

## EXCAVATOR RENTAL AGREEMENT (LEASE)

THIS AGREEMENT, made the ..... day of ..... 20....., by and between

(NAME) .....

of (ADDRESS) .....

Vehicle Registration No:..... Driver's Licence No..... Expiry.....

hereafter called the Renter and Lyall Hodgson trading as Eastern Excavator Hire of 20 Atkinson Drive, Berwick, Victoria, 3806, ABN 93 269 688 074 hereafter called the Owner.

Renter and Owner, for the consideration hereafter named, agree as follows:

- Under the General Conditions of Lease attached to this sheet, the Owner agrees to rent the equipment named and identified in the following "Schedule" to the Renter for the rental period and the Renter agrees to take the equipment on hire for that period and to pay the rental charge set out in the schedule for that rental period, together with any applicable GST. The Renter is entitled to use the equipment for the rental period and for any agreed extension of the rental period.

### SCHEDULE

Description of Equipment	Equipment to be used at or near	Rental Period	Security Deposit	Rental Rate Ex GST (\$)	Rental Rate Inc GST (\$)	Rental Rate Unit Base (eg hourly, daily, monthly)

Owner and Renter, for themselves, their successors, executors, administrators and assigns, have read, understood and agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, they have executed this Agreement the day and year first above written:

Signed by .....  
(Insert Renter's Name)

Signed by an authorised representative, for and on behalf of Eastern Excavator Hire ABN 93 269 688 074

.....  
(Signature of Renter)

.....  
(Signature of authorised representative)

.....  
(Name of Renter)

.....  
(Name of authorised representative)

.....  
(Date)

.....  
(Title of authorised representative)

.....  
(Date)

## GENERAL CONDITIONS OF EXCAVATOR RENTAL AGREEMENT (LEASE)

The conditions of lease here below stand, together with the Agreement set forth on the reverse side of this sheet, constitute a contract between the parties therein named which contract is hereafter referred to as "this Agreement".

### 1) INTERPRETATION

In this Agreement:

'Owner' means Lyall Hodgson trading as Eastern Excavator Hire ABN 93 269 688 074 of 20 Atkinson Drive, Berwick and its substitutes, successors and permitted assigns;

'Renter' means any person who signs this Agreement personally or by an agent;

'Equipment' means the equipment described on the front of this form and any replacement for that equipment and includes all accessories, trailer and other equipment;

'Rental period' means the period beginning on the date/hour set out on the front of this form as the commencement date and ending on the date set out on the front of this form as the expiry date/hour on which the goods are redelivered by Renter or by anyone else to the owner or, if the goods are stolen or damaged beyond repair, the date on which the insurance company confirms that it will accept that the goods have been stolen or damaged beyond repair.

'GST' has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### 2) RENTAL PERIOD

The rental period shall cover all time consumed in transporting the equipment, including the date of legal delivery to a public carrier for transit to Renter and upon return of the equipment, the date of legal delivery by such carrier to Owner, or if no public carrier is used, shall include the date upon which transit to Renter begins and the date upon which transit from Renter ends at Owner's unloading point.

### 3) RENTAL CHARGES

Renter shall pay rental for the entire rental period on each article of equipment named in the Schedule at the rate therein stipulated and in accordance with the following:

- (a) Monthly rental rates shall not be subject to any deductions on account of any non-working time in the month. The amount of rent payable for any fraction of a month at the beginning or end of the rental period shall be the monthly rental rate, prorated according to the number of calendar days in such fraction.
- (b) Daily rental rates shall not be subject to deductions for any non-working time in the day and shall be paid for each calendar day in the month. Daily and monthly rental rates stipulated in the Schedule contemplate an operating day of a regular single shift of eight (8) hours, and for each hour over such eight (8) hours that the equipment is operated these rates shall be increased six (6) percent of the daily rate throughout such period as the equipment is so operated.

### 4) PAYMENT FOR RENTAL

- (a) Renter agrees to pay to the Owner the amount of the rental charge set out in the Schedule for the equipment for the rental period, together with any applicable GST.
- (b) Renter also agrees to pay the other amounts set out on the front of this form calculated in accordance with the Schedule and any duties, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this Agreement or Renter's hiring of the goods.
- (c) Renter authorises Owner to complete any documents necessary or desirable to enable Renter to make any payments through any credit card system. Renter shall pay Owner interest at twelve percent (12%) or the highest lawful rate, whichever is greater, on any delinquent payment from the date when such payment was due until paid and/or any other sum for breach of this Agreement, from the date of the breach, and expenses of collection including solicitor fees on a solicitor own/client basis.

### 5) SECURITY DEPOSIT

Any security deposit paid by Renter to Owner is paid to guarantee Renter's full and faithful performance of all terms, conditions and provisions of this Agreement. If Renter shall so perform, an equal sum shall be repaid without interest to Renter at the termination of this Agreement.

### 6) FEES, ASSESSMENTS, AND TAXES PAID BY RENTER

Renter shall pay all license fees, assessments, and sales, use, property and excise, and other taxes or hereafter imposed, and relating to Renter's use or possession of the equipment.

### 7) RECALL NOTICE

Owner may recall any or all equipment upon ten (10) days written notice to Renter and Renter may return any or all equipment upon a like notice to Owner.

### 8) MAINTENANCE AND OPERATION

Renter shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed upon the equipment, and shall see that the equipment is not subjected to careless, unusually or needlessly rough usage; and Renter shall at its own expense maintain the equipment and its appurtenances in good repair and operative condition, and return it in such condition to Owner, ordinary wear and tear resulting from proper use thereof alone expected. Renter shall return the equipment with a full tank of fuel and agrees that if the equipment does not have a full tank of fuel upon return, Renter shall pay to the Owner the cost of a full tank of fuel (19 Litres) calculated at the current diesel rate for the equipment, regardless of the actual amount required to fill the tank.

### 9) REPAIRS

The expense of all repairs (excluding repairs resulting from ordinary fair wear and tear) made during the rental period, including labour, material, parts and other items shall be paid by Renter.

### 10) OPERATORS

Unless otherwise mutually agreed in writing Renter shall supply and pay all operators on the equipment during the rental period. All operators shall be competent and possess all necessary licenses to operate the equipment. Should Renter furnish any operators or other workmen for the equipment, they shall be employees of Renter during the rental period, and Renter shall pay them salary or wages and all other applicable costs. Renter shall provide and pay for all workers' compensation insurance and pay all payroll taxes required by law and applying to such operators and workmen. Renter agrees that, if

supplied by Owner pursuant to this Lease, the operators will be under the sole direction and control of the Renter during the hire period.

#### **11) DISCLAIMER OF WARRANTIES**

OWNER BEING NEITHER THE MANUFACTURER, NOR A SUPPLIER, NOR A DEALER IN THE EQUIPMENT, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS MATERIAL, ITS WORKMANSHIP, ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT IT WILL MEET THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS OR CONTRACTS WHICH PROVIDE FOR SPECIFIC APPARATUS OR SPECIAL METHODS. OWNER FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO RENTER OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO OWNER, OWNER LEASES THE EQUIPMENT "AS IS". OWNER SHALL NOT BE LIABLE IN ANY EVENT TO RENTER FOR ANY LOSS, DELAY, OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, EQUIPMENT HEREBY LEASED OR ACCIDENTAL BREAKAGE THEREOF.

#### **12) LIMITATION OF LIABILITY**

- (a) Except as expressly provided to the contrary in this Warranty, to the extent permitted by law, all express and implied terms, conditions, representations and warranties relating to the equipment are excluded and Owner will not be liable for any loss or damage (including injury, death, loss of profits or reputation, economic loss, indirect, special, consequential, general or any similar damages) arising in any way, either directly or indirectly, from any use of the equipment supplied with this contract, any defect in the equipment or from any failure by Owner or its directors, officers, servants, agents or contractors to perform any of its obligations under this Agreement whether a result of negligence or otherwise.
- (b) If any condition or warranty is implied in the terms and conditions of the supply or rental of equipment by the Trade Practices Act 1974 or any similar legislation of any state or territory of Australia and that legislation prohibits the exclusion, restriction or modification of such condition or warranty, such condition or warranty will be deemed to be included in the terms and conditions of sale/rental of the equipment and these terms and conditions will be deemed to be in addition to and will in no way limit, vary or exclude rights granted to the Renter of the items by virtue of such legislation.

#### **13) INDEMNITY**

Renter shall indemnify Owner against, and hold Owner harmless from, any and all claims, fines, penalties, actions, suits, proceedings, costs expenses, damages, and liabilities, including legal fees on a solicitor own/client basis, arising out of, connected with, or resulting from the equipment or the Lease, including without limitation, the manufacture, selection, delivery leasing, renting, control, possession, use, operation, maintenance, return of the equipment or acts or omissions of the Operator whilst under the control of the Renter pursuant to this Lease. Renter shall further indemnify Owner, and hold Owner harmless from all loss and damage to the equipment during the rental period. Renter recognises and agrees that included in this indemnity clause, but not by way of limitation, is Renter's assumption of any and all liability for injury, disability and death of workmen and other persons caused by the operation, use, control, handling or transportation of the equipment during the rental period.

#### **14) LIABILITY**

- (a) Renter states he/she has, and is presumed to have, all the information and skills necessary for careful and normal use of the equipment; it is his/her responsibility to supplement his/her knowledge if necessary.
- (b) Similarly he/she states that he/she has the authorisation, licenses and legal capacity to have or use the equipment and shall follow all instructions provided by Owner.
- (c) Renter is the sole custodian of the equipment during the rental period, he/she undertakes as such to exercise effective and exclusive control of the equipment.
- (d) Renter is therefore the sole person responsible, apart from Owner, for any damage that the equipment could cause to the Renter or a third party.
- (e) Renter expressly recognises that he/she is the custodian of the equipment rented for the full duration of the rental period and, should the case arise, beyond this time, until the return of the equipment to Owner is accomplished.
- (f) Consequently, Owner assumes no liability during the rental period for the equipment rented, in particular regarding its incorrect, imprudent or illegal use or the actions or omissions of the Operator whilst under the control of the Renter pursuant to this Lease.

#### **15) RISK OF LOSS**

Owner shall not be responsible for loss or damage to property, material or equipment belonging to Renter, its agents, employees, suppliers, or anyone directly or indirectly employed by Renter while said equipment is in Renter's care, custody, control or under Renter's physical control. Renter is encouraged to obtain appropriate equipment, public liability, material or installation floater insurance against such risk of loss. Renter and its insurers waive all rights of subrogation against Owner for such losses. The Owner shall not be liable to the Renter for any loss or damage whatsoever caused by reason of the Renter using a vehicle with insufficient towing capacity whilst transporting the equipment.

#### **16) INSPECTION: CONCLUSIVE PRESUMPTIONS**

Renter shall inspect the equipment immediately upon receipt thereof. Unless Renter gives written notice to Owner, specifying any defect in or other property objection to the equipment, Renter agrees that it shall be conclusively PRESUMED, as between Owner and Renter that Renter has fully inspected and acknowledged that the equipment is in full compliance with the terms of this Agreement, in good condition and repair, and that Renter is satisfied with and has accepted the equipment in such good condition and repair. Owner shall have the right at any time to enter the premises occupied by the equipment and shall be given free access thereto and afforded necessary facilities for the purpose of inspection.

#### **17) INSURANCE**

It is Highly recommended that the Renter shall keep the equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof; and shall carry public liability and property damage insurance covering the equipment and its operation and handling for the amount of at least One Million Dollars (\$1,000,000.00) or other reasonable amount specified by Owner. Renter shall pay the premiums and any deductible portions therefore and deliver said policies, or duplicates thereof, to Owner.

#### **18) DEFAULT: REMEDIES**

If (a) Renter shall default in the payment of any rent or in making any other payment hereunder when due, or (b) Renter shall default in the payment when due of any indebtedness of Renter to Owner arising independently of this lease, or (c) Renter shall default in the performance of any other covenant herein and such default shall continue for one day after written notice hereof to Renter by Owners, or (d) Renter becomes insolvent or makes an assignment for the benefit of creditors, or (e) Renter applies for or consents to the appointment of a receiver, trustee, or liquidator of Renter or of all or a substantial part of the assets of Renter under the Bankruptcy Act, or any amendment thereto (including, without limitation, a petition for sequestration arrangement, or extension) or under any other insolvency law or law providing for the relief of debtors, then, if and to the extent permitted by applicable law. Owner shall have the right to under any other insolvency law or law providing for the relief of debtors, then, if and to the extent permitted by applicable law. Owner shall have the right to exercise any one or more of the following remedies:

- (a) to declare the entire amount of rent hereunder immediately due and payable as to any or all items of the equipment, without notice or demand to Renter.
- (b) To sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any or all items of the equipment.
- (c) To take possession of any or all items of the equipment without demand, notice, or legal process, wherever they may be located. Renter hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of this lease as to any or all items of equipment unless Owner expressly so notifies Renter in writing. Owner may for the purposes of possession of its equipment enter upon any premises where the equipment is or is stored or where is it reasonably thought to be stored and may repossess the equipment without liability for trespass or otherwise.
- (d) To terminate this lease as to any or all items of equipment.
- (e) To pursue any other remedy at law or in equity.

Notwithstanding any said repossession, or any other action which Owner may take, Renter shall be and remain liable for the full performance of all obligations on the part of Renter to be performed under this lease. All such remedies are cumulative, and may be exercised concurrently or separately.

#### **19) NO SUBLETTING ASSIGNMENT**

No equipment shall be sublet by Renter, nor shall he assign or transfer any interest in this Agreement without written consent of Owner. Owner may assign this Agreement without notice. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the heirs, successors, and assigns of the parties hereto.

#### **20) REMEDIES CUMULATIVE: NO WAIVER: SEVERABILITY**

All remedies of Owner hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure, on the part of Owner to exercise and no delay in exercising, any right or remedy, hereby shall operate as a waiver thereof nor shall any single or partial exercise by Owner of any right or remedy hereunder preclude any other of further exercise thereof or the exercise of any other right or remedy. If any term of this lease is found invalid, it shall not affect the validity and enforcement of all remaining terms and provisions of this lease.

#### **21) EXPENSES**

Renter shall pay Owner all costs and expenses, including solicitor fees on a solicitor own/client basis, incurred by Owner in exercising any of its rights or remedies hereunder or enforcing any of the terms, condition, or provisions hereof.

#### **22) ENTIRE AGREEMENT**

This instrument constitutes the entire Agreement between Owner and Renter and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

#### **23) TITLE TO GOODS**

Renter acknowledges that the owner retains title to the equipment and that the Renter has rights to possess the equipment as a mere bailee only. Renter does not have any rights to pledge Owner's credit in connection with the equipment and agrees not to do so. Renter also agrees not to agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with the personal possession session of or otherwise deal with the equipment and not to conceal or alter the equipment or make any addition or alteration to, or repair of, the equipment.

#### **24) GOVERNING LAW**

This Agreement will be governed by the law of Victoria.

#### **25) FORCE MAJEURE**

Owner shall not be held liable if the failure to perform under the contract arises out of causes beyond the control of Owner. Causes may include, but are not limited to, acts of nature, fires, strikes other than by Owner's employees, flood, emergency breakdown, civil disturbance, etc.

#### **26) INDEPENDENCE**

Both parties, in the performance of this contract, shall be acting in the individual capacity and not as agent, employees, partners, joint ventures or associates of one another.

# EASTERN EXCAVATOR HIRE DIRECTOR'S GUARANTEE

To: Lyall Hodgson trading as Eastern Excavator Hire  
ABN 93 269 688 074

IN CONSIDERATION of your agreeing to supply ..... Pty Ltd  
of ..... ("the Company" with goods or services on credit)

..... of .....  
(Names(s)) (Private Address)

..... of .....  
(Names(s)) (Private Address)

..... of .....  
(Names(s)) (Private Address)

..... of .....  
(Names(s)) (Private Address)

**HEREBY AGREE with you as follows:**

1. That I/We have read, understood and agree to the conditions of Lease and shall be answerable and responsible to you for payment by the Company for all such goods or services as you may from time to time supply to it. This agreement shall be a continuing Guarantee to you for all debts whatsoever contracted by the Company with you in respect of goods and services to be supplied to it.
2. That you are at liberty without notice to make me/us at any time and without in any way discharging me/us from any liability hereunder to grant time or other indulgence to this Company and to accept payment from it in cash or by means of negotiable instruments and to treat me/us in all respects as though I/we were jointly and severally liable with the Company to you instead of being merely surety for it.

IN WITNESS the Guarantors have signed this Deed of Guarantee the ..... day of ..... 20.....

<b>SIGNED SEALED AND DELIVERED</b>	<b>SIGNED SEALED AND DELIVERED</b>	<b>SIGNED SEALED AND DELIVERED</b>
..... Signature	..... Signature	..... Signature
..... Name	..... Name	..... Name
..... Witness Signature	..... Witness Signature	..... Witness Signature
..... Witness Name	..... Witness Name	..... Witness Name
..... Witness Address	..... Witness Address	..... Witness Address
.....	.....	.....
..... Date	..... Date	..... Date