



Hire Agreement

The Trustee for THT Trust T/A Trash Heap Trailers ABN 65 118 347 726

1. Agreement

The Supplier provides the Hirer with this Agreement as an offer to enter into a binding agreement with the Hirer. The Hirer may accept the terms of this Agreement by:

- (a) verbally accepting it;
- (b) giving acceptance in writing via text message or email; or
- (c) by giving the Supplier instructions to perform the Services.

2. Rights and obligations

2.1 Services

- (a) The Supplier shall:
 - (i) deliver to the Delivery Point a Bin on the Delivery Date; and
 - (ii) at the end of the Hire Period, collect the Bin from the Delivery Point and remove up to 1 tonne of material placed in the Bin,(together, the **Services**).
- (b) The Hirer acknowledges and agrees that, unless otherwise agreed in writing, the Services do not include the removal of Regulated or Hazardous Waste.

2.2 Hirer obligations

- (a) If a permit of any sort is required for placement of the Bin at the Delivery Point, it is the sole responsibility of the Hirer to obtain such permit.
- (b) If the Hirer needs to place solid materials including but not limited to soils, clay, rocks, stones, concrete and masonry, they must notify the Supplier prior to delivery of the Bin and the Supplier will advise how much of the said materials can be placed in the Bin.
- (c) The Hirer is responsible for the good care of any Bins in their possession.
- (d) Bins are designed for light material, household rubbish and green waste. Bins have a gross rating of 1 tonne. If when collecting a Bin, the Supplier deems the weight of materials in the Bin exceeds 1 tonne, the Hirer will be responsible for removing any excess materials within the Bin to reduce the weight.
- (e) The Hirer must contact the Supplier, within 24 hours of delivery of the Bin to the Delivery Point, if the Bin does not match the specifications provided on the Order.

2.3 Strictly prohibited use

- (a) The Hirer shall not, without prior written approval from the Supplier:
 - (i) use a Bin with cranes;
 - (ii) place any Regulated or Hazardous Waste in a Bin;
 - (iii) place any wet concrete in a Bin;
 - (iv) burn any materials in a Bin; or
 - (v) move the Bin from the Delivery Point.

3. Retention of title

- (a) Bins remain the property of the Supplier at all times.
- (b) Bins are deemed to be in the Hirer's possession from the time the Supplier unloads the Bin at the Delivery Point to the time the Supplier is able to reload the Bin.
- (c) The Hirer shall not remove, deface or cover up identifying marks, without prior written approval from the Supplier.
- (d) The Hirer acknowledges and agrees that the Supplier at all time has the right to enter any site in which a Bin is located and recover the Bin.

4. Delivery

- (a) Delivery of the Bin shall be made to the Delivery Point on the Delivery Date.
- (b) The Hirer shall make all arrangements necessary to take delivery of the Bin whenever they are tendered for delivery.
- (c) Delivery of the Bin to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purpose of this agreement.
- (d) The failure of the Supplier to deliver the bin on the Delivery Date does not entitle either party to treat this contract as repudiated. Delivery Dates are estimates only.

5. Fees and payment

5.1 Hire Fees

The Hire Fees to be charged for the Services are as set out on our Website as the "Hire Fees" at the time this Agreement is provided to the Hirer, unless otherwise agreed between the parties.

5.2 Additional Fees

The Hirer may be charged Additional Fees as set out on our Website as the "Additional Fees" at the time this Agreement is provided to the Hirer, unless otherwise agreed between the parties.

5.3 Payment

- (a) The Supplier will provide to the Hirer an invoice for the Fees.
- (b) The Hirer must pay the Fees, plus any GST payable, in accordance with the Payment Terms.
- (c) Unless otherwise stated, all Fees are exclusive of GST.

5.4 Interest

The Supplier may charge interest at 5% per calendar month on amounts not paid in accordance with the Payment Terms.

5.5 Credit Card Payment

Credit card payments may incur a 3% surcharge.

5.6 Dishonoured Cheques

Dishonoured cheques will attract an administration fee including, but not limited to charges levied by banks and other financial institutions.



5.7 Disputes

Queries or disputes relating to invoices or statements received by the Hirer should be reported to the Supplier's office within 7 days of receipt of said invoice or statement.

6. Liability, warranties and indemnities

6.1 Non-Excludable Conditions

This clause must be read subject to any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded (**Non-Excludable Condition**).

6.2 Limitation of liability

Subject to the application of any Non-Excludable Condition and unless otherwise stipulated in this Agreement, the Supplier excludes all liability for any costs, expenses, losses and damages suffered or incurred directly or indirectly by the Hirer, in connection with this Agreement, whether that liability arises under contract, tort (including negligence) or under statute, including:

- (a) any loss or expense resulting from a claim by a third party; or
- (b) any delay in delivering the Bins.

6.3 Exclusion of Consequential Loss

Notwithstanding any other clause in this Agreement, and to the maximum extent permitted at law, the Supplier shall not be liable to the Hirer for any Consequential Loss.

6.4 Warranties

The Hirer warrants that it has not relied on any representation by the Supplier and its employees and agents other than as supplied in writing in the Agreement.

6.5 Indemnities

Subject to the application of any Non-Excludable Condition, the Hirer shall indemnify the Supplier for any costs or losses incurred by the Supplier, whether arising directly or indirectly, as a result of:

- (a) any loss of or damage to the Bin whilst in the possession of the Hirer;
- (b) the Supplier being unable to deliver to the Hirer the Bin owing to the Supplier deeming the Delivery Point to be unsafe or inaccessible;
- (c) the Hirer failing to obtain a necessary permit for the placement of the Bin at the Delivery Point;
- (d) any damage to public or private property in association with the Bin whilst the Bin is in the Hirer's possession;
- (e) the Hirer's failure to comply with clause 2.3(a);
- (f) the Hirer's failure to pay the Fees in accordance with the Payment Terms;
- (g) the Supplier needing to engage debt collection or legal services to recover unpaid Fees owed by the Hirer;
- (h) damage to property caused in the Supplier delivering or collecting the Bin from the Delivery Point; or



- (i) damage to property caused by the Hirer instructing the Supplier on the delivery, placement or collection of the Bin.

7. Dispute Resolution

7.1 Mandatory mediation

- (a) A party claiming that a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute and the parties must submit themselves to the dispute resolution procedure set out in this clause 7.
- (b) Subject to clause 7.2, the parties agree that if a Dispute arises, a party may not commence any legal proceedings relating to the Dispute unless it has complied with the provisions of this clause.
- (c) If the parties cannot resolve the Dispute within 30 days of receiving a notice of the Dispute, then either party may (by giving notice in writing to the other party) require the Dispute to be referred for mediation. The mediation must be undertaken:
 - (i) in accordance with the Resolution Institute Mediation Rules;
 - (ii) at a location agreed by the parties and in the absence of agreement in Brisbane, Queensland; and
 - (iii) using a mediator agreed by the parties and in the absence of agreement, by a mediator nominated by the Resolution Institute.
- (d) Each party must pay its own internal and legal costs in relation to complying with this clause 7. The mediator's costs are to be shared equally.
- (e) If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

7.2 Not applicable to the collection of debts or injunctive relief

The parties acknowledge and agree this clause 7 does not:

- (a) apply to the recovery of any debt; or
- (b) prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

8. Termination

8.1 Termination for default

- (a) Either party may end this Agreement immediately by written notice if the other party commits a material breach of this Agreement.
- (b) Termination of this Agreement in accordance with clause 8.1 will not affect the Hirer's obligation to pay the Fees.
- (c) Where the Bin is in the Hirer's possession, upon termination of this Agreement in accordance with clause 8.1:
 - (i) the Hirer must make the Bin available for clear and safe collection by the Supplier from the Delivery Point;
 - (ii) any materials left in the Bin are deemed to be the responsibility of the Hirer; and



- (iii) the Supplier may repossess the Bin and unload any materials in the Bin at the location it is found.

9. General

9.1 Assignment

The Supplier may assign, encumber, declare a trust over or otherwise create an interest in its rights under this Agreement without the Hirer's consent. The Hirer cannot assign, encumber, declare a trust over or otherwise create an interest in its rights under this Agreement without the Supplier's consent.

9.2 Entire agreement

The Agreement sets out all the parties' rights and obligations relating to the subject matter of the Agreement, and it supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

9.3 Governing law

The Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland.

9.4 Rights cumulative

Except as expressly stated otherwise in the Agreement, the rights of a party under the Agreement are cumulative and are in addition to any other rights of that party.

9.5 Survival

Clauses 6, 7 and any other clause in the Agreement which is expressed to survive or by its nature survives, will survive termination or expiry of the Agreement for any reason.

9.6 Variations

This Agreement may only be varied by written agreement.

9.7 Waiver

- (a) Clauses and rights in the Agreement can only be waived in writing signed by the waiving party.
- (b) Failure or delay of a party in exercising a right under the Agreement does not waive the party's rights.
- (c) A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.

10. Definitions and Interpretation

10.1 Definitions

In this Agreement, unless otherwise indicated the following terms have the associated meanings.

Additional Fee takes its meaning from clause 5.2.

Agreement means this Trash Heap Trailers Hire Agreement.

Bin(s) means a waste receptacle provided by the Supplier for waste removal.



Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party; or
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity

Delivery Date means the estimated calendar date for the Bin to be delivered to the Delivery Point as specified by the Hirer in an Order.

Delivery Point means the location specified by the Hirer in an Order for the Bin to be delivered to and collected from.

Fees means any amount payable by the Hirer to the Supplier under this Agreement, including the Hire Fee and any Additional Fees.

GST means goods and services as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Waste means the following types of waste which the Supplier considers hazardous: radioactive waste, grease trap waste, contaminated soils, fuels, oils, gasses, lubricants, gas cylinders and asbestos.

Hirer means the individual or entity who places an Order with the Supplier to provide the Services.

Hire Fee takes its meaning from clause 5.1.

Hire Period means 5 calendar days from the Delivery Date, or as otherwise agreed in writing.

Order means a request by the Hirer for the Supplier to provide the Services.

Payment Terms means 7 days from the date the Supplier provides to the Hirer an invoice for the Fees.

Regulated Waste means as it is defined in the *Environmental Protection Regulation 2019 (Qld)*, and includes waste types such as tyres, asbestos, batteries or liquids.

Supplier means The Trustee for THT Trust T/A Trash Heap Trailers ABN 65 118 347 726.

Website means the website located at www.trashheaptrailers.com.au.

10.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) a reference to a part, clause, annexure, exhibit, appendix or schedule is a reference to a part of, clause of, an annexure, exhibit, appendix or schedule to this Agreement and a reference to this Agreement includes any annexure, exhibit, appendix and schedule;
- (b) a reference to an agreement includes any variation or replacement of the agreement;
- (c) the singular includes the plural and the opposite also applies;
- (d) all currency amounts are in Australian dollars;
- (e) headings are provided for convenience and do not affect the interpretation of the documents making up the Agreement;



- (f) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (g) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
- (h) a reference to a clause refers to clauses in this Agreement and is a reference to its sub-clauses;
- (i) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (j) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- (k) a person includes the person’s executors, administrators and permitted novatees and assignees;
- (l) a reference to a person includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (m) a reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing;
- (n) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and
- (o) if any part of the Agreement is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Agreement will not apply but the other parts of the Agreement will not be affected.