

GP Earthworks Pty Ltd
335 Connection Road, Mooloolah Valley, QLD 4553
Mobile: 0416 375 905 Tel: (07)5492 9651
ACN 149 113 495 ABN 19 378 226 089

Equipment Hire Agreement

Between

GP Earthworks Pty Ltd, 335 Connection Road, Mooloolah Valley, Qld 4553, ACN 149 113 495
And

Part 1 – Agreement Details and Special Conditions

Customer trading name:	
ACN:	ABN:
Business address:	
Site Contact:	Mobile:
Site address:	

1. Period of Contract

Hire Start Date:
Expected Off Hire Date:

2. Equipment Details and Hire Charges

Equipment Description:	
Equipment Number: V	Start Meter:
Daily Rate (EX GST):	
5 Day + Rate (EX GST):	

3. Definition of Terms of the Contract

- The 'Supplier' is GP Earthworks Pty Ltd, ABN 19 378 226 089.
- The 'Customer' refers to _____ Pty Ltd, ABN _____
- The 'Equipment' refers to all equipment, including tools, accessories and parts supplied to the 'Customer' by GP Earthworks Pty Ltd.

4. Summary of the Responsibilities of the Parties

Task	Party responsible for the task and for bearing associated cost (tick appropriate box)	
	Supplier	Customer
Mobilisation costs (see clause 1.2(a) of the Standard Terms and Conditions)		
Demobilisation costs (see clause 1.2 (a) of the Standard Terms and Conditions)		
Fuel cost (see clause 1.2(b) and 2.3(d) of the Standard Terms and Conditions)		✓
Repair/replacement of ground engaging tools		✓
Inspection of equipment of commencement of hire	✓	✓
Tyre/Undercarriage inspection of commence of hire	✓	✓
Provision of equipment operator (see clause 2.3(a) of the standard Terms and conditions)		✓
Pre-start inspection before each start of shift		✓
Daily servicing (Including top ups of oil, grease and water)		✓
Provision of major service consumables (Including oils, grease and coolants)	✓	
Minor repairs	✓	
Major Repairs (see clause 6 of the standard Terms and Conditions below)		✓
Tyre/Undercarriage damage, repair and replacement		✓
Body/Bucket damage		✓
Panel/Glass damage and replacement		✓
Cleaning of Equipment (see clause 2.3(c) of the standard Terms and Conditions below)		✓
Inspection of equipment on completion of hire	✓	✓
Tyre/Undercarriage inspection on completion of hire	✓	✓
Payment of taxes and duties in connection with this Agreement (see clause 1.2 (c) and (d) of the Standard Terms and Conditions below)	✓	

5. Special Conditions

The following special conditions form part of the terms and conditions of this Agreement and will apply notwithstanding any inconsistency with the Standard Terms and Conditions set out in Part 2 of this Agreement:

- (a) Any additional implements required for attachment to the excavator must be negotiated on a per case basis and recorded as a variation to this Agreement.

6. Customers Acceptance

The Customer agrees to rent the Equipment on the Terms and Conditions of this Agreement. The Customer expressly acknowledges and agrees that:

- (a) the customer has read and understood The Supplier Standard Hire Terms and Conditions set out in Part 2 of this Agreement;
- (b) the Supplier Standard Hire Terms and Conditions form part of this Agreement and apply except to the extent of any inconsistency with the Special Conditions set out in section 4 above, in which case the latter will prevail to the extent of the inconsistency; and
- (c) in entering into this Agreement, The Supplier is relying on this acknowledgement by the Customer.

Daily Safety Checks

Pre-Operational Daily Safety Check requirements have been supplied and I agree to comply with them.

Signed by the Customer:	Signed by The Supplier:
Signature:	Signature:
Print Name:	Print Name:
Date:	Date:

Part 2 – Standard Hire Terms and Conditions

1. Hire Charges

- 1.1 The Customer must pay the Hire Charges from the Hire Start Date until the earlier of the Hire End Date or the date on which the Hire Agreement is terminated in accordance with clause 7.
- 1.2 The Customer must pay in addition to the Hire Charges:
- (a) all Mobilisation Costs and Demobilisation Costs;
 - (b) all Operating Costs during the Hire Period;
 - (c) any taxes, duties (including stamp duty), levies, charges or imposts on or in connection with this Agreement.
 - (d) a sum equal to the amount of any goods and service tax (GST) payable by The Supplier on any supplies made by the The Supplier under or in connection with the Agreement, calculated by multiplying the GST-exclusive consideration payable for the relevant supply or supplies by the prevailing GST rate;
 - (e) any costs or expenses reasonably incurred by The Supplier in enforcing this Agreement as a result of the Customers breach of the Agreement or in order to return the Equipment to the same condition as at the Hire Start Date (including cleaning costs)
- 1.3 The Customer must pay all amounts owing under the Agreement within 30 days from the date on which The Supplier issues a tax invoice to the Customer. The Customer is not entitled to offset any monies owing to it buy The Supplier against monies owing to The Supplier without the express written consent of The Supplier.
- 1.4 The Supplier may charge the Customer interest calculated on a daily basis and compounded monthly on overdue amounts from the date on which a payment is due to the date of actual receipt of the payment at an interest rate which is 4% greater than the rate published by ANZ or it's successor on commercial overdraft finance facilities in excess of \$100,000 as at the due date of payment.

2 Customer Obligations

- 2.1 The Customer acknowledges that The Supplier retains full title to the Equipment notwithstanding the delivery of the Equipment to, and the possession and use of the Equipment by, the Customer and that the Customer will have possession of the Equipment as a bailee subject to the terms and conditions of this Agreement.
- 2.2 Risk in the Equipment passes to the Customer on delivery of the Equipment to the Customer and remains with the Customer until the Equipment is collected by or returned to The Supplier. Delivery to the Customer is deemed to occur either when the Equipment is made available to the Customers nominated carrier for shipment or when The Supplier delivers the Equipment to the site or other location agreed between the parties, as the case may be. Following delivery of the Equipment to the Customer, the Customer is liable to the Supplier for any and all loss or damage to, or caused by, the Equipment or its operation, all costs incurred in respect of repairing or replacing the Equipment at the full new replacement cost, together with salvage costs and Hire Charges incurred while the Equipment is being repaired or replaced.
- 2.3 The Customer must ensure that the Equipment is:
- (a) operated only by competent and properly trained personnel who have all of the licences permits and approvals required by law to operate the equipment, are wearing appropriate protective clothing and equipment and are not under the influence of drugs or alcohol;
 - (b) operated in accordance with the methods and standards of operation recommended and approved by the Equipment's manufacturer or as required by any relevant Law;
 - (c) serviced, maintained, cleaned and repaired according to the manufacturer's specifications and procedures so that the Equipment is at all times in good condition;
 - (d) returned to The Supplier in the same condition as at the Hire Start Date (except for normal wear and tear) with a full tank of fuel;
 - (e) used only for the general purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment;
 - (f) not removed from the Site without The Suppliers prior written consent;
 - (g) not modified without The Suppliers written consent; and
 - (h) at all times stored safely and protected from theft, loss or damage.

- 2.4 The Customer must:
- (a) ensure that all safety and operating information supplied with the Equipment is attached to or otherwise kept with the Equipment and brought to the attention of any person using the Equipment;
 - (b) not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment;
 - (c) must not alter, affix or attach any thing to the Equipment without The Supplier's prior written consent;
 - (d) maintain any manuals and log books supplied with the Equipment.

- 2.5 The Customer must comply with all relevant Laws in relation to the use of the Equipment and must not permit the Equipment to be used for any illegal purpose or in any manner that would amount to a breach of any relevant Law.

3. Access and Inspection

- 3.1 The Customer must, upon being given reasonable notice by The Supplier, use its best endeavours to procure that The Supplier and its representatives gain entry to the site to inspect, maintain and/or repair the Equipment or to repossess the Equipment.

4. Insurance

- 4.1 The Supplier will modify its existing insurance policy to provide comprehensive cover on the Equipment for the Hire Period and at the Site with the exception of the public risk cover which the Customer must take out pursuant to clause 4.4(a).

- 4.2 The Supplier will:
- (a) ensure that the Customer is endorsed on the comprehensive cover policy as an interested party; and
 - (b) if requested by the Customer, provide evidence of this insurance cover to the Customer including details of the premium charged and the excess applicable under the policy.

- 4.3 If requested by the Supplier, the Customer must:
- (a) pay as a one off charge on or before the Hire Start Date any additional premium which the Supplier is required to pay to its insurer to modify the Supplier's existing comprehensive cover policy pursuant to clause 4.1; and
 - (b) pay the excess on any claim made under the comprehensive cover insurance policy arising under this Agreement or the Customer's use of the Equipment.

- 4.4 The Customer must:
- (a) take out and keep current at all times during the Hire Period a public risk insurance policy with a reputable insurance company in the name of the Customer for an amount of not less than \$20,000,000.00 per claim; and
 - (b) provide to the Supplier a copy of the public risk insurance policy and the receipt for payment of the current premium prior to or at the time the Supplier delivers the Equipment to the Customer.

5. Risk and Indemnity

- 5.1 The Customer will use the Equipment at its own risk in all respects.
- 5.2 The Customer indemnifies the Supplier against all Claims which may be made against the Supplier in respect of or arising from:
- (a) the use by the Customer of the Equipment; or
 - (b) damage or injury to any person or property caused or contributed to by the Customer's use or operation of the Equipment.

6. Major Repairs

- 6.1 All Major Repairs not caused or contributed to by the Customer's neglect or a failure to comply with its obligations under this Agreement are the responsibility of The Supplier. However, the Supplier has the right, instead of carrying out such repairs, to replace the Equipment with similar Equipment or alternatively terminate this Agreement in so far as it relates to the damaged Equipment.

7. Termination

- 7.1 Subject to clause 7.2, this Agreement will terminate when the Customer delivers the Equipment to The Supplier during normal working hours at the end of the Hire Period, or, if The Supplier agrees, when the Equipment is collected by The Supplier. The Customer irrevocably appoints The Supplier as its agent and authorises and licenses The Supplier to enter the Site and repossess the Equipment if the Customer fails to deliver the Equipment upon termination this Agreement, or at the end of the Hire Period, whichever is the first to occur.
- 7.2 The Supplier may terminate the Agreement and repossess the Equipment at any time by written notice to the Customer if the Customer is in breach of the Agreement and fails to remedy that breach with 7 days of receiving notice requiring the Customer to do so or the Customer becomes insolvent, enters receivership or administration, or otherwise is unable to pay its debts as they fall due.
- 7.3 If the Customer fails to return the Equipment when required by the Agreement or within 24 hours of oral or written demand to the Customer, the Customer will be deemed to be in unlawful possession of the Equipment without The Suppliers consent.

8. Warranties & Acknowledgements

- 8.1 Subject to any terms that cannot be excluded, the Customer acknowledges and agrees that:
- (a) before signing this Agreement the Customer inspected the Equipment;
 - (b) it is satisfied with the quality, condition and safety of the Equipment;
 - (c) it has received from the Supplier written instructions for the safe operation of the Equipment;
 - (d) it is satisfied the Equipment is fit for the particular purpose for which the Customer is renting the Equipment and otherwise meets its requirements;
 - (e) in deciding to hire the Equipment it did not rely on any representations as to the Equipment's design or suitability for the particular purpose or rely on The Supplier's skill or judgment or the skill and judgment or anyone for whom The Supplier is responsible;
 - (f) it is satisfied that the particular purpose for which the Customer is renting the Equipment is a purpose for which the Equipment was designed;
 - (g) the Supplier may grant security over its rights under this Agreement and that neither the execution of such security, nor the exercise by a financier, its agents or a security trustee of any power under such security entitles the Customer to terminate or suspend performance of its obligations under this Agreement; and
 - (h) The Supplier is relying on the warranties and acknowledgements of the Customer in this clause 8 and would not enter into this Agreement but for these Customer warranties and acknowledgements.

9. Claims and Proceedings

- 9.1 Where use of Equipment by the Customer results in any accident, claim, damage or loss, the Customer:
- (a) must as soon as practicable provide to The Supplier a report setting out details of the accident, claim, damage or loss (as the case may be) and any statements, information or assistance (including meeting with the Supplier's legal advisers) which The Supplier or its insurer may reasonably require;
 - (b) must not, without The Suppliers written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability; and
 - (c) agrees that The Supplier or its insurer may at their own cost bring, defend, enforce, or settle any legal proceedings against third parties.

10. Dispute resolution

- 10.1 If a dispute or difference arises between the Customer and The Supplier one party requires it to be resolved, that party must promptly give the other party written notice identifying, and giving details of, the dispute or difference.
- 10.2 Within ten (10) business days of a party receiving the notice referred to in clause 10.1, a delegate of The Supplier and a delegate of the Customer must meet and attempt to resolve the dispute or difference.

- 10.3 If, within two (2) business days of the first meeting under clause 10.2 the dispute or difference is not resolved, the delegates of The Supplier and the Customer must meet again within a further ten (10) business days and attempt to resolve the dispute or difference.
- 10.4 If, within twenty (20) business days of the first meeting under clause 10.3, the dispute or difference is not resolved, the chief executive of The Supplier or his nominee and the chief executive of the Customer or his nominee must meet within a further ten (10) business days and attempt to resolve the dispute or difference.
- 10.5 If the dispute is not resolved in the meeting convened pursuant to clause 10.4, the matter may be litigated.
- 10.6 Except as provided by clause 10.7, neither party may commence any legal proceedings against the other party, unless the requirements of clause 10 have first been satisfied or the other party has for its part, failed to comply with any of those requirements.
- 10.7 Nothing in clause 10 prejudices the right of a party to seek injunctive or declaratory relief which may be required in relation to the Agreement.

11. Miscellaneous

- 11.1 The expiry or termination of the Agreement does not affect the rights, which have accrued before that expiry or termination.
- 11.2 Time is of the essence in respect of all obligations of the Customer under this Agreement.
- 11.3 The Supplier may assign or subcontract all or any of its rights under this Agreement.
- 11.4 The Agreement is governed by the laws of Queensland.

12. Definitions

Approval means any licence, permit, consent, approval, determination, certificate or permission which is required from any Authority or under any Law to perform the Agreement.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

Claim means any claim or legal action.

Equipment means the equipment specified in the table at item 2 of Part 1 of this Agreement.

Demobilisation Costs means, in relation to the equipment, the cost of decommissioning, disassembly, loading, transport and delivery of the Equipment from the site to the Supplier's premises from which the Equipment was mobilised, including but not limited to freight costs, labour and equipment hire and crane hire.

Hire Charges means the Hire charges specified in the table at item 2 of Part 1 of this Agreement.

Hire End Date means, in relation to each item of Equipment the date specified as such in the table at item 1 of Part 1 of this agreement.

Hire Start Date means, in relation to each item of Equipment the date specified as such in the table at item 1 of Part 1 of this agreement.

Law means

- (a) Commonwealth, State or Local government legislation including regulations by-laws and other subordinate legislation;
- (b) the common law; and
- (c) Approvals (including any condition or requirement under them)

Minor Repairs means individual events with a total cost of less than \$1000 per event.

Major Repairs means individual events with a total cost greater than or equal to \$1000 per event.

Mobilisation Costs means, in relation to the Equipment, all of the costs in connection with the assembly, commissioning, transport and delivery of the Equipment to the site, including but not limited to freight costs, labour and equipment hire and crane hire.

Operating costs means the cost of all consumables necessary for the day to day running and upkeep of the Equipment including but not limited to costs of all fuel, oils, lubricants and coolants, and, if the Customer is not responsible for Minor Repairs, the cost incurred by The Supplier in undertaking all necessary Minor Repairs.

Site means the site at which the Customer advises The Supplier the equipment is to be used.