

Hired Pty Ltd - Terms & Conditions of Hire

1 Definitions

- 1.1 "Supplier" means Hired Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Hired Pty Ltd.
- 1.2 "Client" means the Client or any person acting on behalf of and with the authority of the Client, as specified in any invoice, document or order, and if there is more than one Client is a reference to each hirer jointly and severally.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by the Supplier to the Client (and where the context so permits shall include any incidental supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Client.
- 1.4 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.5 "Price" means the cost of the hire of the Equipment as agreed between the Supplier and the Client subject to clause 5 of this contract.

2 Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts delivery of, the Equipment.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.

3 Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4 Change in Control

- 4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5 Price and Payment

- 5.1 At the Supplier's sole discretion the Price shall be either;
- as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied on hire; or
 - the Supplier's current Price, at the date of delivery of the Equipment, according to the Supplier's current Price list; or
 - the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier's quotation within thirty (30) days.
- 5.2 The Supplier reserves the right to change the Price
- if a variation to the Equipment which is to be supplied is requested; or
 - if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.
- 5.3 At the Supplier's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- on delivery of the Equipment/completion of the Services; or
 - for approved Clients, made by instalments in accordance with the Supplier's payment schedule; or
 - due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - the date specified on any invoice or other form as being the date for payment; or
 - falling any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by the Supplier.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of two and a half percent (2.5%) of the Price) or by any other method as agreed to between the Client and the Supplier.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.7 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6 Hire Period

- 6.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 6.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment departs from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 6.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 6.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will

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not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

6.5 Off-hire receipts will only be issued when the Equipment has been either collected by the Supplier, or returned to the Supplier's premises.

7 Delivery

7.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Equipment at the Supplier's premises; or
- (b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.

7.2 At the Supplier's sole discretion the cost of delivery is included in the Price.

7.3 Where the Supplier is to deliver the Equipment the Client shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Client is unable to take delivery of the Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.

7.4 The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

7.5 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

8 Risk

8.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.

8.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.

8.3 The Client will insure, or self insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

8.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

9 Title

9.1 The Equipment is and will at all times remain the absolute property of the Supplier, and the Client must return the Equipment to the Supplier upon request to do so.

9.2 If the Client fails to return the Equipment to the Supplier as is required under this agreement or when requested to do so, then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by the Supplier as a result of the Supplier so repossessing the Equipment shall be charged to the Client.

9.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

10 Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment and/or collateral (account) – being a monetary obligation of the Buyer to the Supplier for Services – that has previously been supplied and that will be supplied in the future by the Supplier to the Client.

10.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Supplier.

10.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 10.3 to 10.5.

10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

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11 Security and Charge

- 11.1 In consideration of the Supplier agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Client must inspect the Equipment on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 12.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then the owner may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Client which were not defective.
- 12.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Equipment;
 - (c) otherwise negated absolutely.
- 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client failing to properly maintain or store any Equipment;
 - (b) the Client interfering with the Equipment in any way without the Supplier's written approval to do so;
 - (c) the Client using the Equipment for any purpose other than that for which it was designed;
 - (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Client failing to follow any instructions or guidelines provided by the Supplier;
 - (f) fair wear and tear, any accident, or act of God.

13 Client's Responsibilities

- 13.1 The Client shall:
- (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to the Supplier upon request;
 - (c) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
 - (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
 - (e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Supplier relating to any such matters or occurrences;
 - (f) not carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of the Supplier;
 - (g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
 - (h) refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
 - (i) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (j) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (k) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
 - (l) comply with all work health and safety laws relating to the Equipment and its operation;
 - (m) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier (or the Supplier's designated employee). Where applicable, the Client shall notify the Supplier that the Equipment is ready for pickup and shall ensure that the Equipment (and all parts and accessories) are clean and in good order;

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- (n) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
 - (o) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (p) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work.
- 13.2 Immediately on request by the Supplier the Client will pay:
- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Supplier;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (f) the cost of fuels and consumables provided by the Supplier and used by the Client;
 - (g) any costs incurred by the Supplier in picking up and returning the Equipment to the Suppliers premises if the Client does not return the Equipment to the Suppliers premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.
 - (h) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (i) any insurance excess payable in relation to a claim made by either the Client or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Supplier's.

14 Wet Hire

- 14.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Supplier.
- 14.2 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.

15 Cancellation

- 15.1 The Supplier may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of the Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

16 Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Supplier may have under this contract, if a Buyer has made payment to the Supplier by credit card, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.
- 16.4 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire the Supplier may repossess the Equipment as per clause 9.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 16.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies the Supplier may have and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17 Privacy Act 1988

- 17.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- 17.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 17.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

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- 17.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 17.5 the Supplier may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
 - (b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8 The Supplier will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

18 Building and Construction Industry Security of Payments Act 1999

- 18.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

19 General

- 19.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 19.3 Subject to clause 12 the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment hire).
- 19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide any Equipment to the Client.
- 19.7 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.
- 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Terms Applicable to Earthmoving Services only

20 Access

- 20.1 The Client shall ensure that the Supplier has clear and free access to the site at all times to enable them to undertake the Services. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 20.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Supplier. The Client agrees to indemnify the Supplier against all costs incurred by the Supplier in recovering such vehicles in the event they become bogged or otherwise immovable.

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21 Underground Locations

- 21.1 Prior to the Supplier commencing the Services, the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 21.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 21.1.

22 Compliance with Laws

- 22.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation
- 22.2 The Supplier shall obtain (at the expense of the Client) all licenses and approvals (including, but not limited to, local council permits) that may be required for the Services.
- 22.3 All customary building industry tolerances shall apply to the dimensions and measurements with regard to the Goods to be provided, unless DHP and the Client agree otherwise in writing.
- 22.4 DHP shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.