

HIRE AGREEMENT ONTRACK DIGGER HIRE LIMITED ("Ontrack")

Ontrack is the owner of the equipment and at the request of the customer it has been agreed, subject to the terms and conditions of this agreement, that Ontrack will hire the equipment identified in this agreement to the Customer.

Date of Agreement: _____

1. Customer: _____
Name (if a limited liability company/trust/partnership please state) _____

Name of Person*: _____

Customers Physical Address:

_____ No of Street/Road

_____ Town/City/Post Code

Customers Postal address
(if different from physical address) _____

Telephone: _____ (mobile)
_____ (landline)
_____ (facsimile / "fax")

E-mail: _____

It is agreed by the Customer and Ontrack that invoices and any other notices provided for by this agreement will be sent to the e-mail address shown above and any such invoices or notices shall be deemed to be delivered to and received by the customer on the day the e-mail was sent, if no e-mail address is given by the customer invoices will be sent to the customers physical and/or postal address above and will be deemed to have been received by the customer on the third day after posting by Ontrack. It is a specific term of this agreement and it is agreed that all invoices are due and payable by the customer to Ontrack on the seventh (7th) day following the date of any invoices issued by Ontrack to the customer irrespective of the date that the customer may receive any invoice.

Equipment:

2. Description of Equipment (including associated equipment) to be hired by Customer:

Serial number/Identification number(code): _____

Hire Period:

3. Date of Hire: _____

Commencement time: _____ am / pm

Return date & time: _____ am / pm *

Hire Period: _____ week/weeks

*The customer acknowledges the minimum hire period is one (1) day unless otherwise stated. As to payment see clauses 1.4 to 1.8 of this agreement. If no commencement time or return date and time are recorded then the equipment is hired for the minimum period and shall be returned in accordance with this agreement by 4:30 pm on the date of hire.

Hire Rate:

4. _____ *

*The hire rate is exclusive of GST. GST will be charged on all equipment. Interest will be charged on late payment (see clause 1.7).

5. Deposit payable: _____

Refundable deposit: _____

Signed by or on behalf of the customer (see cl.3.1 & 3.2).

By signing this agreement the customer acknowledges that it has read the terms and conditions of Hire and shall be bound by the terms and conditions

Terms and Conditions of Hire:

Definitions:

Agreement - means this agreement and the terms and conditions of hire set out herein.

Associated Equipment - means equipment and includes, trailers, detachable parts (whether attached to the equipment or not), spare parts, wheels, tyres, tracks, and any part that is attached to or forms part of the equipment, including, but without limitation buckets, interchangeable implements, tools and attachments...

Commencement time - (subject to the minimum hire period) means, the day and time at which the equipment is due to be and/or is uplifted from Ontrack by the customer or the day and time at which Ontrack delivers the equipment to the customer or as is recorded on page 1 of this agreement.

Costs - means any cost incurred by Ontrack associated with this agreement and the hire of equipment to the customer and shall include legal costs (on a solicitor-client basis), repair costs, cleaning costs and the costs of recovery of any amount owing by the customer to Ontrack, and shall include cleaning, travel and time costs incurred by Ontrack, and any costs incurred by Ontrack under subclause 1.7.c. In this agreement:

Cleaning costs: means Sixty Dollars (\$60.00) per hour (or any part thereof) plus GST;

Travel costs: means the rate of One Dollar and Fifty cents (\$1.50) per kilometre (plus GST if any); and

Time Cost: mean Sixty Dollars (\$60.00) per hour (or part thereof) plus GST.

Customer - means the person or entity identified on page 1 of this agreement and the person who has signed this agreement on behalf of the customer.

Due Date for Payment - means the seventh (7th) day following the date of any invoice issued by Ontrack to the customer under this agreement minimum hire.

End of Period of Hire and Return time - means the time and date identified on page 1 of this agreement.

Entity - means any duly incorporated company, a partnership (including a limited partnership) or any other entity identified as the customer on page 1 of this agreement (where a customer does not record the fact that it is duly incorporated company by adding the words "limited" or the letters "ltd" after the name, then it is expressly agreed that Ontrack may treat the customer as being the natural person who signed this Hire Agreement and the word entity shall be deemed to be that person).

Equipment - means any machine, including any digger, excavator, or other types of machinery, and includes any associated equipment, including trailers, implements, parts, and attachments whether identified on page 1 of this agreement or not.

Day and a half (1/2) day - Day means from 7:30 am on any day of the week until 4:30 pm on the same day and half (1/2) day means from 7:30 am to 11:30 am or from 12:30 pm to 4:30 pm.

Hire - means the borrowing and use of equipment (and associated equipment) owned by Ontrack by the customer for the hire period and on the terms and conditions set out in this agreement.

Hiree - means the customer and the person who has signed this agreement on behalf of the customer.

Hirer - means Ontrack Digger Hire Limited and "On Track".

Hire Price - means the daily rate of hire for the equipment as set by Ontrack plus GST and as set out on page 1 of this agreement.

Hire Period (or period of hire) - subject to the minimum hire period, means the period between the commencement of Hire and the day and time that the period of Hire is scheduled to end and the return of the equipment by the hiree as recorded on page 1 of this agreement.

Hire Price - means the price set out on page 1 of this agreement plus Goods and Services Tax (GST)

Minimum Hire Period or Minimum Hire - means the period from 7:30 am to 4:30 pm and any period in between 7:30 am and 4:30 pm on any calendar day, unless the contrary is specifically recorded on page 1 of this agreement.

Non-refundable Deposit - means the deposit referred to in clause 1.2 of this agreement.

Ontrack - means Ontrack Digger Hire Limited and the Hirer.

Owner of the equipment - means Ontrack.

Refundable Deposit - means the deposit referred to in clause 1.1 of this agreement.

Return time - means 4:30 pm on any day save where the customer has hired the equipment for a half (1/2) day in which case the return time shall be 11:30 am on the morning of hire or 4:30 pm on the afternoon of the hire

Return Date - subject to the minimum hire period - means the date and time recorded on page 1 of this agreement.

Service Maintenance Sheet - means the sheet provided to the customer (a copy of which the customer acknowledges as having received at the commencement of hire), and which details the service requirements that the customer agrees and warrants to perform on the equipment (plus associated equipment) during the period of hire and otherwise as directed by Ontrack.

One Week / Weeks - means the period from 7:30 am on a Monday to the following Sunday 4:30 pm, and any period of more than five (5) days.

1. Deposit & Payment:

Deposit:

1.1 **Refundable deposit:** Ontrack may require any customer to pay a refundable deposit in advance of the commencement of the Hire period in the amount set out on page 1 of this agreement; and

a. The refundable deposit shall be paid in addition to the price for hire of any equipment;

b. The Refundable Deposit will be in addition to any other deposit to be paid by the customer as provided for by this agreement;

c. Subject to the sub-clauses 1.7.a, 2.3.g and 2.4 herein the refundable deposit shall be refunded to the customer by Ontrack on the equipment being returned to Ontrack on the date and at the time that the hire period ends and the equipment being returned clean, in good order and repair, and otherwise in the same condition that the equipment was in at the commencement of hire to the satisfaction of Ontrack;

d. In the event that the equipment is returned after the time when the hire period is to end, and/or the equipment is returned uncleared, and otherwise not in the same condition as it was at the commencement of hire then, Ontrack may retain all or any of the refundable deposit as it may consider appropriate in the circumstances.

e. The retention of the refundable deposit by Ontrack. Where Ontrack elects to retain the refundable deposit (or any portion of it) for the reasons set out in sub-clause 1.1.d the amount retained shall not be credited against the hire price payable by the customer for the equipment which shall remain due, owing and payable and the retention of the refundable deposit shall be in addition to and without prejudice to any other rights that Ontrack may have under this agreement.

1.2 **Non-Refundable Deposit:** Unless specifically agreed in writing by Ontrack the customer who requests to hire any equipment for a period of more than the minimum period shall pay a non-refundable deposit to Ontrack before the commencement of Hire calculated as follows:

a. in the case of a hire period of more than one (1) week but less than two (2) weeks in the amount equivalent to one (1) weeks hire plus GST or such other amount as Ontrack may determine and is set out on page 1 of this agreement; or

b. in the case of a hire period of more than two (2) weeks in the amount set out on page 1 of this agreement.

1.3. The Non-refundable deposit shall be credited to the customer against the price of hire.

Payment:

1.4. Where the customer agrees to hire any equipment from Ontrack for a period of a half day or for more than one (1) day or for more than one day and up to one (1) week the customer agrees that he/she/it will pay Ontrack the full price (including GST) for Hire of any equipment (not including any refundable deposit) in cleared funds before the customer takes possession of the equipment or the equipment to be hired by the customer is delivered to the customer by or on behalf of Ontrack. If the customer fails or refuses to make payment then Ontrack has no obligation to make the or any equipment available to the customer.

1.5. Where the customer agrees to hire any equipment for a period of more than one (1) week the customer shall pay Ontrack the hire price for the equipment for the first week of hire before the commencement period and Ontrack will invoice the Customer on the first day of the following week of hire and on the fifth (5th) day thereafter for the duration of the Hire Period and any such invoice shall be due and payable by the customer on the seventh (7th) day following the date of the invoice.

1.6 For the purposes of this agreement, the due date for payment by which the customer shall pay Ontrack shall be the seventh (7th) day following the date of any invoice issued by Ontrack to the customer.

1.7 In the event that the customer fails to return the equipment hired by the return date and/or return time then the customer agrees to pay Ontrack a sum equivalent to the price for hire of the equipment for one (1) day for every day (or part thereof) past the return date until the equipment is returned to Ontrack in accordance with this agreement and in addition to paying Ontrack as provided for by this clause, the customer specifically consents to and irrevocably authorises Ontrack to exercise the rights provided to it under sub-clause 2.1 herein.

Interest on late payment:

1.8 In the event that the customer fails to pay any amount invoiced to the customer by Ontrack under this agreement by the due date for payment then:

a. the customer specifically and irrevocably agrees and authorises Ontrack to retain any refundable deposit that the customer may have paid in payment (whether in full or part payment) of any amount (including interest and costs) that may be owing to Ontrack. Where Ontrack exercises its right to retain any amount under this sub-clause, that amount shall be credited to the customer against any amount that may be due and owing. If Ontrack exercises its rights under this sub-clause, Ontrack shall still have the right to exercise the powers provided to it under sub-clause 2.1 herein irrespective of whether the amount retained is equal to the amount the customer has failed or refused to pay Ontrack by the due date for payment.

b. the customer specifically agrees that interest shall accrue and be payable by the customer to Ontrack on any amount due and unpaid (including costs as specified in this agreement) at the rate of **Three and a half (3.5%)** percent per month and such interest shall be calculated daily on a compounding basis from the date of the invoice, and Ontrack is specifically and irrevocably authorised by the customer to exercise its right to retake possession of the equipment as provided for by sub-clause 2.1 herein and any costs incurred by Ontrack (including travel and time costs) shall be a debt due and payable by the customer to Ontrack and such sum shall be a liquidated debt due and payable on demand. In the event that a customer fails to pay any costs incurred by Ontrack in exercising its rights under this sub-clause, such amount shall incur interest at the rate specified in sub-clause 1.7.b until the said amount is paid in full (including any interest that may have been accrued on the said amount).

1.9 Any person signing this agreement as the customer, or on behalf of the entity identified as the Customer warrants that he/she has the actual authority of the customer to enter into this agreement on behalf of the customer ("warranty of authority"), and, if the customer should subsequently assert in writing that the person who signed this agreement did not have the authority of the customer to enter into this agreement then such an assertion shall be deemed to constitute a breach of the warranty of authority by the person signing this agreement, rendering that person liable to pay liquidated damages to Ontrack, notwithstanding that the customer may also remain liable under this agreement. The quantum of such liquidated damages shall be equal to the amount or amounts payable but not paid by the customer under this agreement (including interest and costs including travel and time).

2. Limited Right to use the equipment:

2.1 The customer has the limited right to use the equipment it hires from Ontrack only for the period of the hire and subject to the terms and conditions of this agreement. In the event that the customer, breaches the terms and conditions of this agreement and/or fails or refuses to pay Ontrack any amount owing to Ontrack then, and in addition to, and without prejudice to any other rights that Ontrack may have against the customer, the customer irrevocably provides Ontrack with the right and entitlement to enter onto the customer's property, or any site controlled by the customer (or any third person) as the customer's duly authorised agent for the purpose of removing and uplifting any equipment owned by

Ontrack. The customer further and expressly gives Ontrack (including its agents, employees or contractors) his/her/its right as the customers duly appointed agent to enter any enclosed yard, or building (whether such yard or building is locked or unlocked) using minimum force necessary to allow Ontrack to come onto any such yard or into any such building at any time of the day or night for the purposes of retrieving any equipment owned by Ontrack. The customer further acknowledges and agrees that the customer shall meet the costs of any repairs or damage resulting from Ontrack exercising its rights under this sub-clause.

2.2 The customer undertakes to Ontrack that it shall only use the equipment for the purpose for which the equipment is designed.

2.3 The customer undertakes, warrants and represents to Ontrack that it (and all those persons that the customer may permit to use the equipment):

a) are familiar with the equipment and the manufacturers' instructions and specifications ("the manufacturer's instructions") and the legislation including but not limited to the Health and Safety At Work Act 2015, regulations, rules and trade and/or industry guidelines (hereinafter referred to as "the rules") governing the use of or otherwise associated with the equipment;

b) are trained (or have been trained by the customer), and are experienced in the operation of the equipment;

c) will only operate the equipment and permit the equipment to be operated in accordance with the manufacturer's instructions and the rules;

d) Will only operate the equipment in a safe and prudent manner and will comply with any and all rules governing the use of such equipment;

e) Will at all times keep the equipment secure and safe during the period of hire and during the period of the hire will actively protect the equipment from damage and/or theft;

f) Will maintain the equipment in accordance with sub-clause 5.1 herein; and

g) Have current insurance cover with a reputable insurer which provides cover to the customer against damage, accident and loss which will include the equipment up to the value of the equipment and for public liability (including criminal prosecution) to a value of no less than One Million Dollars (\$1,000,000.00).

h) Shall not do or omit to do anything during the period of hire (or for so long as the equipment may be in the possession of the customer) that will invalidate or otherwise give the customer's insurers cause to reject any claim made on the customer's insurance policy and shall take all necessary steps to notify the customer's insurers of the fact of the hire of equipment from Ontrack and to ensure that the insurer is aware that Ontrack is an interested party and that any claim made by the customer on its insurer and associated with the equipment shall be paid to Ontrack in full.

g) Shall be responsible for and solely liable to pay the costs of any repairs which in Ontrack's opinion need to be undertaken to the equipment resulting from or associated with the hire of the equipment by the customer, including the costs of replacing the equipment with new equipment should Ontrack be of the view that the equipment cannot be satisfactorily repaired. The costs of repairs or replacement of the equipment shall be payable by the customer upon demand made in writing by Ontrack and payment shall be made by the customer in full, without set off, cross demand, counter claim or deduction of any kind within seven (7) days of demand being issued, should the customer fail to pay Ontrack within seven (7) days of demand being made, then Ontrack may charge interest in accordance with sub-clause 1.7.b herein and may retain any refundable deposit in payment or part payment of the costs of repairs or of replacing the equipment.

2.4. In the event that the equipment is being used in a manner inconsistent with the warranties and representations set out in sub-clause 2.3 herein or Ontrack believes that the equipment hired by the customer is being used in breach of the warranties and representations set out in clause 2.3 herein or otherwise in breach of the terms and conditions of this agreement it shall have the right and be free to terminate this agreement immediately and without notice to the customer and exercise its rights and powers under sub-clause 2.1 herein and any amount paid to Ontrack by the customer shall be forfeited to Ontrack (including any refundable deposit). In the event that Ontrack exercises its rights under this sub-clause the customer specifically agrees that Ontrack shall not be liable to the customer for any losses or damages that the customer may incur (whether direct or indirect).

2.5. **No Liability.** The customer acknowledges and agrees that Ontrack owes no duty of care to the customer, nor any other obligations to the customer save to make the equipment available to the customer for hire, and

a) The customer expressly warrants and represents to Ontrack that prior to taking possession or delivery of the equipment it had the opportunity to, and did inspect the equipment, and was fully satisfied in all respects that the equipment was functional, could be operated safely, and presented no risk of damage to the customer (including any employee of the customer) or any third person and identified any risk or hazard that was potentially capable of causing damage and/or injury and the customer was satisfied that it could properly and effectively mitigate against and prevent the occurrence of any such damage and/or injury.

b) In the event that during the period of hire (including any period when the equipment is in the possession of the customer) the customer has any concerns regarding the equipment (including any concerns as to its safety) the customer shall immediately cease using the equipment and contact Ontrack directly and Ontrack may travel to the location and inspect the equipment, any costs incurred by Ontrack in inspecting and/or repairing the equipment shall be paid by the customer, including travel and time costs incurred by Ontrack.

c) In the event that during the period of hire the equipment is broken or suffers damage (of any kind) but including damage that may make the equipment unsafe to use), then the customer will immediately cease using the equipment and contact Ontrack and provide it with details of the breakage to or damage suffered by the equipment .

d) The customer expressly acknowledges and agrees that Ontrack accepts and carries no liability for, or connected with the equipment or its use during the period of the hire and agrees, warrants and undertakes that it shall not hold Ontrack responsible for any incident, accident, injury, damage, or misfortune that may occur (including to property or to a person (or persons) or any third party) during the period of hire (or during such times when the equipment is in the possession of the customer) and in consideration for Ontrack agreeing to enter into this agreement and allow the customer to hire the equipment the customer agrees that it shall not make any claim or bring any proceedings nor shall it be entitled to bring any claim or issue any proceedings against Ontrack (whether in a Court, Tribunal or other Authority) whether seeking damages, contributions, compensation for loss or any remedy whatsoever.

e) In consideration of Ontrack entering into this agreement and permitting the customer to hire the equipment the customer specifically agrees and warrants that it shall hold Ontrack completely harmless against any claims that may be made by any third party connected to or otherwise associated with the customers use of the equipment (including in the case of any criminal or regulatory prosecution, any fines, Court or prosecution costs, reparation (under the Sentencing Act 2000 or any other enactment or rule of law) and in the event that the customer can not hold Ontrack harmless then the customer expressly agrees and warrants that the customer will fully and completely indemnify Ontrack against any claims (of any kind and including criminal prosecution) that may be brought against Ontrack (and/or any of its directors or employees) whether proved or unproved and any judgment or award of costs, damages or compensation (including any order of a Court to pay a fine or fines or order to pay reparation) that may be made against Ontrack by any Court, tribunal or authority and including any amount that Ontrack may, in its discretion, pay to settle any such claim or claims and the customer shall also pay all and any costs incurred by Ontrack that may be associated with any such claims including legal costs on a solicitor client basis.

3. Guarantee:

3.1 Any person signing this agreement on behalf of a customer who is a limited liability company, a partnership, a trust (whether limited or otherwise) guarantees the obligations under this agreement of the customer Ontrack may, regard the guarantor as the principal debtor and Ontrack shall be under no obligation to take recovery proceedings against the customer or the person warranting the authority of the customer before taking proceedings against the guarantor. The guarantor shall not be released or discharged by any want of authority or by any grant of time or waiver or other indulgences by Ontrack to the customer or to the person warranting the authority of the customer. If there is more than one guarantor, their liability under this guarantee shall be joint and several.

3.2 In addition to the rights provided to Ontrack by the customer under this agreement set out in clause 1.7 and 2.1 herein, the customer irrevocably consents to Ontrack having the right of access to any land, building, or worksite owned by or controlled by or on or at which the customer is working and the equipment is (or may be) located for the purposes of delivering, inspecting, or removing any equipment owned by Ontrack.

4. **Ownership:** Nothing in this agreement provides for the passing of title in any equipment from Ontrack to the customer, and the equipment identified in this agreement for hire shall at all times remain the sole and exclusive property of Ontrack. Ontrack is and remains the owner.

5. **Maintenance:** During the period of hire the customer agrees and warrants to Ontrack that it shall duly and in a workmanlike fashion, ensure that all daily service and maintenance requirements are performed on any equipment hired by the customer in strict accordance with the provisions of the service sheet provided to the customer by Ontrack at the commencement of the period of hire. Any damage or fault suffered by any equipment as the result of the customer not servicing and maintaining the equipment in accordance with this clause, and any repairs and/or remedial work necessary as a result of any such damage shall be paid by the customer to Ontrack as liquidated damages. The costs of any such repairs shall be invoiced to the customer and payable by the customer within seven (7) days of the date of the invoice.

6. **Minimum Age:** The customer warrants and agrees with Ontrack that at no time shall any equipment hired by the customer from Ontrack be used by any person under the age of eighteen (18) years, save as may be specifically agreed in writing by Ontrack.

7. **Representations:** By signing this agreement the customer warrants and specifically acknowledges to Ontrack that it has read the agreement, understands the terms and conditions and will comply with the terms and conditions of the agreement.

8. General:

8.1 The failure by Ontrack to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ontrack's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

8.2 The customer specifically acknowledges and agrees that Ontrack shall be under no liability whatsoever to the customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the customer arising out of a breach by Ontrack of these terms and conditions (alternatively the customer agrees and acknowledges that Ontrack's liability shall be limited to damages which under no circumstances shall exceed the price of the equipment hire).

8.3 Ontrack may licence and/or assign all or any part of its rights and/or obligations under this agreement without the customer's consent.

8.4 The customer cannot licence or assign the benefits and obligations of this agreement to any third party without the first obtaining the written approval of Ontrack.

8.5 Ontrack may elect to subcontract out any part of the services it may be required to perform under this agreement and the customer agrees that the customer has no authority to give any instruction to any of Ontrack's sub-contractors without the authority of Ontrack.

8.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.