

ENTATAS Excavator Hire Agreement

ABN: 53 286 987 847



Terms and Conditions

'ENTATAS' agrees to hire Equipment to the Customer subject to the terms and conditions set out in this document.

By signing this hire agreement, the customer acknowledges that they have read, understand and will follow all requirements set out in the hire agreement, In order for the customer to hire equipment from ENTATAS they must complete and sign the hire agreement and any other documents ENTATAS may require. ENTATAS reserves the right to decline hiring Equipment to the Customer at any time.

1. DEFINITIONS

Customer: The person, firm, company, government institution, entity or corporation (including any personal representatives or permitted assigns of such) that engages ENTATAS.

Hire Period: Is duration of time from Commencement of hire until the end of the hire shown on the hire Agreement.

Commencement of Hire: The date and time the customer and ENTATAS agrees upon for the customer to pick up machine or machine is delivered, and possession is taken.

Hire Agreement: The agreement entered into between ENTATAS and the Customer hiring the equipment.

Equipment: Any kind of Equipment provided to the Customer by ENTATAS under the Hire Agreement including any and all machinery and trailer, accessories, tools, attachments and manuals.

Hire Charge: The rates and costs payable by the Customer for the hire of Equipment.

Wet Hire: Customer engages ENTATAS to provide equipment and operator to complete work.

2. ENTATAS OBLIGATIONS

Ensure equipment is in good working order prior to commencement of hire.

Ensure the equipment has a full tank of fuel prior to commencement of hire.

For wet hire, ENTATAS will provide a machine operator to work under the direction of the customer. It is the customer's responsibility to obtain a site plan and carry out all 'before you dig' service checks for the area they wish ENTATAS to operate. ENTATAS will only operate under direction from the customer therefore the customer remains liable for any damages incurred during the period of wet hire.

3. CUSTOMER HIRE OBLIGATIONS

The customer acknowledges that they will not on-Hire the equipment unless written permission to do so is given by ENTATAS.

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The customer warrants that they are authorised to sign the hire agreement and that all information provided is true and correct.

By signing the Hire agreement warrants that the customer has read, understood and will comply with all directions, terms and conditions and safety information provided.

The Customer agrees to provide ENTATAS with permission and unhindered access to enter the premises where equipment is being used or stored, to carry out inspections and servicing required.

The customer must not alter, modify, tamper with, damage or repair the Equipment without written permission from ENTATAS.

It is the customers responsibility to ensure all equipment loaded on or in customers vehicle is secured correctly during transport as per manufacturers instructions.

It is the customers responsibility before transporting machine to ensure trailer is secured correctly and checked for any mechanical issues that may deem it unsuitable for use as per manufacturer's instructions.

The customer must not exceed the designed GTM (gross trailer mass) or ATM (aggregate trailer mass) of any trailer used to transport the Equipment.

The customer must take full responsibility for the vehicle being used to tow any form of Equipment and make sure the vehicle meets the requirements made by the Department of State Growth (Transport Services), or any other relevant legislation or regulation.

The customer is responsible for ensuring their vehicle is suitable and has the towing capacity required to transport the hired equipment and attachments.

It is the customers responsibility to ensure that the hired equipment is:

- (a) Stored in a safe, secure area and where possible in a locked yard or shed.
- (b) Operated safely by a suitably trained, competent, licensed, experienced and (if necessary) certified operator in accordance with all laws and regulations, the operator's manual and any instructions ENTATAS provides;
- (c) Used only for its intended purpose, in suitable terrain and in a manner that is within the Equipment's capabilities and limitations;
- (d) Not used underground, in a mine or in an area where friable asbestos is present.
- (e) Not used excessively, including excessive use of the attachments;
- (f) Not used in, on or over water;
- (g) Not removed from the state of Tasmania without prior written consent of ENTATAS

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(h) Returned to ENTATAS in the same clean condition and good working order it was in when received, and with a full tank of clean fuel, filled either directly from fuel station bowser or using jerry can provided by ENTATAS.

(I) Ensure unregistered machinery is only operated on private property.

The Customer must ensure that all persons who operate the Equipment:

(a) Prior to any use are made aware of all safety information, operating instructions and notices supplied with, attached to or contained in the Equipment.

(b) Do not operate the Equipment while under the influence of any alcohol or drugs;

(c) Do not use the equipment for any illegal activities;

(d) Do not deface or remove any safety information from the Equipment;

(e) Wear suitable clothing and protective equipment as required or recommended by the safety and operating instructions, the law or any regulations;

(f) Not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment;

(g) Not use a hydraulic attachment that has not been supplied by ENTATAS without prior written agreement from ENTATAS; and

(h) Re fuel, lubricate and maintain the Equipment in good condition and in accordance with all instructions and the operator's manual.

The Customer takes full responsibility for any traffic infringements incurred during the Hire Period and must not exceed the recommended or legal speed limits during transport of the Equipment.

The Customer must report all accidents and damage to ENTATAS immediately if an accident or damage occurs.

The Customer acknowledges, and ENTATAS advises, that the Customer must obtain a "Before You Dig" site plan and council building site plan before any use of Equipment or wet hire. Information in regard to "Before You Dig" can be found at www.byda.com.au and through local councils.

Under a wet hire agreement, the customer must give direction as to what earthworks they want completed. The customer accepts and takes full responsibility for any damages incurred by ENTATAS during the wet hire period.

4. HIRE CHARGES

Initial Hire Charges are based on the Hire Period outlined in the Hire Agreement.

The customer acknowledges that one day hire is strictly limited to a 10 hour period or return by 5:00pm, whichever comes first.

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The Customer acknowledges and accepts that if the Equipment is not returned to ENTATAS by the conclusion of the Hire Period, then additional charges will apply at a daily rate until the Equipment is returned.

The Customer accepts that equipment is not to be used continuously for more than 8 hours over a 24 hour period. Additional charges of \$50 / hour will apply if this period of usage is exceeded.

5. PAYMENT / CREDIT TERMS

The Customer must pay to ENTATAS:

- (a) Full payment of the Hire Charge prior to Commencement;
- (b) All costs incurred by ENTATAS to fix, repair or replace damage caused to the Equipment by the Customer or any person using the Equipment while it was hired to the Customer including insurance costs, (i.e. cost of excess on claim) and costs of recovery of the Equipment. This includes repairs to all parts and attachments for the Equipment that are excessively worn or used;
- (c) All cleaning and refuelling costs of the Equipment; Refuelling will be charged at a rate of \$2.50 per litre and cleaning of machine charged at \$65 plus GST per hour.
- (d) All costs incurred by ENTATAS to recover, clean, repair or refuel the Equipment, including loss of business;
- (e) All tolls, fines, levies, penalties or charges payable in respect of this hire agreement or arising from the Customer's use of the Equipment; and
- (f) Any legal expenses or legal cost incurred by ENTATAS, on a solicitor and own client basis, for any actions taken whatsoever due to Customer's default of these terms and conditions.
- (g) For the new listed price plus shipping and labour of any Equipment which is not returned to ENTATAS.

Prior to Commencement, the Customer must (unless agreed in writing prior with ENTATAS):

- (a) Make full payment for hire of equipment including delivery and hire of attachments.
- (b) Provide a valid credit card to ENTATAS to be used for all payments pursuant to these terms and conditions.

The Customer agrees to the following Credit terms:

- (a) Payment in full of any additional charges is required within 7 days from date of invoice.
- (b) An account keeping fee of \$20 per month will be imposed on overdue accounts
- (c) Accounts referred to a Collection Agency or Solicitor will have all legal costs and commission added to the amount due.

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- (d) Overdue accounts will be subject to 10% interest rate.
- (e) When more than one party is liable for payment of this account, they will be liable jointly and severely.
- (f) The customer covenants that the information provided in this application is true and correct.

6. RESPONSIBILITY FOR THE EQUIPMENT

The 'Customer' acknowledges and accepts it is solely responsible for any loss, theft or damage of or to the Equipment from any and every event whatsoever and howsoever and by whosoever caused while the equipment is being hired to the Customer.

7. BREACH OF HIRE AGREEMENT BY THE CUSTOMER

If the Customer breaches any clause whatsoever of this document, or becomes insolvent, bankrupt or ceases business then ENTATAS shall be entitled to immediately terminate the Hire Agreement, repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so) and institute proceedings against the Customer for recovery of all monies owing by the Customer.

8. LIABILITY AND INDEMNITY

It is the customers responsibility to locate all services and infrastructure in the area that the machine is to be operated in prior to works commencing.

It is the customers responsibility to ensure the machine is operated within the manufacturers specifications by a competent person.

It is the customers responsibility to ensure machine is loaded and unloaded safely by a competent person and will supervise all machine operations where required.

It is the customers responsibility to ensure children do not have access to the job site, work area or machine.

The Customer acknowledges that use of the Equipment comes with dangers and risk of injury and the Customer accepts all dangers and risks associated with the use of the Equipment.

The Customer assumes all risks and liabilities for, and in respect of, the use of the Equipment including, but not limited to:

- (a) Any injury or death of any persons or animals;
- (b) Any damage to property or claim by a third party howsoever arising from the possession use maintenance, repair or storage of the 'Equipment-(including as a result of the Customer not using the Before You Dig service); and
- (c) Transport of the Equipment, including damage or injuries caused by incorrect transport of the Equipment in any way.

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The Customer is liable to, and indemnifies and forever keeps indemnified ENTATAS against any and all damage, loss, claims, cost and expenses (including, without limitation, legal fees, cost and disbursements on a full indemnity basis, whether incurred or awarded against ENTATAS and any environmental loss, cost, damage or expense) resulting from the use of the Equipment by any person or a breach of any of these terms and conditions.

No delay or 'omission' by ENTATAS of its rights under the Hire Agreement or these terms and conditions will impair any such right, power or remedy, nor will it be construed to be a waiver of any rights to take action or make a claim in respect of a continuing breach or default.

9. GUARANTOR

The person signing the hire agreement agrees to:

- (a) Personally guarantee all terms and conditions imposed on the Customer; and
- (b) Indemnify and keep indemnified ENTATAS against any and all breaches by the Customer of these terms and conditions, or agreement created by it.

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By signing below, I acknowledge that I have read and agree to all terms and conditions outlined in this hire contract and will follow excavator safe work procedures and safe work Australia's excavation code of practice.

This Agreement is made on the _____ Day of _____ 20____

Between: ENTATAS of Formby Street Sheffield, Tasmania 7306 (*"Owner"*)

And: _____ (*"Customer"*)

of _____

Drivers Licence No: _____ **Class:** _____ **Expiry Date:** ____ / ____ / ____

Original sighted & Copy Obtained by: _____
(*"ENTATAS Authorised Officer"*)

For and on behalf of ENTATAS (*"the owner"*).

Authorised Officer: Dakota Wolf _____

Signature: _____ Date: ____ / ____ / ____

Customer: _____

Signature: _____ Date: ____ / ____ / ____

SCHEDULE

Plant & Equipment:

1.7 T Hitachi excavator, 900mm, 450mm & 300mm buckets and ripper tyne.

Aluminium Plant trailer

Hire period:

From: Date: ____ / ____ / ____ Time: _____

To: Date: ____ / ____ / ____ Time: _____

Machine Hours At Time Of Collection: _____

Hire fee : _____ as per hire period above (additional charges will apply if hire period / hours are exceeded)

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Conditions of use specific to the equipment:

Pre-hire inspection report (working order and condition, including defects to be noted):

Minor scratches and rub marks on booms, side panels and rear nudge bar

Signature of Authorised Officer: _____ Date: ____ / ____ / ____

Signature of Hirer: _____ Date: ____ / ____ / ____

Date Returned: ____ / ____ / ____ **Time:** _____

After-hire inspection report (any change from pre-inspection condition to be noted):

Signature of Authorised Officer : _____ Date: ____ / ____ / ____