



AGREEMENT FOR THE HIRE OF EQUIPMENT

This **Agreement** is made on the _____ day of _____, 2016

between: Dindidiggers Pty Ltd
ACN 606 675 101
(Hireree)

and

of (Hireree)

Definitions

- Cancellation Fee** means the fee set out in the Schedule hereto.
- Collection Location** means the location set out in the Schedule hereto.
- Commencement Date** means the date set out in the Schedule hereto.
- Equipment** means any item of plant and Equipment listed in the Schedule hereto, including accessories.
- Fees** means the fees set out in the Schedule hereto.
- PPSA** means the *Personal Property Securities Act 2009* (Cth).
- PPS Security Interest** means a security interest that is subject to the PPSA;
- Security Interest** means:
 - a) a PPS Security Interest;
 - b) any other mortgage, pledge, lien or charge; or,
 - any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.
- Term** means the term set out in this Schedule hereto.

Terms and Conditions

1. Hire of Equipment

- 1.1. The Hirer will lease the Equipment to the Hireree, and the Hireree will lease the Equipment from the Hirer, in accordance with the terms and conditions of this Agreement.
- 1.2. The hiring of the Equipment will commence from the Commencement Date and shall continue for the Term.
- 1.3. On the Commencement Date, the Hireree will, at the Hireree's expense, collect the Equipment from the Collection Location.
- 1.4. The Hireree is entitled to use the Equipment for the Term. Any extension of the Term must be agreed to by the Hirer in writing.
- 1.5. The Hireree agrees to return the Equipment to the Collection Location on or before the end of the Term.
- 1.6. Equipment returned after 5.00pm will be charged an additional half day of hire.
- 1.7. No stand downs for any reason are included in this Agreement.

2. Title to Equipment

- 2.1. Title to the Equipment will remain with the Hirer at all times even if the Equipment is in the possession of the Hireree or attached to any land or buildings.
- 2.2. Immediately on and from the Commencement Date:
 - 2.2.1. the risk in the Equipment will pass to the Hireree; and
 - 2.2.2. the Hireree must protect the Equipment from and will be responsible for all losses arising in connection with the possession, use and storage of the Equipment (including but not limited to loss or claims arising in relation to any theft, destruction, damage or injury).

3. Payment of rental

- 3.1. The Hireree agrees to pay the Hirer the Fees for hire of the Equipment for the Term including any applicable GST, stamp duties, tolls, fines, levies, or freight and other charges relevant to this Agreement and the hire of the Equipment. The Hireree agrees to pay 23% compounding interest on any fees outstanding under this Agreement, plus all solicitors or collection agencies fees incurred in retrieving payments from the Hireree.
- 3.2. The Fees must be paid by the Hireree to the Hirer prior to or on the Commencement Date.
- 3.3. Equipment not returned on or prior to the expiry of the Term and in accordance with this Agreement will be subject to a continuance of the agreed Fees on a pro rata basis until return is complete.
- 3.4. A Cancellation Fee may be charged by the Hirer where Equipment has been reserved by the Hireree and the Hireree cancels the booking without 72 hours' notice or fails to take delivery of the Equipment on the Commencement Date.
- 3.5. The Hirer may charge the Hireree a fee for accepting payment of the Fees by credit card.

4. Damage

The Hireree shall be responsible for the cost of repairs or replacement of the Equipment due to damage occurring during the Term.

5. Use, operation and maintenance

- 5.1. The Hireree agrees that the use of the Equipment carries with it dangers and risks of injury and the Hireree agrees to accept all dangers and risks.
- 5.2. The Equipment shall not be used by anyone other than the Hireree and its employees without express permission of the Hirer.
- 5.3. The Hireree will ensure that all persons operating the Equipment are instructed in its safe use and where required hold a valid certificate of competency or are fully licensed to use it.
- 5.4. The Hireree agrees to operate, maintain, store and transport the Equipment strictly in accordance with any instruction provided by the Hirer and with due care and diligence.
- 5.5. The Hireree agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations whether supplied by the Hirer or posted on the Equipment in regard to its operation, maintenance and storage.
- 5.6. The Hireree agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations.
- 5.7. The Hireree shall ensure the Equipment is returned to the Hirer clean of all foreign matter or agrees to a reasonable cleaning fee being charged by the Hirer.
- 5.8. The reasonable costs of fuel provided by the Hirer are to be paid to the Hirer at the Completion Date.

6. Hireree's warranties

- 6.1. The Hireree warrants that:
 - 6.1.1. The Equipment will not be used for a period in excess of 8 hours per 24 hour period;
 - 6.1.2. the Equipment will be used in accordance with the conditions set out in this Agreement;
 - 6.1.3. the particulars in the Schedule are correct in every respect and are not misleading in any way.
 - 6.1.4. the Hireree and its personnel hold a valid current driver's licence, operating licence or permit valid for the type of Equipment hired;
 - 6.1.5. the Equipment will not be used for any illegal purpose;
 - 6.1.6. the Hireree's vehicle is suitable for towing the Equipment if required;
 - 6.1.7. the Hireree will not, without prior written consent of the Hirer, tamper with, repair or modify the Equipment in any way, or permit another to do so;
 - 6.1.8. the Hireree agrees that the Equipment complies with its description, is in merchantable condition and is fit for the Hireree's purpose;
 - 6.1.9. the Hireree agrees that the Equipment has been received by the Hireree clean and in good working order.

7. Security Interest

- 7.1. The Hireree must not:
 - 7.1.1. sell, assign, dispose of, assign, encumber, mortgage, pledge, create any lien, or grant any security interest in, or in respect of the Equipment;
 - 7.1.2. grant to any person any sub-lease, licence or sub-licence of the Equipment;
 - 7.1.3. part with possession of the Equipment; or
 - 7.1.4. grant a Security Interest over the Equipment.
- 7.2. The Hireree must at all times keep the Equipment free from distress, execution or other legal process and ensure that no Security Interest is created over the Equipment, save for any Security Interest of the Owner or Hirer.
- 7.3. If any person seizes or attempts to seize or interfere with the Equipment, the Hireree must:
 - 7.3.1. notify that person of the Owner and the Hirer's rights in relation to the Equipment; and
 - 7.3.2. provide immediate written notice to the Owner and Hirer of the seizure, attempted seizure or interference.

- 7.4. In this Agreement, unless the context requires otherwise, terms which are defined in the PPSA have the definitions in the PPSA.
- 7.5. The Hireree acknowledges that this Agreement gives rise, or may give rise, to one or more PPS Security Interests in favour of the Owner and the Hirer, as follows:
- 7.5.1. In favour of the Owner: due to the rights and title of the Equipment residing with the Owner;
- 7.5.2. In favour of the Hirer: due to the Hirer having authorised possession of the Equipment.
- 7.6. Nothing in this Agreement may be taken as an agreement that any PPS Security Interest provided for by this Agreement attaches later than the time contemplated by Section 19(2) of the PPSA.
- 7.7. The Hireree acknowledges that the Owner and the Hirer have not agreed to subordinate any PPS Security Interest provided for by this Agreement in favour of any other person.
- 7.8. If, in breach of this Agreement, the Hireree attempts to dispose of or otherwise deal with any Equipment, the Hireree acknowledges that, despite the disposal or dealing:
- 7.8.1. the Owner and the Hirer have not authorised the disposal or agreed that the dealing would extinguish any PPS Security Interest provided for by this Agreement; and
- 7.8.2. that PPS Security Interest continues in that Equipment.
- 7.9. The Hireree acknowledges that the Owner or the Hirer may, at the Hireree's cost, register one or more financing statements in relation to any PPS Security Interests under this Agreement.
- 7.10. If permitted by the PPSA, the Hireree waives the Hireree's rights under Section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- 7.11. The Hireree must provide the Owner and the Hirer with all information required by the Hirer to ensure that any registration of any Security Interest provided for by this Agreement is, and remains, fully effective or perfected (or both) and that each Security Interest has the priority required by the Owner and the Hirer.
- 7.12. The Hireree must provide to the Hirer at least 14 days prior notice of any change to the Hireree's name or any other information that could affect the accuracy or validity of any financing statement in relation to any PPS Security Interest under this Agreement.
- 7.13. The Hireree must do anything (including perfecting and protecting any Security Interest intended to be created by or pursuant to this Agreement), and must ensure that each member of the Hireree's personnel do anything, that the Hirer may reasonably require to more fully secure or exercise the rights, remedies and powers of the Hirer under this Agreement.
- 7.14. The Hireree must indemnify the Hirer against, and must pay the Hirer on demand the amount of, all Taxes and expenses incurred in connection with any action taken by the Hirer under or in relation to the PPSA, including any registration, or any response to an amendment demand or a request under Section 275 of the PPSA.
- 7.15. Neither party will disclose information of the kind referred to in Section 275(1) of the PPSA.
- 7.16. The parties agree that the following provisions of the PPSA do not apply, to the extent the PPS Act allows such provisions to be excluded: Sections 95, 118, 121(4), 125, 127, 129(2), 129 (3), 130, 132, 134(2), 135, 136(5), 137, 138B(4), 142 and 143.

8. Indemnity

- 8.1. To the full extent permitted by the law, the Hireree releases, discharges and indemnifies the Hirer from all claims and demands on the Hirer arising out of or consequent on the use or misuse of the Equipment during the Term.
- 8.2. Without limiting Clause 8.1, the Hireree agrees that to the full extent permitted by law, no warranties are given by the Hirer in respect of the Equipment. Any liability of the Hirer pursuant to any warranty which cannot be excluded by law will not exceed either the cost of repairing the Equipment or the cost of resupplying the Equipment, at the discretion of the Hirer.

9. Loss, damage or breakdown of plant and Equipment

- 9.1. The Hireree will be responsible for any loss or damage to the Equipment, irrespective of how the loss or damage occurred, except for fair wear and tear, during the Term.
- 9.2. The Hireree is liable for the payment of the new list price of any Equipment not returned to the Hirer on or before the expiry of the Term.
- 9.3. If there is a breakdown or failure of the Equipment, the Hireree shall notify the Hirer immediately for the appropriate action to be taken by the Hirer.

10. Insurance

The Hirer will maintain current insurance policies in respect of the Equipment to its full insurable value.

11. Liability

The Hireree will assume all risks and liabilities for, and in respect of, the Equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the Hireree's possession, use, maintenance, repair, storage or transport of the Equipment.

12. Disclaimer

To the extent permitted by law the Hirer disclaims all liability for and does not give any warranties to the Hireree as to the condition of the Equipment.

13. Title to Equipment

- 13.1. The Hireree acknowledges that the Owner retains title to the Equipment and that the Hireree has rights to use the Equipment as a mere bailee only under this Agreement. The Hireree agrees that the Hireree has no right to pledge the Hirer’s credit in connection with the Equipment.
- 13.2. The Hireree agrees not to offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the Equipment and not to conceal or alter the goods or make any addition or alteration to the Equipment.

14. Repossession and remedies on default

- 14.1. The Hirer may retake possession of the Equipment if the Hireree breaches any provision of this Agreement, notwithstanding anything else herein contained.
- 14.2. All costs incurred by the Hirer in repossessing the Equipment due to a breach are to be paid by the Hireree.
- 14.3. In the case of repossession due to a breach of this Agreement, the Hireree agrees to grant the Owner and the Hirer permission to enter any premises where the Equipment is situated to disconnect, decommission and remove that Equipment.
- 14.4. In addition to the Owner and Hirer’s right to retake possession the Hirer is entitled in its discretion, following any breach of any provision of this Agreement by the Hireree, to terminate this Agreement and sue for recovery of any damages, charges or loss suffered by the Hirer.

15. Completion of the hire period

- 15.1. The hire of the Equipment is completed when the Equipment has been returned to the Hirer in the same condition as when it was hired.
- 15.2. The Hireree agrees to hire the Equipment for the Term. The Hirer may cancel this Agreement and take possession of the Equipment at any time after giving the Hireree 60 days’ notice in writing.

16. Non-merger

The covenants, agreements and obligations contained in this Agreement will not merge or terminate upon the termination of this Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

17. Severance

If any provision of this Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this Agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and parts provisions remaining after severance.

18. Governing law

This Agreement is governed by the laws of the State of Victoria and each party submits to the exclusive jurisdiction of this State.

19. Privacy policy

The Hirer will comply with the National Privacy Principles in all dealings with the Hireree.

20. Responsibilities and costs

The following responsibilities and associated costs are assigned to each party for the Term of this Agreement:

Hireree	Hirer
Damage (excluding fair wear & tear)	Scheduled servicing
Ground engaging tools, tyres & tracks	Breakdown costs
Transport and freight costs	
After business hours call out charges	
Operator, fuel & lubricants	
Daily servicing as per operators manual	
Travel charges	

21. Identification

The Hireree shall provide the Hirer with photo identification of the Hireree (if applicable) and any employee, agent or contractor of the Hireree who will be operating the equipment, at the time of signing this Agreement.

22. Payment method

<input type="checkbox"/> Cash	<input type="checkbox"/> Credit Card	<input type="checkbox"/> Direct Debit
Visa / Mastercard Card Number: Expiry Date: CCV:		
..... Signature of Card Holder		

SCHEDULE

Commencement Date

.....

Term

.....

Equipment

Wacker Neuson EZ17 Mini Excavator

VIN: WNCE1301APAL00705

Plant trailer **Y/N**

Attachments to be listed below

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Collection Location

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Hire Fee

.....
Equipment Hire

.....
Fuel Fee

.....
Refuelling fee (if equipment is not returned full)

.....
Transport Fee

.....
Excess Hours Fee

Cancellation Fee

.....

Executed as an Agreement

Hirer

For and on behalf of: Dindidiggers Pty Ltd
ACN 606 675 101

Authorised Person: Bradley Bird, Sole Director

Signature:

Date :/...../2016

Photo ID Viewed Y/N

Hiree

For and on behalf of: (Company)

Authorised Person:
(Print Name)

Driver's License number:

Signature:

Date:/...../2016