

Scrapper Hire Australia Pty Ltd – Trade & Hire Terms & Conditions

PART I - GENERAL CLAUSES

- 1.1 **Definitions**
"Supplier" means Scrapper Hire Australia Pty Ltd ATF Scrapper Hire Australia Unit Trust T/A Scrapper Hire Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Scrapper Hire Australia Pty Ltd ATF Scrapper Hire Australia Unit Trust T/A Scrapper Hire Australia Pty Ltd. 6.8
"Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide Equipment for hire (and/or buying Goods) as specified in any proposal, quotation, order, invoice or other documentation, and: 6.9
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and 6.10
(c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
1.4 "Equipment" means all Equipment (including, but not limited to, any cranes, trucks, vehicles, plant, tools, (or any accessories thereto), which is supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, 7.1 authority to hire, or any other work authorisation form provided by the Supplier to the Client.
1.5 "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.
1.6 "Price" means the Price payable (plus any GST where applicable) for the purchase of Goods or for Equipment hire as agreed between the Supplier and the Client in accordance with clause 5.1 below. 7.2
1.7 "GST" means Goods and Services Tax (GST) as defined within the *A New Tax System (Goods and Services Tax) Act 1999" Cth. 7.3
2. **Acceptance** 7.4
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/Goods.
2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier. 8.1
2.3 The Supplier reserves the right to review (or to withdraw) any credit facility offered to the Client without any requirement to give prior notice of the same. If we withdraw a credit facility the Client shall have the right to terminate this agreement without notice provided that the Client:
(a) pays all amounts owing under the revoked credit facility in accordance with the terms upon which that credit facility was granted; and
(b) pays all other monies due under this agreement (for the hire of Equipment hire charges shall remain payable by the Client until such time as all Equipment hired by the Client has been returned to the Supplier). 8.2
2.4 The Client acknowledges and accepts that the Supplier reserves the right to charge a decontamination fee in accordance with clause 28.3(b) in the event the Equipment is returned to the Supplier without firstly being decontaminated.
2.5 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail. 8.2
2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act. 8.3
3. **Errors and Omissions**
3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or 9.1
(b) contained in information from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services. 9.2
3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
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. 10.1
5. **Trade-In**
5.1 In the event that the Supplier accepts a trade-in as part payment of purchases, Goods or machinery outright, then the Client acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement. 10.2
5.2 The Client shall be deemed to have accepted the trade-in value of the equipment as set out in the hire agreement. 10.3
6. **Price and Payment**
6.1 At the Supplier's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Supplier to the Client; or
(b) the Supplier's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation unless otherwise agreed for a specific period of thirty (30) days (if subject to international pricing), all other quotes shall default to the valid period being five (5) days; or
(c) as set out in the hire agreement.
- 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested, or where any variation is required as a result of additional Services being required (or additional costs incurred) due to unforeseen circumstances such as poor weather conditions, limitations in accessing the work/delivery site, overseas transactions that are affected by variations in foreign currency rates of exchange, increases in freight and/or insurance charges, or any increase to the Supplier in the cost of Equipment, Goods, labour or fuel).
6.3 Any amount that the Supplier is required to pay its employees under any award (including, but not limited to, travelling time or costs, tolls, meals, accommodation etc.) shall be charged to the Client in addition to the Price.
6.4 Unless otherwise agreed in writing all site specific requirements (e.g. medicals, inductions, or any special modifications required to be made to Equipment) shall be charged to the Client in addition to the Price at a rate of cost plus ten percent (10%). Any service vehicle modifications, operational guidance and/or driver training, shall also be charged to the Client in addition to the Price.
6.5 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entail the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion. 11.1
6.6 At the Supplier's sole discretion a non-refundable deposit may be required. 11.2
6.7 Time for payment for the Equipment/Goods being of the essence, the Price will be payable by the Client on the dates determined by the Supplier, which may be:
(a) on delivery of the Equipment/Goods;
- (b) before delivery of the Equipment/Goods
(c) the date specified on any invoice or other form as being the date for payment; or 11.3
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
Payment may be made by cash, EFT/direct bank transfer, credit card, processed via eWay for security (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.
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.
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/sale of the Goods. 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.
- Delivery of Goods/Equipment**
Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
(a) the Client or the Client's nominated carrier takes possession of the Equipment/Goods at the Supplier's address; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment/Goods to the Client's nominated address even if the Client is not present at the address. 11.4
At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
11.5 The Supplier may deliver the Equipment/Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
11.6 The Client must take delivery by receipt or collection of the Equipment/Goods to the Client's nominated address for delivery. In the event that the Client is unable to take delivery of the Equipment/Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Equipment/Goods and/or the storage of the Goods. 11.7
11.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 11.3 to 11.5.
11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- Online Ordering**
The Client acknowledges and agrees that:
(a) the Supplier does not guarantee the websites performance or availability of any of its Goods; and
(b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Supplier.
(c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
(d) there are inherent hazards in electronic distribution and as such the Supplier cannot warrant against delays or errors in transmitting data between the Client and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders. 12.1
(e) if the Client is not the cardholder for any credit card being used to pay for the Goods, the Supplier shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction. 12.2
These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail, copy the Terms and Conditions available upon request from the Supplier. The Supplier reserves the right to terminate the Client's order if it learns that the Client has provided false or misleading information, interfered with other users or the administration of the Supplier Services, or violated these terms and conditions. 12.3
- Risk for Goods**
Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk. 14.1
14.2 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**).
14.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
14.4 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/Goods, the Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
14.5 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.
14.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.
14.7 If the Supplier is required to repair, rectify, re-supply, or pay the cost of repair, rectification or re-supplying any services/Equipment under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Client has paid for the services/Equipment but only to the extent that such refund shall take into account the value of any services/Equipment and Goods which have been provided to the Client which were not defective.
14.8 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods 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 Goods;
(c) otherwise negated absolutely.
14.9 Subject to this clause 13, returns of Goods will only be accepted provided that:
(a) the Client has complied with the provisions of clause 14.1; and
(b) the Supplier has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
14.10 Notwithstanding clauses 14.1 to 14.8(c) 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 Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client, failing to follow any instructions or guidelines provided by the Supplier;
(e) fair wear and tear, any accident, or act of God.
- 14.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.11.
14.12 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
14.13 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- Default and Consequences of Default**
15.1 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 a half percent (2.5%) per calendar month (and at the Supplier's discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
15.2 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).
15.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
15.4 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 unfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by the Supplier;
(c) 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
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- Confidentiality/Security Policy**
16.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
16.2 All Client's information is routed through the Supplier's secure server using a minimum of a 128bit SSL (secure sockets layer) encryption technology which is a recognized industry standard. The encryption process ensures that your information cannot be read or copied by any outsider. Further information regarding our Security Policy can be provided upon request by the Supplier.
- Cancellation**
17.1 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 and conditions the Supplier may suspend or terminate the supply of Goods/Equipment to the Client, which remains unfilled and all amounts owing to or damage the Client suffers because the Supplier has exercised its rights under this clause.
17.2 The Supplier may cancel these terms and conditions or cancel the delivery of Equipment or Goods at any time by giving at least twenty-four (24) hours written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums already paid to the Supplier that directly relate to any part of the Client's order for the supply of the Equipment or Goods that will, as a result of cancellation by the Supplier, then not be met by the Supplier. The Supplier shall not be liable for any loss or damage that the Client may suffer (howsoever arising) from such cancellation.
17.3 For Equipment hire where the term of this agreement is not for a fixed period or becomes for an indefinite period then this agreement may be terminated by the Client giving the Supplier not less than fourteen (14) days written notice that they are terminating the agreement.
17.4 In the event that the Client cancels the delivery of Goods 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).
17.5 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- Privacy Act 1988**
18.1 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.
18.2 The Client agrees that the Supplier may exchange information about the Client's personal 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 (2) years.
18.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
18.4 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 Goods/Equipment; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/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 Goods/Equipment.
18.5 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.
18.6 The information given to the CRB may include:
(a) personal information as outlined in 18.1 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

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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).

18.7 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.

18.8 The Supplier will destroy personal information on 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.

18.9 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.

19. **Unpaid Seller's Rights**

19.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been deferred the whole or any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier are paid:

(a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

19.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.

20. **Service of Notices**

20.1 Any notice required to be served under this contract must be in writing and shall be deemed to have been given and received:

(a) by handing the notice to the other party, in person;

(b) by leaving it at the address of the other party as stated in this contract;

(c) by sending it by registered post to the address of the other party as stated in this contract;

(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address, which shall be deemed to be received the day after sending.

20.2 Any notice served by pre-paid post shall be deemed served after two (2) days after posting (whether received or not) to the recipient's registered office or place of business.

21. **Trusts**

21.1 If the Client at any time upon or subsequent to entering into a contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:

(a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

(b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other act which might prejudice that right of indemnity;

(c) The Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

(i) the removal, replacement or retirement of the Client as trustee of the Trust;

(ii) any alteration to or variation of the terms of the Trust;

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

22. **General**

22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.

22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.

22.3 Subject to clause 14, 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 by the Client for the supply of Equipment or Goods).

22.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

22.5 The Client cannot licence or assign without the written approval of the Supplier.

22.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.

22.7 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.

22.8 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.

22.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

PART II – TERMS & CONDITIONS APPLICABLE TO EQUIPMENT HIRE

23. **Hire Period**

23.1 Hire charges shall commence from the time the Equipment is collected by the Client or dispatched 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.

23.2 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

23.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

23.4 If at the end of the hire period the whole of the Equipment is not returned to the Supplier then the daily hire charge rate calculated on a pro-rata basis plus twenty percent (20%) shall be payable by the Client to the Supplier until the whole of the Equipment originally supplied is returned to the Supplier. The parties agree that this is a genuine estimate of damages which will be suffered by the Supplier should any Equipment not be returned by the Client when due.

23.5 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 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. Upon notice of breakdown undertaken to repair or (where necessary) supply suitable replacement Equipment as soon as the Supplier is reasonably able. Off-hire numbers will only be issued when the Equipment has been either collected by the Supplier, or returned to the Supplier's premises.

23.6 Notwithstanding anything in this clause 23 but without limiting clause 23.4, the Client's hire of Equipment may not exceed a total of twelve (12) months for any reason.

Access for Delivery or Collection

23.7 The Client shall ensure that the Supplier has free and clear access to the worksite at which the Equipment is to be, or is located, if there are any delays due to free and clear access not being available then the Client shall be responsible for (and shall reimburse) the Supplier for all additional costs incurred by the Supplier in gaining suitable access to the worksite and/or the Supplier's Equipment.

Risk for the Equipment

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

23.9 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.

23.10 Except where clause 31 applies the Client must prior to Delivery 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.

23.11 The Client agrees to provide the Supplier with a copy of the Certificate of Currency for the Equipment immediately on request. In the event that the Equipment provided by the Supplier is the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by the Supplier and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.

23.12 **Title to Equipment**

23.13 The Equipment is and will at all times remain the absolute property of the Supplier and must be returned to the Supplier on request. The Client's right to use the Equipment are as a bailee only. If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the inviter of the Client) enter upon any lands 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.

23.14 **Supplier's Responsibilities**

23.15 The Supplier shall have the right to determine the type of operation for which the Equipment may be reasonably used, and the suitability of the Equipment for that use.

23.16 If at any time the Client is using the Equipment in a way which the Supplier believes that its Equipment is not suitable for the type of operation (or the type of works) that the Client is using the Equipment for then the Supplier shall have the right to suspend or terminate this agreement without any liability to the Client whatsoever.

23.17 The Supplier shall supply all equipment in a safe, useable and (where applicable) roadworthy condition:

(a) hydraulic hose, fittings and electrical faults caused through age or wear and tear shall be borne by the Supplier unless the Client has contributed to the fault through misuse of the Equipment in which event the Client shall pay the cost of repairing the fault.

23.18 **Client's Responsibilities**

23.19 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) not refuse or fail to take any blood analysis or breath test requested by the Police or as required by law. Any such requests apply also to the Client's authorised operator;

(c) ensure that all persons driving and/or operating Equipment are suitably instructed in the Operator'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;

(d) check the equipment daily for oil, grease, water and battery levels and any sign of looseness or wear and shall at the Client's own cost maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining (where applicable) water, battery, grease, oil and other fluid levels (using only products approved by the Supplier), and tyre pressures);

(e) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked, securely stored, and protected against acts of theft or vandalism when not in use;

(f) 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;

(g) not carry any animals, illegal, prohibited or hazardous substances on, or in, the Equipment supplied without the prior written permission of the Supplier;

(h) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));

(i) return 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 (as set out in the hire agreement) shall be charged to the Client in addition to the costs of the Equipment hire;

(j) 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. The Client shall immediately take all steps to secure the Equipment so as to prevent any potential injury to person or property, and to prevent any potential or additional damage to the Equipment itself;

(k) satisfy itself at commencement that the Equipment is suitable for its purposes;

(l) 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;

(m) comply with all occupational health and safety laws relating to the Equipment and its operation, display all safety signs and instructions (as required by law) and ensure that the same are complied with by Equipment operators;

(n) 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 address);

(o) consent to the Supplier (or its nominee) inspecting the Equipment from time to time during the Hire period. In addition, the Client may arrange a joint inspection with the Supplier (or its nominee) at the end of the Hire period;

(p) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to sell, sub-let, lease a lien, grant any encumbrance, or create any form of security interest over the Equipment, or allow the Equipment to become a fixture (or any part of a fixture). The Client shall immediately inform any person trying to take possession of, or attempting to seize the Equipment (for any reason), of the Supplier's interest in, and ownership of, the Equipment, and must immediately notify the Supplier of any such event;

(q) 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. In the event that any deal on the Supplier's equipment has been removed then all costs incurred by the Supplier in replacing the same should the Supplier wish to do so will be charged to the Client;

(r) 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;

(s) immediately notify the Supplier should the Equipment become bogged or stuck (refer also 29.8(g));

(t) not move the Equipment from the address where the Equipment was delivered to without the prior written approval of the Supplier;

(u) on a daily basis complete the pre-start safety checklist or any log book provided with the Equipment;

(v) provide to the Supplier (upon reasonable notice by the Supplier) free access to the Supplier's Equipment in order that the Supplier may examine or test the equipment or assess Equipment care and maintenance;

(w) use suitable clothing and protective equipment when operating the Equipment as required or recommended by the Supplier or the Equipment manufacturer;

(x) comply with all Environmental laws as in place from time to time and shall immediately rectify any breach of such laws caused by the use of the Equipment;

(y) anytime where the speed or tachometer of the Equipment exceeds the manufacturer's recommendations.

23.20 The Client shall be liable to pay the Supplier a fee of five hundred dollars (\$500.00) for each and every occasion on which the tachometer or speed of the Equipment goes over the manufacturer's recommendation.

23.21 The Client must:

(a) not use the Equipment off shore, in an area where friable asbestos is present, or move the Equipment over water the Supplier's prior written consent which may be reasonably withheld;

(b) use the Client's endeavours to ensure that the Equipment is not contaminated with any hazardous substance/ (including asbestos). The Client must advise the Supplier of any risk of hazardous substance contamination to the Equipment as soon as such risk becomes apparent. Where Equipment may have been subjected to contamination, the Client must (as soon as is reasonably possible) effectively decontaminate the Equipment, as well as provide the Supplier with written details of the decontamination processes utilised. If in the Supplier's sole opinion the Equipment has not been properly decontaminated then the Supplier may require the Equipment to be decontaminated by a specialist, or if the specialist advises that the Equipment is unable to be decontaminated then the Client shall be charged for the full replacement cost of the Equipment.

23.22 All cost incurred by the Supplier in engaging the specialist shall be charged to the Client.

23.23 (c) when moving the Equipment comply with any and all safety guidelines advised by either the Supplier or the manufacturer of the Equipment to ensure the Equipment's safe loading, handling and transportation;

(d) not at any time attempt to repair Equipment without the prior consent of the Supplier. Where such consent is given if the repairs prove to be defective any way whatsoever, rectification to the Supplier's satisfaction shall be at the Client's expense.

23.24 (e) immediately on request by the Supplier the Client will:

(i) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Supplier;

(ii) all costs incurred for all wear and tear to cutting edges, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Client are to be returned to the Supplier at the end of the Hire period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire period with the percentage of use at the end of the Hire period;

(iii) all costs incurred in cleaning the Equipment (in accordance with the Hire Agreement but subject to charge at the Supplier's discretion);

(iv) all costs of repairing any damage caused through the Client's use of the Equipment i.e. the amount required to restore the Equipment to the Supplier's pre-hire status (excluding the first set of GET's – refer clause 30.2);

(v) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;

(vi) the cost of repairing any damage to the Equipment caused by theft, or burglary, arson or act of god, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;

(vii) the cost of fuels and consumables provided by the Supplier and used by the Client;

(viii) 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;

(ix) where the Equipment has been lost or stolen any costs incurred by the Supplier in recovering the Equipment;

(x) any levies, fines, tolls, penalties, or other government charges arising out of the Client's use of the Equipment.

23.25 **Wet Hire**

23.26 Where the Equipment is to be operated on Public Holidays, Sundays or night shift, then an additional hourly loading shall be applied to the standard hire rate such additional rate will be advised in writing by the Supplier. A minimum four (4) hour shift is chargeable.

23.27 Any amount that the Supplier is required to pay its employees under any award (including, but not limited to, travelling time or costs, meals, accommodation etc.) shall be charged to the Client in addition to the Price.

23.28 Minimum Hire Period of four (4) hours per day applies (this period may be increased dependant on project logistics and labour conditions). Sites in excess of forty-five (45) minutes driving time from the Supplier's premises will (unless otherwise agreed in writing between the Supplier and the Client) incur additional charges to cover travel, accommodation, and associated overheads at the Supplier's discretion.

23.29 A Traveller charge is applicable to Water Trucks and/or Tipper's travelling from a site each day (as specified in the Supplier's current Price list).

23.30 In the event that the Client requests a stand down, no charge will apply to short term stand down periods (i.e. where plant and operator are not required for the day) to sites within forty-five (45) minutes driving time from the Supplier's premises, however, such a request must be either telephoned or emailed to the Supplier by 5.00pm the previous day or the specified minimum hire period will be charged.

23.31 Standby rates may apply when the Supplier is instructed by the Client to sit idle and remain onsite until a decision is made whether or not to resume work. The standby rate shall be calculated at fifty percent (50%) of the Supplier's standard hourly rates.

23.32 In the event of Wet Hire the operator of the Equipment remains an employee of the Supplier but operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator where the operator is following the Client's instructions.

23.33 In the event of Wet Hire the following shall apply in relation to the above clauses:

(a) clauses 28.1(a), (l), and (p) shall be the joint responsibility of both the Supplier and the Client; and

(b) clauses 28.1(b), (c), (d), (f), (g), (k) and (u), shall be the responsibility of the Supplier or the Supplier's employee/operator; and

(c) clauses 28.1(e) and (v) shall be the responsibility of the Supplier except where such costs or responsibilities are incurred through the Supplier's employee/operator following the express instructions of the Client; and

(d) clause 28.1(i) shall be the responsibility of the Client unless otherwise agreed in writing; and

(e) clauses 28.1(j), (m), (n), (o), (r), (s), and (t) shall be the responsibility of the Client; and

(f) clauses 28.1(i) and (q) both the Supplier's employee/operator and the Client must comply with these clauses; and

(g) for clause 28.1(q) if the Equipment has become bogged or stuck due to the negligent actions of the Supplier's employee/operator then the Supplier shall incur the costs of recovering the Equipment, otherwise the Client shall be liable for all such costs.

23.34 The clauses under 28.3 and 28.4 shall all be the Client's responsibility except where any losses, damages or costs to which those clauses pertain are caused by the Supplier or the Supplier's employee/operator.

Additional Clauses - Dry Hire

23.35 The Supplier's dry hire rates are calculated based on the following allowed usage:

(a) Daily;

(b) Weekly: seven (7) days (no pro rata rates on weekends);

(c) Monthly: (calculated on the basis of an agreed monthly minimum hour charge for Equipment);

(d) Additional hours: will be charged off the hour meter at a pro rata hourly rate.

23.36 The Client acknowledges and accepts that dry hire rates allow for the first set of ground engaging tools (GET's) only, any additional supply of (GET's) shall be charged to the Client's account.

23.37 In the event that the Client requests a stand down, such a request must be either telephoned or emailed to the Supplier before 9.00am each day. The Client acknowledges that:

(a) stand downs are only applicable to daily and weekly rates; and

(b) stand downs are not applicable to monthly hire rates; and

(c) the Supplier shall not at any time back date stand downs.

23.38 Servicing of the Equipment shall be provided to the Client at no charge provided that the Client's worksite is located within one hundred kilometres (100kms) of the Supplier's depot. Where the Client's worksite is located beyond this distance then all Servicing expenses incurred by the Supplier (including, but not limited to, travel, labour, consumables, meals and accommodation) shall be charged to the Client. The same expenses (with the exception of consumables) shall apply to breakdowns where the Client's worksite is more than one hundred kilometres (100kms) from the Supplier's depot. The cost of replacement components or parts shall be the Supplier's responsibility.

23.39 **Damage Waiver/Insurance - Dry Hire**

23.40 The Client must produce a certificate of currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment. The COC must be provided to the Supplier prior to the supply of Equipment by the Supplier. At the Supplier's sole discretion a Damage Waiver may be offered.

23.41 The Supplier reserves the right to refuse hire to the Client should they not be able to provide a certificate of currency. However, if the Supplier's discretion they choose to release the Equipment without a certificate of currency, then the Client agrees and accepts all liability and agrees to indemnify the Supplier against all losses incurred in respect of the Hire Equipment.

23.42 The LTD Waiver is not insurance, but is an agreement by the Supplier to limit your liability in certain circumstances for loss, theft, or damage, to the Supplier's Equipment to an amount called the LTD Waiver Excess. The LTD Excess is explained below.

23.43 Where a Client has purchased the LTD Waiver Fee, the Supplier will waive the Supplier's right to claim against you for loss, theft or damage to the Equipment if:

(a) the Client has promptly reported the incident to the Police and provided the Supplier with a written Police report;

(b) the Client has co-operated with the Supplier and provided the Supplier with details of the incident, including any written or photographic evidence that the Supplier requires;

(c) the Client's loss or damage does not fall into one or more of the circumstances in clause 31.5 and;

(d) the Client has paid to the Supplier the LTD Waiver Excess.

23.44 Even if the Client has paid the LTD Waiver Fee, the Supplier shall not waive the Supplier's rights to claim against the Client for loss, theft or damage to the Equipment and the LTD Waiver shall not apply if the loss, theft or damage:

(a) has arisen as a result of the Client breaching a clause of this Hire Agreement;

(b) has been caused by a negligent act or omission by the Client;

(c) has arisen as a result of the Client's use of the Equipment in violation of any law(s);

(d) has been caused by the Client's failure to use the Equipment for its intended purpose or in accordance with the Supplier's instructions or the Manufacturer's instructions;

(e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;

(f) has been caused by a lack of lubrication or a failure to service or properly maintain the Equipment

(g) has been caused by a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;

(h) has been caused by the overloading of the Equipment or any components thereof;

(i) is to motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extension leads with the electrical Equipment;

(j) is caused by exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc;

(k) is caused by vandalism;

(l) is to tyres or tubes;

(m) is to glass;

(n) is caused by the wilful actions of the Client, their employees, sub-contractors or agents.

23.45 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 or damage or loss of the Equipment, and/or damage or loss to property arising out of the use or provision of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons, particularly in the event that clauses 31.1 to 31.5 are voided for any reason.