

DMD PLANT HIRE

You drive or I drive

Dry Hire Agreement

This Agreement is between StarCo Developments Pty Ltd ABN 29 100 149 750 trading as **DMD Plant Hire** of 79 Pearsons Road, Lake Macdonald 4563 ('DMD') and the Hirer described below:

Hirer

Hirer Name:	Phone:
Hirer Address:	
Hirer Email:	
Work Site Address:	
Operator Name:	Licence No:

Hire Period and Commencement

Hire Period: Hours:	Day:	Week:
Commencement Date: / /		End Hire Date: / /

Equipment

Equipment (Reg No.): <input type="checkbox"/> 815 Fuso Truck: _____ <input type="checkbox"/> RT-30 Posi Track: _____ <input type="checkbox"/> 18-ZT Mini Excavator: _____ <input type="checkbox"/> Trailers: _____
Attachments: <input type="checkbox"/> Post Hole Auger: <input type="checkbox"/> Augers: _____ No. Of Augers _____ <input type="checkbox"/> Other _____
Equipment Start Hrs/Klm: _____
Consumables: Diesel Full
Bond: \$
Damage Waiver excess included Yes <input type="checkbox"/> No <input type="checkbox"/> . If No, Hirer's insurance copied and acceptable <input type="checkbox"/>
Theft Waiver excess included Yes <input type="checkbox"/> No <input type="checkbox"/> . If No, Hirer's insurance copied and acceptable <input type="checkbox"/>
If Yes, Equipment Waiver Plus Fee - \$ _____ OR Vehicle Waiver Plus Fee - \$ _____

Dated this _____ day of _____ 2019

Signed as a Deed

HIRER	DMD
The Hirer hereby acknowledges to have read, understood and agrees to be bound by the terms and conditions of this Agreement as attached.	
Signature	Signature
Name & Position	Daniel Starkey Manager

DMD Plant Hire Agreement - Terms and Conditions

1. Definitions

- 1.1. 'Additional Distance Fee' means the sum of 0.30 cents per kilometre if the Hirer exceeds 100 kilometres;
- 1.2. 'Agreement' means this Agreement and includes any written variations.
- 1.3. 'Bond' means the Amount specified in the Schedule.
- 1.4. 'Commencement' is the time and day when either the Hirer collects the Equipment, or the Equipment is delivered to the Hirer, whichever is applicable.
- 1.5. DMD Plant Hire is a business owned and operated by StarCo Developments Pty Ltd as trustee of the Project Development Trust ABN 29 100 149 750, referred to herein as 'DMD'.
- 1.6. 'Equipment' means all the plant and Equipment specified above including, but not limited to, any tools, accessories, parts or other machinery supplied to the Hirer.
- 1.7. 'Hirer' means the person or entity described in the Agreement.
- 1.8. 'Hire Charge' is the amount payable by the Hirer as specified above.
- 1.9. 'Hire Period' is the period of Hire as specified above.
- 1.10. 'Operator' is the person specified above that will be in direct control of and operating the Equipment.

2. DMD Obligations

DMD agrees to:

- 2.1. Allow the Hirer to take and use the Equipment for the Hire Period.
- 2.2. Provide the Equipment to the Hirer clean and in good working order.
- 2.3. Provide the Equipment with a full tank of fuel.
- 2.4. Collect the Equipment at the end of the Hire Period, if nominated in this Agreement.

3. Obligations of the Hirer

The Hirer agrees to:

- 3.1. Prior to commencement of this Agreement, ensure the Equipment is suitable for its intended use.
- 3.2. Ensure that in operating the Equipment:
 - 3.2.1. only persons who are properly trained and certified as competent, if applicable; and/or
 - 3.2.2. hold an appropriate drivers' licence; and
 - 3.2.3. use recognised standards for the purpose for which the Equipment is intended.
- 3.3. The Operator named in this Agreement is the only person authorised to use the Equipment.
- 3.4. Not to make any alterations, additions or replacements to the Equipment.
- 3.5. Only operate the Equipment for its intended use and in accordance with the manufacturer's instructions whether supplied by DMD or otherwise.
- 3.6. Strictly operate the Equipment safely in accordance with the law.
- 3.7. Conduct a thorough hazard and risk assessment before using the Equipment and comply with all workplace health and safety regulations relating to the Equipment and its safe operation.
- 3.8. Secure all items loaded in or on the Equipment in a safe manner, using only fit for purpose load restraints and in compliance with all legal requirements and safe workload limits specified by the manufacturer.
- 3.9. Provide full details in writing to DMD within two (2) hours of any accident or damage to the Equipment and prior to its return.
- 3.10. Allow DMD at all times access to the Equipment to examine and/or test the Equipment at the discretion of DMD.
- 3.11. At the end of the Hire Period, ensure the Equipment is available for collection at the agreed time, or, deliver the Equipment back to the DMD premises at the agreed time, as specified in this Agreement.
- 3.12. Return the Equipment to DMD fully cleaned and in the same condition as it was received (fair wear and tear excepted). If the Hirer fails to return the Equipment fully cleaned, DMD will charge the Hirer a fee for cleaning the Equipment. The Hirer acknowledges and agrees that the minimum cost will be \$40.00 but the cost will be at the discretion of DMD acting reasonably to reflect the cost and inconvenience to DMD of having to clean the Equipment.
- 3.13. Return the Equipment with a full tank of fuel and if the Hirer fails to do so the Hirer agrees to pay DMD \$2.50 per litre to fill the tank with fuel.
- 3.14. Ensure it will not:
 - 3.14.1. tamper with, damage or repair the Equipment;
 - 3.14.2. lose or part with possession of the Equipment;
 - 3.14.3. rely upon any representation relating to the Equipment or its operation other than those contained in this Agreement;
 - 3.14.4. allow any person to operate the Equipment if they are affected by drugs and/or alcohol;
 - 3.14.5. exceed the recommended or legal load and capacity limits of the Equipment;
 - 3.14.6. use or carry any illegal, prohibited or dangerous substances in or on the Equipment;
 - 3.14.7. exceed the recommended or legal speed limit for the Equipment
 - 3.14.8. allow any person to operate the Equipment who is not properly trained and certified as competent to operate the Equipment.
- 3.15. Pay the Bond at the commencement of the Hire period.
- 3.16. Authorise DMD to deduct from the Bond:

- 3.16.1 Any costs of DMD associated to returning the Equipment to the state it was prior to the Hire period, including damage on cleaning expensives; and
- 3.16.2 The Additional Distance Fee;
- 3.16.2 Any of the Equipment Waiver Plus Fee, Vehicle Waiver Plus Fee or any excess payable with respect to any insurance claim during the Hire Period where the Hirer has not obtained its own insurance under clause 6.2
- 3.17 Pay the Additional Distance Fee where the Equipment hired is a vehicle driven on a road and the total distance driven by that vehicle exceeds 100 km from the commencement of the Hire period.

4. Payments by the Hirer to DMD

- 4.1. On or before Commencement (or as otherwise specifically agreed with DMD) the Hirer will pay the Hire Charge.
- 4.2. Immediately upon demand by DMD, the Hirer will pay:
 - 4.2.1. the new list price of any Equipment which is for whatever reason not returned to DMD (the Hirer is responsible for any loss or theft of the Equipment which occurs during the Hire Period) or any excess payable pursuant to DMD's insurance policy with respect to any Hire Period by the Hirer;
 - 4.2.2. all costs incurred in cleaning the Equipment;
 - 4.2.3. the full cost of repairing any damage to the Equipment caused or contributed to by the Hirer, unless expressly agreed otherwise in this Agreement;
 - 4.2.4. stamp duty, GST, any other taxes or duties, all tolls, fines, penalties, levies or charges payable in respect of this Agreement or arising from the Hirer's use of the Equipment;
 - 4.2.5. all costs incurred by DMD in delivering and recovering possession of the Equipment (except where delivery and pick up is included in the Hire Charge);
 - 4.2.6. interest on late payment of amounts owing by the Hirer at the pre-judgement interest rate set by QCAT from time to time;
 - 4.2.7. any expenses and legal costs (including commission payable to a commercial agent) incurred by DMD in enforcing this Agreement due to the Hirer's default;
 - 4.2.8. if applicable, the Equipment Waiver Plus Fee and/or Vehicle Waiver Plus Fee.
- 4.3. Without limiting the ability of DMD to recover all amounts owing to it, the Hirer authorises DMD to charge any amounts owing by the Hirer to any credit card or bank account details of which are provided to DMD.
- 4.4. The Hire Charge shall not be subject to any set off or deduction for any reason whatsoever and, without limiting the generality of the foregoing, by reason of nonworking time howsoever caused the Hire Charge shall be paid by the Hirer to DMD until the Equipment is returned to DMD in good operating condition.

5. Default and Termination

- 5.1. A default under this Agreement occurs if:
 - 5.1.1. any money payable under this Agreement is not paid by the due date; or
 - 5.1.2. the Hirer fails to observe and perform any of the Hirer's obligations and such failure continues after DMD gives notice to the Hirer to remedy the breach; or
 - 5.1.3. DMD determines that any warranty, representation or statement made by the Hirer in connection with this Agreement has been false in any material respect; or
 - 5.1.4. the Hirer commits an act of bankruptcy, becomes mentally incapacitated or is declared mentally incompetent, or is convicted of a criminal offence or dies; or
 - 5.1.5. the Hirer admits of its inability to pay its debts.
- 5.2. If a default occurs, DMD may take possession of the Equipment with or without notice to the Hirer and the Hirer must at the Hirer's expense deliver the Equipment in good order and repair in accordance with the directions of DMD. The Hirer irrevocably authorises DMD to enter any premises occupied or controlled by, or believed by DMD to be occupied or controlled by the Hirer and repossess the Equipment. The Hirer indemnifies DMD in respect of any loss arising under this subclause.
- 5.3. Notwithstanding anything contained in this Agreement to the contrary, DMD reserves the right to collect the Equipment at any time and without notice to the Hirer when in DMD's opinion the Equipment is endangered or imperilled by any reason or cause whatsoever.

6. Risk and Indemnity

- 6.1. The Hirer shall assume all risks and liabilities for an in respect of the Equipment and for injuries to or death of persons and damage to property howsoever arising from the possession, use, or storage of the Equipment. The Hirer shall be solely responsible for any loss or damage to the Equipment including, without limiting the generality of the foregoing, damage done by corrosion, rust, oxidation and chemical reactions of every nature and kind whatsoever. Unless the Hirer pays the Damage Waiver (being the Vehicle Waiver Plus Fee (clause 7.3) or the Equipment Waiver Plus Fee (clause 7.4)) the Hirer is responsible to insure the Equipment during the Hire Period. Commencement of Hire is subject to provision of the Hirer's insurance to DMD being satisfactory.
- 6.2. The Hirer acknowledges and agrees that the Hirer has satisfied itself as to the condition and suitability of the Equipment in its fitness for the Hirer's purposes and the Hirer has inspected the Equipment and satisfied itself as to its compliance with the specifications.
- 6.3. The Hirer indemnifies DMD against all actions, claims and demands howsoever arising from the use and/or operation of the Equipment

- 6.4. DMD gives no warranty that the Equipment is fit for any particular purpose and all other conditions, warranties and representations whether expressed, implied or statutory are excluded to the extent possible. The Hirer must make its own enquiries in relation to the suitability, capacity and ability of the Equipment and should not rely on any other warranty or representation
- 6.5. DMD is not liable for any delay, failure or inability to perform its obligations as a result of any cause beyond DMD reasonable control, including fire, flood, material adverse weather conditions, interruption of power supply, war, acts of terrorism or still disturbance, industrial action, trade dispute or blockade, legal or government restrictions (force majeure)
- 6.6. The Hirer must inspect the Equipment immediately upon receipt. If the Hirer is not satisfied with the care or condition of the Equipment, the Hirer must give immediate written notice to DMD specifying all defects or any other objection. Failure to do so will result in the Hirer being deemed responsible for any and all damage or defects identified thereafter.

7. **Damage Waiver**

- 7.1 Damage Waiver is not insurance but is an agreement by DMD that the Hirer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.
- 7.2 Damage Waiver applies to all hires, subject to the conditions below. There are two components, the Vehicle Waiver (clause 7.3) and the Equipment Waiver (clause 7.4). The Damage Waiver Excess is the Hirer's responsibility and the cost of same is payable by the Hirer. The Damage Waiver Excess may include the Vehicle Waiver Plus Fee or the Equipment Waiver Plus Fee.

DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE HIRER'S LIABILITY in the following circumstances:

- (a) where the Equipment is lost or stolen;
 - (b) where the operator is not suitably licensed;
 - (c) where the operator is affected by drugs and/or alcohol;
 - (d) where the equipment has been wilfully damaged by the Hirer or its employees or agents;
 - (e) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
 - (f) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road; or
 - (g) where the damage is caused in any way by overloading.
- 7.3 The Hirer may pay an additional Vehicle Waiver Plus Fee (Excluding Hirers driving with "P" plate license's) in relation to the hire of Motor Vehicles, which will:
- (a) reduce the Damage Waiver Excess in relation to Motor Vehicles;
 - (b) cover damage to a pantech or van body above cab height; and
 - (c) add a Theft Waiver component for Motor Vehicles. Theft Waiver is not insurance but is an agreement by DMD that the Hirer's liability for theft or loss of the Motor Vehicle can be limited in some circumstances only to an amount called the Theft Waiver Excess.

DMD will ask the Hirer to pay the Vehicle Waiver Plus Fee on the hire of Motor Vehicles, but the Hirer may decide to opt out of that payment.

The reduced Damage Waiver Excess and the Theft Waiver Excess apply to Motor Vehicles when the Vehicle Waiver Plus Fee is paid this will be shown on the Hire Contract and will vary for different classes of vehicles.

- 7.4 The Hirer may pay an additional Equipment Waiver Plus Fee in relation to the hire of equipment (being such Equipment as determined by DMD Plant Hire from time to time), which will:
- (a) reduce the Damage Waiver Excess in relation to the equipment; and
 - (b) add a Theft Waiver component f. Theft Waiver is not insurance but is an agreement by DMD that the Hirer's liability for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess.

DMD will ask the Hirer to pay the Equipment Waiver Plus Fee on the hire of equipment, but the Hirer may decide to opt out of that payment.

Payment of the Equipment Waiver Plus Fee is compulsory on all earth moving equipment, unless DMD agrees to accept a certificate of insurance provided by the Hirer at its own cost.

The reduced Damage Waiver Excess and the Theft Waiver Excess which apply to equipment when the Equipment Waiver Plus Fee is paid will be shown on the Hire Contract and will vary for different types of machinery.

- 7.5 **THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE HIRER'S LIABILITY FOR THEFT in the following circumstances:**
- (a) where the Hirer has failed to keep the Equipment in a securely locked Compound, or in the case of a Motor Vehicle, has failed to properly secure or lock the Motor Vehicle; or
 - (b) where the Hirer has failed to submit to DMD a Police Report on the theft within 7 days of the theft allegedly occurring.

In the event of Theft Waiver applying, hire fees will be charged to the Hirer until the Police Report is provided to DMD.

- 7.6 Damage Waiver or Theft Waiver will NOT apply where DMD determines that any of the applicable circumstances in clauses 7.2(a)-(g) or 7.4(a)-(b) respectively have occurred, unless the Hirer is able to establish otherwise to the reasonable satisfaction of DMD.

8. **General**

- 8.1. The terms and conditions of this Agreement together with any written variation shall contain the entire and only Agreement between the parties. Any representation, promise, condition or warranty connection there with not otherwise in this Agreement shall not be binding on either party.
- 8.2. If the Hirer is two or more parties their liability under this Agreement is joint and several.
- 8.3. The Hirer must have and maintain throughout the Hire Period all other insurances appropriate to its circumstances and/or required by law, including public liability insurance and workers compensation insurance.