs. Should the drop off be delayed so as the collection point is after hours for the return, the customer will be entitled at no extra charge to return the Vehicle, Machinery, Trailer or Equipment at 7:00am plus 30 mins. A return made after 7:30am will incur Late return charges of 25% of the 1 day hire rate. A return made after 8:30am will incur 100% of the hire day rate with continual cost until return or collection of the Vehicle/Machinery or Equipment.*

5 Additional Charges if Required

- 5.1 In addition to the Hire Charges You agree to pay:
 - 5.1.1 Soiled or Heavily Soiled Cleaning Fee charges may be applied along with extra charges for any consumables, fuel, brake pads, excessive tyre wear outside of the fair wear and tear policy;
 - 5.1.2 if You require Us to deliver, collect or install any 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 Example 1.
 - 5.1.3 any stamp duty or GST arising out of this Hire Agreement;
 - 5.1.4 Any speeding fines, Tolls or parking expiation notices obtained during the hire period are payable by you along with a \$50 administration fee.
 - 5.1.5 New penalties are in place for all trucks and buses driving unsafely on the down track of the South Eastern Freeway into Adelaide. Drivers must use a low gear to limit the speed of the vehicle without the use of the primary brake and not drive in excess of the displayed speed limit. If you are found to be breaking the rules you can face an expiation fee of \$1036, six demerit points plus a six month licence disqualification.

- 5.1.6 charges for payment made by credit card;
- 5.1.7 an environmental charge in relation to any item of Vehicle, Machinery, Trailer or Equipment as detailed in the Hire Schedule;
- 5.1.8 any reasonable charges incurred by Us if we are unable to carry out "OBMS" on the Equipment during normal working hours;
- 5.1.9 If operator error requires a maintenance mechanic to visit your site and effect repairs, charges may occur and will be forwarded to you along with terms of payment;
- 5.2 Damage to Machinery is not always immediately apparent until next use or a future "Pre Hire Inspection" has been completed, any issue outside the Fair Wear and Tear policy will be notified via email and text of the following:
 - 5.2.1 Photographic or video evidence of any damage;
 - 5.2.2 Quote for Repairs from our listed suppliers,
 - 5.2.3 A seven day period for you to respond to Us via info@tacexhire.com.au , PO Box 159 Mitcham SA 5062 with detailed options for payment;
 - 5.2.4 A set of options for dispute resolution, If a dispute of charges is forwarded within the time specified in clause 5.2.3. Subject to clause 7 a Tacex Hire representative will attempt contact with you via your contact details to discuss your obligations.
 - 5.2.5 You agree to allow Tacex Hire to debit your nominated credit card to cover your obligations as per clause 7.

6 PAYMENT

- 6.1 For hire periods 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 per 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 subject to clause 6.2 unpaid hire charges will be granted a reminder email and text forwarded detailing instructions to remedy the oversight within 3 business days;
- 6.4 If You do not pay the outstanding portion of the invoice in full by the payment due date, We may charge, late fees/interest 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 <https://www2.asx.com.au/connectivity-and-data/information-services/benchmarks/benchmark-data/bbsw> plus 5%; 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 Tacex Hire by You or any amount owed to Us by any of Your Related Bodies Corporate.

7 Liability for Loss or Damage

- 7.1 Subject to clause 8 You are liable to compensate Tacex Hire for any damage to or loss of the Vehicle, Machinery, Trailer or Equipment during the term of Your Rental Agreement.
- 7.2 You are also liable for damage to third party property which is caused or contributed to by You or an Authorised Driver or any person You or the Authorised Driver allow to drive the Vehicle or Machinery. This liability is not waived by "Damage Waiver Tacex Plus";
- 7.3 subject to clause 8.6.8 You will be liable to compensate Tacex Hire for the theft of any Vehicle, Machinery, Trailer or Equipment if it is deemed via a police report to have been your responsibility for the theft; or
- 7.4 negligence on your behalf in the safeguarding, or proper securing of hired goods;
- 7.5 If, acting reasonably, We accept that the loss or damage referred to in clause 7.1 or 7.3 was not Your fault, You will not be liable to compensate Tacex Hire provided you provide the following details:
You provide Tacex Hire with the following details of the incident:

- 7.5.1 the name, residential address, contact phone and license number of any person involved;
- 7.5.2 the registration numbers of all vehicles involved;
- 7.5.3 an accurate description of the incident and location;
- 7.5.4 the names of any attending police officers; and
- 7.5.5 the stations at which they are based;
- 7.5.6 the name of the insurer of any third party You believe was at fault; and
- 7.5.7 Tacex Hire reasonably believes that it will recover the amount of loss or damage from the third party.

7.6 Tacex Hire is liable for any damage to or loss of the Vehicle, Machinery or Equipment that is our fault. This includes:

- 7.6.1 any failure on our part to have carried Manufacturers guided maintenance; and
- 7.6.2 loss or damage directly due to our negligence or wilful default.

8 Damage Waiver

- 8.1 Damage Waiver (DW) is not a form of insurance coverage, however it is an agreement by Tacex Hire that the Customer's liability for damage or total loss to Vehicle, Machinery, Trailer or Equipment may be limited in some circumstances only.
- 8.2 Customers Hiring "Equipment" have an option to purchase at the time of booking an option for "Damage Waiver Basic" (DWB) which will limit the liability of the customer to the actual repair cost, or total replacement for loss of the equipment up to a limit of 40% of the Equipment's replacement cost, as reasonably determined by Tacex hire using pricing obtained by local suppliers.
- 8.3 All Vehicle, Machinery or Trailer hire has an option for the customer to purchase at the time of booking a "Damage Waiver Tacex Plus"(DWTP), this option will reduce the customers liability to Tacex Hire as stated in clause 7 to \$1000 (vehicles requiring class C license) or \$2000 (Vehicles/Machinery requiring other than class C license). Note: Third party liability as per clause 7.2 remains Your responsibility.
- 8.4 Subject to clause 8.3, if You are liable to compensate Tacex Hire, We will substantially reduce that liability if:
- 8.4.1 You had accepted and paid for the "Damage Waiver Tacex Plus" (DWTP) at the time of booking; and
 - 8.4.2 You pay the Excess Amount stated in Clause 8.3 for each separate event involving;
 - 8.4.3 damage (including hail damage) to, or loss of, the Vehicle, Machinery or Trailer; or
 - 8.4.4 damage which is caused by You or an Authorised Driver/Operator.
- 8.5 Subject to clause 8.2, if You are liable to compensate Tacex Hire, We will substantially reduce that liability if:
- 8.5.1 You had accepted and paid for the "Damage Waiver Basic" (DWB) at the time of booking; and
 - 8.5.2 Pay the actual repair cost up to a limit of 40% of replacement value for each separate event involving;
 - 8.5.3 damage (including electrical surge damage); or
 - 8.5.4 fire damage of, the Equipment; or
 - 8.5.5 damage which is caused by You or an Authorised Operator.
- 8.6 The waiver's in clause 8.4 and 8.5 will not apply:
- 8.6.1 If the operator of the Vehicle, Machinery, Trailer or Equipment is not appropriately licenced;
 - 8.6.2 If the operator was/is under the influence of drugs or alcohol;
 - 8.6.3 where the damage is caused in any way by overloading or overstressing;
 - 8.6.4 where the Vehicle/Machinery or Trailer has been wilfully damaged;
 - 8.6.5 Overhead Damage or Underbody Damage (including, without limitation, damage which occurs if You come into contact with a bridge, a tunnel, a tree, or the roof or boom gate of a car park; or damage, including but not limited to, the exhaust systems, suspension and chassis caused by carelessly driving over gutters or kerbs or driving along poor quality roads at excessive speeds) which damage is not attributable to Fair Wear and Tear;
 - 8.6.6 Driving the Vehicle or Machinery in a manner that results in total or partial inundation or immersion of the Vehicle in water or exposure of the Vehicle to salt water (including, without limitation, damage which occurs as a result of You driving the Vehicle through floods, creeks or rivers);
 - 8.6.7 damage to a tyre or an accessory not attributable to Fair Wear and Tear that is caused deliberately or recklessly by You;

- 8.6.8 theft of the Vehicle, Machinery, Trailer or Equipment , unless You report the event to the local police authority immediately on becoming aware of the theft and provide a copy of the police report to info@tacexhire.com.au within a 24hr period; or
- 8.6.9 loss or damage to Your property, the property of a member of Your immediate family or of a person related to You or a person residing at Your premises if that loss or damage is from a breach of these terms and conditions.

9 Your Obligations to US

- 9.1 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 Vehicle, Machinery, Trailer or Equipment at any time, unless expressly agreed by Us via email at info@tacexhire.com.au
- 9.2 You agree that before taking delivery of the Vehicle, Machinery, Trailer or Equipment You have satisfied Yourself as to the suitability of its condition and You will ensure that it is used only for the purpose for which it was designed by the manufacturer. We make no representations and give no guarantee or warranty that the Vehicle, Machinery, Trailer or Equipment is suitable for Your intended purpose.
- 9.3 You must report and provide full details to Tacex Hire of any accident or damage to the Vehicle/Machinery or Equipment on the day of the accident or damage occurring.
- 9.4 By providing payment and electronically confirming the Terms & Conditions during the online booking process You confirm acceptance of these Hire Agreement Conditions;
- 9.5 operate the Vehicle, Machinery, Trailer or Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- 9.6 ensure persons operating the Vehicle, Machinery, Trailer or Equipment 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;
- 9.7 wear suitable clothing and protective equipment when operating the Vehicle, Machinery, Trailer or Equipment as required or recommended by Us or the manufacturer;
- 9.8 ensure that no persons operating the Vehicle, Machinery, Trailer or Equipment are under the influence of drugs or alcohol;
- 9.9 conduct a job safety analysis prior to using the Vehicle, Machinery, Trailer or Equipment ;
- 9.10 ensure that operators do not carry illegal, prohibited or dangerous substances in or on the Vehicle or Machinery; and
- 9.11 display all safety signs and instructions (as required by law) ensuring that all instructions and signs are observed by operators of the Vehicle, Machinery, Trailer or Equipment ;
- 9.12 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;
- 9.13 not in any way alter, modify, tamper with, damage or repair the Vehicle/Machinery or Equipment without Our prior written consent;
- 9.14 not deface, remove, vary or erase any identifying marks, plate, number, notices, QR Codes, Tacex Logo's or safety information, on the Vehicle, Machinery, Trailer or Equipment ;
- 9.15 not remove fuel or oil tank caps, bund plugs or seals without replacing immediately after replenishment from the vehicle or machinery and ensure that they are in place when You return them; and
- 9.16 You will be forwarded via an email, links to view the related Tacex Hire safety operational videos appropriate to the Hire. These online videos along with manufacturers operations manuals provide instruction on the Safe Operation of the Vehicle, Machinery or Equipment.
- 9.17 At all times during the Hire Period, You must store the Vehicle, Machinery, Trailer or Equipment safely and securely;
- 9.18 You will allow Us to enter Your premises and inspect and maintain the Vehicle, Machinery, Trailer or Equipment from time to time during the Hire Period during normal working hours. If we cannot inspect or maintain the Vehicle, Machinery, Trailer or Equipment during normal working hours, then additional charges may apply. You can also request to conduct a joint inspection of the Vehicle, Machinery, Trailer or Equipment with Us at the end of the Hire Period;

- 9.19 Whenever You are moving Vehicle, Machinery, Trailer or Equipment, 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 Tacex Hire and/or the manufacturer of the Vehicle, Machinery, Trailer or Equipment to ensure its safe loading and handling;
- 9.20 You must not remove the Vehicle, Machinery, Trailer or 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
- 9.21 Vehicles, Excavators, Skid Steer Loaders and Welders may 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;
- 9.22 By hiring from Tacex Hire, the Customer expressly consents to Tacex Hire's use of the GPS Device on hired Vehicle/Machinery or Equipment 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 Tacex Hire Privacy Policy.
- 9.23 You must not use the Vehicle, Machinery, Trailer or Equipment off-shore, in a mine, in an area where known asbestos removal is being undertaken without Our prior written consent, which may be reasonably withheld.
- 9.24 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.
- 9.25 You must use best endeavours to ensure that the Vehicle, Machinery, Trailer or Equipment is not contaminated with any hazardous substances (including asbestos, chemicals or substances as stated in the Dangerous Substances (Dangerous Goods Transport) Regulations 2008.
- 9.26 You must advise Us of any risks of:
- 9.26.1 Hazardous substance contamination to the Vehicle/Machinery or Equipment as soon as they become apparent. Where Vehicle, Machinery, Trailer or Equipment 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 Vehicle, Machinery, Trailer or Equipment has not been decontaminated, You will be charged for decontamination charges by a suitable organisation capable of safely and effectively cleaning the hired Vehicle, Machinery, Trailer or Equipment.
- 9.27 If, in Our opinion acting reasonably, the Vehicle, Machinery, Trailer or Equipment is not capable of being decontaminated, You will be charged for the replacement value of the hired Vehicle, Machinery, Trailer or Equipment.
- 9.28 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.
- 9.29 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 Vehicle, Machinery, Trailer or Equipment and its operation and have adequate finances to cover all liabilities incurred as a result of the use of the Vehicle/Machinery or Equipment; Insurance coverage is not compulsory as a term for hire however highly recommended to cover the customer in the event of total loss, theft or fire.
- 9.30 The hirer of excavators intending on trenching/drilling or digging 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 Machinery or Equipment.

10 Ownership of The Vehicle Machinery Trailer or Equipment

- 10.1 Except as detailed in clause 10.4, You acknowledge that We own the Vehicle/Machinery or Equipment and in all circumstances We retain title to the Equipment. Your rights as the hirer 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).

- 10.2 Except in the circumstances set out in clause 11.3, 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;
- 10.3 In no circumstances will the Vehicle/Machinery or Equipment be deemed to be a fixture.
- 10.4 You acknowledge that We may hire or lease Vehicle/Machinery or Equipment from a third party if we cannot provide them to You ("Third Party Owner"), and if this occurs, title in the Vehicle/Machinery or Equipment remains with the Third Party Owner.
- 11 Personal Properties Security Act**
- 11.1 You acknowledge that We may register any actual or impending PMSI under the PPSA in respect of all Machinery; and
- 11.2 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:
- 11.2.1 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.
- 11.3 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:
- 11.3.1 registering a security interest itself; or
- 11.3.2 assigning, by this clause, to Us all rights as bailor, to enforce against an agent, contractor or subcontractor.
- 11.4 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
- 11.5 If You grant any security interest in the Equipment to another party, that other party must acknowledge the priority of Our PMSI.
- 11.5.1 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.
- 12 Responsibility of the Equipment or Machinery**
- 12.1 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 Tacex Hire actions.
- 13 Return Of Equipment**
- 13.1 You must return the Equipment to Tacex Hire 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 Vehicle, Machinery, Trailer or Equipment or in Our view (acting reasonably) the Vehicle, Machinery, Trailer or Equipment is not decontaminated, Tacex Hire will charge You a cleaning cost in accordance with clause 5.1.1 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.
- 13.2 Except in the circumstances set out in clause 14.1 below, it is Your responsibility to return the Equipment to the Tacex Hire branch You hired it from during normal business hours.
- 13.3 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.
- 14 A Plan to follow If a Vehicle, Machinery, Trailer or Equipment Breaks Down**
- 14.1 In the event that a break down, or you encounter unsafe condition occurs during the Hire Period You must:
- 14.1.1 immediately stop using the Vehicle, Machinery, Trailer or Equipment
- 14.1.2 take all steps necessary to prevent any further damage to the Vehicle, Machinery, Trailer, Equipment, surrounding facilities or environment;

14.1.3 not repair or attempt to repair the Vehicle, Machinery, Trailer or Equipment and follow the below steps:

1. scan the relevant Issue/Maintenance QR Code located on the Vehicle, Machinery, Trailer or Equipment with your Internet connected Smart Phone/device
2. this will open a webform on your browser
3. Follow the prompts to upload pictures/videos and any additional comments that will assist maintenance personnel in the repair or recovery;
4. When complete submit the webform;
5. In addition call Tacex Hire on the number provided on the webform to discuss options.

14.1.4 We will:

1. take all reasonable steps to repair the Vehicle, Machinery, Trailer or Equipment or provide a suitable substitute Vehicle, Machinery, Trailer or Equipment as soon as reasonably possible after being notified by You; and
2. not impose a Hire Charge for that portion of the Hire Period for which the Vehicle, Machinery, Trailer or Equipment was broken down or unsafe; nor
3. the costs associated with any repair or replacement of the Vehicle/Machinery or Equipment if it was found to be faulty or defective beyond your control.

15 A Plan to follow If Vehicle, Machinery, Trailer or Equipment Is Lost, Stolen or Damaged

15.1 In the event that Vehicle, Machinery, Trailer or Equipment is damaged during the Hire Period You must:

- 15.1.1 immediately stop using the Vehicle, Machinery, Trailer or Equipment ;
- 15.1.2 take all steps necessary to prevent any further damage to the Vehicle, Machinery, Trailer, Equipment, surrounding facilities or environment;
- 15.1.3 not repair or attempt to repair the Vehicle, Machinery, Trailer or Equipment and follow the steps in clause 14.1.3

15.2 In the event that Vehicle, Machinery, Trailer or Equipment is Stolen during the Hire Period You must:

- 15.2.1 contact the Tacex hire location you collected the hired goods from advising them of the relevant details;
- 15.2.2 contact the local police authority to provide a statement;
- 15.2.3 forward a scanned PDF copy of the police report to info@tacexhire.com.au within 24hrs;

15.3 as per clause 8.5.8 if it is deemed the theft of the vehicle is not your responsibility from the police report liability of the stolen Vehicle, Machinery, Trailer or Equipment will be as per clause 7.3.

15.4 If the Vehicle, Machinery, Trailer or Equipment 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 Vehicle, Machinery, Trailer or Equipment is damaged beyond Fair Wear and Tear during the Hire Period, You will be liable for:

- 15.4.1 Subject to clause 8 Damage waiver any costs incurred by Tacex Hire to recover and repair or replace the Equipment; and
- 15.4.2 the Hire Charges for that portion of the Hire Period during which the Vehicle, Machinery, Trailer or Equipment is being recovered, repaired or replaced

15.5 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:

- 15.5.1 personal injury;
- 15.5.2 damage to property; or
- 15.5.3 a claim by a third party,

15.6 in respect of Your hire or use of the Vehicle, Machinery, Trailer or Equipment 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.

15.7 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;

15.8 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.

16 Remote Area Maintenance

16.1 This clause 16 applies if You hire Vehicle, Machinery, Trailer or Equipment for use at a Remote Area Location. Vehicle, Machinery, Trailer or Equipment located at a Remote Area Location will be subject to a per kilometre charge both to and from the premises nominated by You. There will be no charge for the first 50 km either way.

16.2 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.

16.3 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Vehicles/Machinery/Trailers and Equipment in accordance with clause 9.12, 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.

16.4 If the Equipment breaks down at a Remote Area Location, You will also pay Tacex Hire the costs associated with any attendance to the Remote Area Location in addition to any other costs payable under this Hire Agreement.

17 Recovery of Machinery or Equipment

17.1 If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 19, We may, at Your cost, take all steps necessary (including legal action) to recover the Vehicle, Machinery, Trailer or Equipment, including entering Your premises to do so and You expressly consent to Tacex Hire entering Your premises for the purposes of recovering Equipment.

18 Termination of Hire Agreement

18.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:

18.1.1 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

18.1.2 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.

18.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.

18.3 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.

18.4 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.

19 Equipment That Is Collected or Delivered In A Damaged or Defective Condition

19.1 If You collect or receive any Vehicle, Machinery, Trailer or 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 by following the steps in clause 14.1.3. If You do not notify Tacex Hire via these steps within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

20 Security

20.1 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;

- 20.2 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
- 20.2.1 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.

21 Governing Law

- 21.1 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.

22 Privacy

- 22.1 We will comply with the Australian Privacy Principles in all dealings with You.
- 22.2 We may need to collect personal information about You, including but not limited to, Your full name, address, drivers licence details, credit card details, Builders Licence Number, Plant Equipment or vehicle Insurance Policy details. You consent to Us using Your personal information in order to:
- 22.2.1 fulfill functions associated with the hire of Equipment;
- 22.2.2 provide services to You;
- 22.2.3 prevent theft of Our goods;
- 22.2.4 enter into contracts with You or third parties, and
- 22.2.5 to market to You and maintain a client relationship with You.
- 22.3 You also consent to Us disclosing Your personal information:
- 22.3.1 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
- 22.3.2 You have the right to access the personal information We hold about You.
- 22.4 Copies of Our Privacy Policy are available on our website www.tacexhire.com.au.

23 Chain of Responsibility Obligations

- 23.1 You must 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;
- 23.2 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 clause 23.1.

24 Force Majeure

- 24.1 Subject to clause 24.2, 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.
- 24.2 Nothing in clause 24.1 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.

25 Entire Agreement

25.1 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 24

26 No Reliance

26.1 You acknowledge that Tacex Hire nor any authorised 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 clauses contained in this Hire Agreement.

27 Variation to Hire Agreement

27.1 To the extent that a variation to this Hire Agreement is not detrimental to You, from time to time, Tacex Hire 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 Tacex Hire. 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 Tacex Hire.

28 No Waiver of Rights

28.1 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.

29 Severability

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

30 Signing This Hire Agreement

30.1 The electronic transaction for full or partial payment via the www.tacexhire.com.au website or any other method is the trigger for accepting the terms and conditions of any documents which forms part of the Hire Agreement;

30.2 You confirm the person completing the booking online 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.

30.3 The person accepting the terms of this Hire Agreement via electronic transaction for payment of hire indemnifies Tacex Hire against all losses, costs and claims incurred by Tacex Hire arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

31 Claim for Payment

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

32 Assignment

32.1 We may assign this Hire Agreement to any third party without Your consent (including a Related Body Corporate).

32.2 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.

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

33.1 The following provisions will not apply if the Hire Agreement is a consumer contract or a small business contract:

33.1.1 clause 18.2 (Termination on 24 hours' notice)

33.1.2 clause 20 (Security);



33.1.3 clause 30 (Signing this Hire Agreement); and
33.1.4 clause 32.2 (Assignment).

TACEX