MASTER HIRE AGREEMENT 2025

FOCUS MACHINERY

Focus Hire Pty Ltd T/A Focus Machinery - Terms & Conditions

1. Definitions

1.1 "Charges" means the cost of the hire or purchase of the Equipment (plus any GST where applicable) as agreed between the Supplier and the Client subject to clause 7 of this Contract.

1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.4 "Contract" means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.

1.5 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

1.6 ''Damage Waiver Excess Fee'' means the amount the Client must still pay in the event of damage, theft, or loss, even after paying the Damage Waiver Fee.

1.7 "Damage Waiver Fee" means a fee included in the hire charge. It is not insurance but an agreement by the Supplier to limit the Client's liability for loss, theft, or damage to the Equipment during the Hire Period.

1.8 "De-Hire Number" means the number provided by the Supplier to the Client when the Client notifies the Supplier that the Equipment is no longer required or that the Client wishes to end the hire period.

1.9 "Equipment" means all Equipment (including any erection and/or dismantle of the Equipment, parts, accessories, consumables, any guidance devices, vehicles, and/or wear items) supplied either by sale or 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.

1.10 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

1.11 "Guidance Device" means any device designed to guide the operation of the Equipment (including, but not limited to, cross slop, laser, universal tracking systems, global positioning, or compaction meters).

1.12 "Hire Period" means the period which the Client has hired the Equipment for, as set out in an invoice or in the terms or otherwise as agreed by the Supplier.

1.13 "Location "means the location of the Equipment as specified in the Contract or such other location as agreed by the Supplier.

1.14 "Minimum Hire Period" means the Equipment shall be hired for a term of not less than one (1) day (or unless specified otherwise on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client).

1.15 "Off Hire Number" means the number provided by the Supplier to the Client when the Client makes a request for temporary off hire rates.

1.16 "Preventative Maintenance" means the original Equipment manufacturer's recommended periodic services and does not include prestart, turn off procedures and daily or weekly recommended checks.

1.17 "Site" means the location/s at which the Equipment is to be operated.

1.18 "Stand Down Number" means the number provided by the Supplier to the Client when the Client makes a request for stand down rates.

1.19 "Supplier" means Focus Hire Pty Ltd T/A Focus Machinery, its successors and assigns or any person acting on behalf of and with the authority of Focus Hire Pty Ltd T/A Focus Machinery.

1.20 "Wear Items" includes ground engaging tools, wear on blades, buckets, rippers, tyres, track gear and fuel lubricants.

2. Acceptance

2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are 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 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges and accepts that the hire of Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.

2.5 In the event that the hire of Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.

2.6 In the event that the Supplier is required to provide the Services urgently, that may require the Supplier's staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or public holidays) then the Supplier reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Supplier and the Client.

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

3. Authorised Representatives

3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Equipment or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).

3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.

3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Equipment, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

4.1 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

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Equipment hire and/or/services.

4.2 In circumstances where the Client is required to place an order for the Equipment, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Equipment ("Client Error"). The Client must pay for all Equipment it orders from the Supplier notwithstanding that such Equipment suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Equipment. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. Change in Control

5.1 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, change of trustees, 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.

6. Credit Card Information

6.1 The Supplier will:

(a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Supplier;

(b) not disclose the Client's credit card details to any third party;

(c) not unnecessarily disclose any of the Client's personal information, except is accordance with the Privacy Act (clause 27) or where required by law; and

(d) the Client agrees that the Supplier may collect credit card details over the phone where the Supplier will securely store the credit card information in eCommerce payment solutions offered by any Australian financial institutions to process payments for the initial hire, ongoing hire and any additional charges as listed in the Contract.

6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Client which were not known at the time of the return of the Equipment, the Supplier is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

7. Charges and Payment

7.1 The Client must pay:

(a) the hire Charges as set out in the hire contract; and

(b) all hire Charges and other fees, Charges, costs that become due and payable under this Contract according to the payment terms mentioned in the invoice.

7.2 The Client will be charged for the hire of Equipment for the full hire period The Client must continue to pay the hire Charges and other additional Charges until the Equipment is returned to the Supplier (unless the Supplier notifies the Client otherwise in writing of an earlier off-hire date).

7.3 The Supplier may increase rates for hire Charges based on market conditions. Any ongoing hire will be exempted unless the Client is informed in writing. If the Client does not accept the increase in hire Charge the Client must return the Equipment to the Supplier.

7.4 At the Supplier's sole discretion, a reasonable deposit (in the form of a bond) shall be required at the commencement of this Contract in accordance with any quotation provided by the Supplier or as notified to the Client prior to the placement of an order for the Equipment, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client.

7.5 In addition to hire Charges, the Client agrees to pay for any:

(a) consumables, fuel or trade materials that the Supplier supplies to the Client;

(b) items or accessories missing when returned;

(c) cleaning and repair Charges, if the Equipment is not returned in a clean and good working order (to the same standard as delivered or picked up); and

(d) delivery, collection or installation Charges if the Client requires the Supplier to deliver, collect, install or decommission the Equipment.

7.6 Additional hire Charges may also apply if:

(a) the nominated time for delivery or collection of the Equipment is delayed by the Client or is outside of normal business hours;

(b) delivery, collection or installation is cancelled by the Client within twenty-four (24) hours of the agreed time;

(c) increased hire Charges, if the Client requests that the Supplier's has hired Equipment from a third party or requires enhancements to the Equipment specification; and
(d) Charges in connection with the administration of the Client's credit account, which may include printing and postage costs.

7.7 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by the Supplier, which may be:
(a) on or before delivery of the Equipment; or
(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule; or
(c) thirty (30) days following the end of the month or the date of invoice in which a statement is posted to the Client's address or address for notices; or
(d) the date specified on any invoice or other form as being the date for payment; or
(e) 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.

7.8 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and the Supplier.

7.9 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.

7.10 The Client shall not be entitled to set off against, or deduct from the Charges, 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.

7.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges 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 Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

7.12 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.

8. Special Conditions for COD Hire

8.1 COD (Cash on Delivery) hires are subject to an upfront payment and shall require and a minimum of one (1) week's hire Charges and paid in advance, even if the Hire Period is for less than a week, unless otherwise agreed by the Supplier.

8.2 A refund for unused days shall apply if the hire is booked for less than a week. A refund will be processed for any unused days after the off-hire process is completed.

8.3 The Client shall return all equipment on the agreed return date and time. If the Equipment is not returned as scheduled the following conditions shall apply:
(a) for hires less than one (1) week: the Supplier will assume the Equipment is still in use, as the minimum one (1) week charge has been paid. After one (1) week the hire will automatically extend for an additional week and continue to roll weekly until the Supplier decides to cancel the hire and recoup the Equipment; and
(b) for hires of one (1) week or more: the hire will automatically extend for an additional week and continue to roll over weekly until the Supplier decides to cancel the hire and recoup the Equipment.

8.4 In the event the Equipment is returned before the end of an automatically extended week, an early return refund will be provided for the unused days within that extension period.

9. Hire Period

9.1 The 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.

9.2 Additional charges will apply in the event that the Client requests an extension of the Hire Period, and the Hire Period is extended, or if the Equipment is used more than eight (8) hours per day.

9.3 Where the Client has agreed to a specific Hire Period or Minimum Hire Period with the Supplier and the Hire Period expires or is terminated, the Client acknowledges and agrees to promptly pay the Supplier for all lost hire Charges that the Supplier would otherwise have been entitled to under this Contract.

9.4 The Client irrevocably appoints the Supplier as its agent and authorizes and licenses the Supplier to enter the Location and repossess the Equipment after the Client receives a De-Hire Number or upon termination of the hire agreement, whichever is the first to occur.

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

9.6 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.

10. Delivery

10.1 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.

10.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by the Supplier to the Client, or as otherwise notified to the Client prior to the placement of an order for the Equipment.

10.3 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.

10.4 Any time specified by the Supplier for Delivery of the Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Equipment (including any installation and/or removal thereof) as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee including mileage and lost time hours, for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

10.5 The Client shall ensure that the Supplier has clear and free access to the nominated address at all times to enable them to make Delivery and/or to inspect the hire Equipment. The Supplier shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Supplier.

11. Risk

11.1 The Client assumes all risks and liabilities in relation to the Equipment from the start of the Hire Period until the Equipment is returned to the Supplier in an acceptable condition.

11.2 The Supplier retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.

11.3 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.

11.4 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.

11.5 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.

12. Title to Hired Equipment

12.1 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.

12.2 If the Client fails to return the Equipment to the Supplier as is required under this Contract 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.

12.3 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.

13. Personal Property Securities Act 2009 ("PPSA")

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

13.2 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 that has previously been supplied and that will be supplied in the future by the Supplier to the Client.

13.3 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 13.3(a)(i) or 13.3(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; and

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Supplier.

13.4 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.

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

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

13.7 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.

13.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 13.3 to 13.5.

13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

13.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.

14. Security and Charge

14.1 In consideration of the Supplier agreeing to supply the Equipment on hire, the Client grants the Supplier a security interest by way of a floating charge (registerable by the Supplier pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment on hire under this Contract and/or permit the Supplier to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).

14.2 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.

14.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 32, 13.2 and 14.1 as applicable, is deemed insufficient by the Supplier to secure the repayment of monies owed by the Client to the Supplier, the Client hereby grants the Supplier a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

15.1 The Client must inspect the Equipment on Delivery and must within four (4) hours 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.

15.2 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).

15.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4 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.

15.5 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.

15.6 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 Supplier 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.

15.7 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; or
- (c) otherwise negated absolutely.

15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1;
- (b) the Supplier has agreed that the Equipment is defective;
- (c) the Equipment is returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Equipment is returned in as close a condition to that in which they were delivered as is possible.

15.9 Notwithstanding clauses 15.1 to 15.7 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; or
- (f) fair wear and tear, any accident, or act of God.

15.10 The Supplier may in its absolute discretion accept non-defective Equipment for return in which case the Supplier may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Equipment plus any freight costs.

15.11 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.

16. Intellectual Property

16.1 Where the Supplier has designed, drawn or developed Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.

16.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

16.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Equipment which the Supplier has created for the Client.

17. Client's Obligations

17.1 The Client shall:

(a) satisfy itself at commencement that the Equipment is suitable for its purposes;
(b) 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;
(c) maintain the Equipment as is required by the Supplier;
(d) 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;
(e) ensure that:
  (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
  (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
  (iii) 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.
(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) comply with all occupational health and safety laws relating to the Equipment and its operation;
(h) 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;
(i) 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;
(j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
(k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work; and
(l) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment.

17.2 The Client shall not:

(a) 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;
(b) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable);
(c) carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of the Supplier;
(d) use or carry any illegal, prohibited or dangerous substance in or on the Equipment; or
(e) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

17.3 The Client is responsible for safe custody of the Equipment from the time the Equipment:

(a) leaves the Supplier's yard until it is returned to the yard if the Client organises the pickup and drop off; and
(b) is delivered to the Client's nominated site (even if the Client is not present at site at that time) until the Supplier or designated transport driver physically collects the Equipment.

18. Stand Down Conditions

18.1 A stand down rate may apply, subject to:

(a) machine availability;
(b) a Stand Down Number being issued to the Client by the Supplier; and
(c) the Client is in compliance with clause 18.2.

18.2 Stand downs may apply to Equipment hired, provided that:

(a) any stand down request must be made by 9.00am on the day of the stand down (stand downs cannot be applied retrospectively);
(b) the Client remains responsible for the security of the Equipment and all loss or damage while it is stood down;
(c) break down of the Equipment has occurred or is due to inclement weather or public holidays in which a stand down and stand down rate would need to be agreed upon in advance and is at the sole discretion of the Supplier. No stand down shall be available for the aforementioned unless it is part of a machinery contract, and the machinery is allowed to be stood down; and
(d) if the Equipment is used during a stand down (which may be determined by remote monitoring), full hire Charges for that period will be applied.

18.3 Regardless of any indication to the contrary in the terms, stand down will apply at the Supplier's sole and absolute discretion and stand down rates are not available for Equipment hired at monthly rates or on a rental/purchase basis.

19. Use, Operation and Maintenance of Equipment

19.1 The Client acknowledges that use of the Equipment may involve risk of injury or damage to property, and the Client accepts all such dangers and risks.

19.2 The Client must not, and must not allow any of its officers, employees, agents or contractors to tamper with, damage or alter the Equipment

19.3 The Client may, with express permission only of the Supplier, repair or attempt to repair the Equipment.

20. Preventative Maintenance

20.1 The Supplier will manage Preventative Maintenance for the Supplier's Equipment, unless specifically mentioned in the Contract otherwise.

20.2 The Client must allow the Supplier to enter the Client's premises and inspect and maintain the Equipment from time to time during the Hire Period during ordinary business hours. If the Supplier cannot inspect or maintain the Equipment during ordinary business hours, then additional Charges may apply.

20.3 The Preventative Maintenance for:

(a) all Equipment located at a long-distance location will be subject to a per kilometre charge both to and from the premises nominated by the Client. There will be no charge for the first fifty (50) km either way; and

(b) multiple items of Equipment which are located at the long-distance location will only be charged as one call out.

20.4 If the Equipment breaks down at a long-distance location, the Client must pay the Supplier the costs associated with any attendance to the long-distance location in addition to any other costs payable under this Contract.

20.5 Where the Equipment includes a registered motor vehicle (including, but not limited to, trucks, utes, or similar road-registered plant), the Client acknowledges and agrees that they shall be responsible for returning the motor vehicle to the Supplier's nominated yard location for the purposes of carrying out periodic servicing in accordance with the original manufacturer's recommended service intervals. Such servicing shall be conducted on a time-based or kilometre-based schedule, whichever occurs first.

20.6 In accordance with clause 20.5, failure by the Client to return the vehicle for such scheduled servicing may result in additional repair charges or penalties, and may void any applicable damage waiver arrangements or warranty cover for the duration of the non-compliance and all costs incurred by the Supplier as a result of the Client failing to comply with this clause shall be recoverable from the Client as a debt due and payable.

20.7 If the Client cancels offsite maintenance required for the Supplier to conduct Preventative Maintenance during the Hire Period, the Client must provide written justification to the Supplier. The Supplier, at its sole discretion, may assess the validity of the Client's reasons for deviating from the maintenance schedule. If deemed appropriate, the Supplier may reschedule maintenance for the Equipment. The Client will be responsible for any losses or costs incurred by the Supplier and the Equipment up to the time of, or as a result of, the cancellation.

20.8 If the Supplier fails to adhere to the maintenance schedule, the Supplier's liability to the Client shall be limited to the total value of the hire charges.

21. Breakdown, Lost or Damaged Equipment

21.1 If the Equipment breaks down, becomes unsafe to use, is lost, stolen or damaged during the Hire Period the Client must:

(a) in the case of damaged, unsafe use or breakdown, immediately stop using the Equipment;

(b) immediately notify the Supplier and provide all relevant particulars of the incident;

(c) for incidents of theft, promptly report the incident to the police and provide the Supplier with written police report;

(d) take all steps necessary to prevent injury occurring to persons or property and to prevent further damage to the Equipment; and

(e) not repair or attempt to repair the Equipment without the Supplier's written consent.

21.2 If the Equipment breaks down, becomes unsafe to use or is damaged because of:

(a) fair wear and tear as determined by the Supplier, the Supplier will take all reasonable steps to repair the Equipment or provide a suitable replacement, at the Supplier's cost, as soon as reasonably possible and not impose a hire Charge for that portion of the Hire Period during which the Equipment was broken down or unsafe; and

(b) any reason other than fair wear and tear as determined by the Supplier, the Supplier will take all reasonable steps to repair the Equipment or provide a suitable replacement as soon as reasonably possible, and the Client will liable for:

(i) the costs and expenses suffered or incurred by the Supplier to recover, repair or replace the Equipment; and

(ii) the hire Charges for the portion of the Hire Period during which the Equipment was broken down, unsafe, damaged and/or being recovered, repaired or replaced.

22. Wet Hire

22.1 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. The Supplier is not liable for any actions of the operator where the operator has followed the Client's directions.

23. Vehicle Hire

23.1 This clause 23 applies if the Equipment includes any excavators, multi-terrain loaders, skid steer loader or any other similar vehicle (Vehicle).

23.2 If a Vehicle is lost, stolen or damaged during the Hire Period, the applicable waiver fee for each Vehicle shall be in accordance with clause 28, and for the avoidance of doubt, the waiver fee will not cover the Client's liability in respect of any 3rd party claim arising out of the Vehicle being lost, stolen or damaged during the Hire Period.

23.3 The Client warrants that it will not permit a person to drive any Vehicle if the person:

(a) is a learner driver;

(b) does not hold an appropriate licence to drive the relevant type of Vehicle;

(c) is under the age of 18 years; or

(d) is affected by, or under the influence of, drugs and/or alcohol.

23.4 The Supplier reserve the right to demand the Client to provide any information required under relevant legislation for those persons who will operate the Vehicle, including details of the licences of any drivers during the Hire Period.

23.5 The Client must:

(a) keep a record of all relevant details of any driver of a Vehicle, including name, licence details, date and time that the driver used the Vehicle;

(b) pay all tolls, fines, penalties and other statutory or Government charges arising out of the Client's use of the Vehicle during the Hire Period;

(c) pay a charge for the number of kilometres travelled for the use of the Vehicle during the Hire Period;

(d) not load the Vehicle in excess of the Vehicle's gross vehicle mass at any time during the Hire Period;

(e) return the Vehicle with a full tank of fuel (otherwise the Client agrees to pay a charge, including labour fee, for refilling the tank).

23.6 If the Vehicle is involved in any incident or collision, the Client must thoroughly record the details of the accident and fully co-operate with the Supplier or the Supplier's insurer.

23.7 The Client acknowledges that the Supplier has provided the manufacturer's operating and safety instructions in respect of any Vehicle.

23.8 The Client agrees to be liable for the cost of repairing or replacing flat or damaged tyres and all wear and tear and damage to tyres, track gear and Wear Items which is caused by use of the tyres, track gear and Wear Items in conditions which the Supplier considers abnormal or inappropriate.

23.9 The Client is responsible for verifying the accuracy of any Guidance Device during the Hire Period.

24. Cancellation

24.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may suspend or terminate the supply of Equipment on hire to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 24.1.

24.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Equipment to the Client, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Equipment at any time before the Equipment are delivered by giving written notice to the Client. On giving such notice, the Supplier shall repay to the Client any money paid by the Client for the Equipment to be hired. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

24.3 The Client may cancel Delivery of the Equipment by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 24.3, the Client will not be liable for the payment of any costs of the Supplier, except where a deposit is payable in accordance with clause 7.2.

24.4 Cancellation of orders for Equipment made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, an order has been placed, or for any ongoing hire which may also be cancelled at the discretion of the Supplier.

25. Default and Consequences of Default

25.1 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.

25.2 If the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements:

(a) incurred; and/or

(b) which would be incurred and/or

(c) for which by the Client would be liable;

in regard to legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under these terms and conditions, internal administration fees, the Supplier's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

25.3 The Supplier will seek the service of collection agencies and or solicitor after giving two (2) days' notice to the designated email address once an invoice is overdue. In such cases all cost associated with collection and legal proceeding will be charged to the Client and become due immediately.

25.4 At the Supplier's sole discretion report any outstanding balance to credit rating agencies after giving two (2) days' notice to the Client.

25.5 Further to any other rights or remedies the Supplier may have under this Contract, if the 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 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

25.6 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 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 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.

26. Compliance with Laws

26.1 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 (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation, particularly those in relation to asbestos and/or other hazardous materials (and the safe removal and disposal of the same). The Client agrees to indemnify the Supplier against all claims arising from health issues related to exposure to asbestos at the Location.

26.2 The Client shall be liable for any costs incurred by the Supplier due to the Client's failure to comply with clause 26.1, including any associated clean up costs related to asbestos.

26.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

27. Privacy Policy

27.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 27.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier

acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

27.2 Notwithstanding clause 27.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information").

If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

27.3 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, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

27.4 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 (2) years.

27.5 The Client consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

27.6 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.

27.7 The Supplier may give information about the Client to a CRB for the following purposes:
(a) to obtain a consumer credit report; and/or
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

27.8 The information given to the CRB may include:
(a) Personal Information as outlined in 27.3 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 (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme),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; or
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

27.9 The Client shall have the right to request (by e-mail) from the Supplier:
(a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
(b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.

27.10 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 Contract or is required to be maintained and/or stored in accordance with the law.

27.11 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.

28. Damage Waiver

28.1 The hire Charge will include a charge for the Damage Waiver Fee. The Damage Waiver Fee is calculated at ten (10%) percent of the value of the total hire costs for the duration of the Hire Period and charged on each invoice. Damage Waiver Fee is not insurance but is an agreement by the Supplier to limit the Client's liability in certain circumstances for loss, theft, or damage to the Equipment to an amount called the Damage Waiver Excess Fee.

28.2 The Damage Waiver Excess Fee shall be as determined by the Supplier and shall be automatically charged in addition to the Charges and is calculated as follows:

(a) Repair: -
  (i) if the cost of the repairs is below one-thousand dollars ($1000.00) (if the Equipment is partially damaged and can be repaired), the waiver excess is actual cost; and
  (ii) if the cost of the repairs is above one-thousand dollars ($1000.00) (if the Equipment is partially damaged and can be repaired), the waiver excess is fifteen percent (15%) of the cost of repairs or one thousand dollars ($1000.00) whichever is higher.

(b) Replacement: -
  (i) if the full new replacement cost of the Equipment is below five-thousand dollars ($5000.00) (if the Equipment is lost, stolen or damaged beyond repair), the waiver excess is actual cost; and
  (ii) if the full new replacement cost of the Equipment is above five-thousand dollars ($5000.00) (if the Equipment is lost, stolen or damaged beyond repair), the waiver excess is fifteen percent (15%) of the replacement or five-thousand dollars ($5000.00) whichever is higher.

28.3 For the purpose of this clause the term "Equipment" does not include any tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes, welding cables, gas cylinders, pneumatic tools, and other similar accessories, ground engaging tools, tracks, tyres, tubes, windscreens, mirrors, glass, and perspex.

28.4 The Client is not required to pay the Damage Waiver Fee from the date the Client produces a certificate of currency 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 replacement value of the Equipment. For the avoidance of any doubt, the Client is liable to pay the Damage Waiver Fee for that portion of the hire period where a certificate of currency required pursuant to the clause remains outstanding ("Uninsured Period") and the Client is not entitled to any credit and/or reimbursement of the Damage Waiver Fee charged and/or paid that relates to the Uninsured Period. The Client is responsible for any excess and any other costs associated with the Client's insurance and the Client is responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under the Client's insurance, including any loss the Supplier suffers as a result of not being able to hire the Equipment.

28.5 Where the Client has paid the Damage Waiver Fee, the Supplier will waive it's right to claim against the Client for loss, theft, or damage to the Equipment if:
(a) for theft, the Client has promptly reported the incident to the police and provided the Supplier with written police report within twenty-four (24) hours unless otherwise agreed in writing by the Supplier;
(b) the Client has co-operated with the Supplier and provided them with the details of the incident, including any written or photographic evidence the Supplier requires; and
(c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 17; and
(d) if the Client has paid the waiver excess.

28.6 Even if the Client has paid the Damage Waiver Fee, the Supplier will not waive its rights to claim against the Client for loss, theft or damage to the Equipment and the Damage Waiver Fee will not apply if the loss, theft, or damage has arisen from anything referred to in clause 20 and 17.

28.7 The Client's liability will not be limited in the Supplier's reasonable opinion, the loss or damage to the Equipment arises from or is caused by:
(a) a breach of the Contract;
(b) the Client's negligent acts or omissions;
(c) improper use of the Equipment;
(d) transporting, loading or unloading (except where transported by the Supplier);
(e) lack of lubrication or other normal servicing of the Equipment;
(f) overloading, exceeding rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment;
(g) motors or other electrical Equipment or components within the Equipment caused by electrical overload, surge in electrical current or the use of under rated or excessive lengths of extension leads with the electrical Equipment;
(h) exposure to any corrosive or caustic substance or environment;
(i) caused by vandalism;
(j) use or Location of the Equipment in, or over water, wharves, bridges, vessels or structures of any kind; or
(k) collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure, or object due to insufficient clearance.

29. Service of Notices

29.1 Any written notice given under this Contract 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; or
(e) if sent by email to the other party's last known email address.

29.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

30. Trusts

30.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a 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, the trustees and the trust fund;

(b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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, the trustees and 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 action which might prejudice that right of indemnity;

(c) the Client will not during the term of the Contract 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 fund or trust property.

31. General

31.1 Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Supplier in writing listing all the reasons and provide proof to substantiate the reason, within seven (7) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Client's account into default and subject to default interest in accordance with clause 25.1, and unless adjudicated by law, the Supplier will take all the steps necessary to recoup the outstanding amounts in accordance with clause 25.

31.2 The Supplier shall review the dispute and respond within seven (7) business days upon receiving the dispute.

31.3 In the event:

(a) the response is not satisfactory, the Client can request a face-to face mediation between the parties at the Supplier's office at a time acceptable to both parties; and

(b) that the mediation fails, both parties are free to take the dispute to alternative dispute resolution avenues.

31.4 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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

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

31.6 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 provided the assignment does not cause detriment to the Client.

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

31.8 The Supplier may elect to subcontract out any part of the provision 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.

31.9 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 Equipment on hire to the Client.

31.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Supplier, once the parties agree that the Force Majeure event has ceased.

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

31.12 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

31.13 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

Terms Applicable to the Sale of Equipment Only

32. Title to the Sale of Equipment

32.1 The Supplier and the Client agree that ownership of the Equipment shall not pass until:
(a) the Client has paid the Supplier all amounts owing to the Supplier; and
(b) the Client has met all of its other obligations to the Supplier.

32.2 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.

32.3 It is further agreed that until ownership of the Equipment passes to the Client in accordance with clause 32.1:
(a) the Client is only a bailee of the Equipment and must return the Goods to the Supplier on request;
(b) the Client holds the benefit of the Client's insurance of the Equipment on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Equipment being lost, damaged or destroyed;
(c) the Client must not sell, dispose, or otherwise part with possession of the Equipment other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Equipment then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
(d) the Client should not convert or process the Equipment or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Equipment;
(f) the Supplier may recover possession of any Equipment in transit whether or not delivery has occurred;
(g) the Client shall not charge or grant an encumbrance over the Equipment nor grant nor otherwise give away any interest in the Equipment while they remain the property of the Supplier; and
(h) the Supplier may commence proceedings to recover the price of the Equipment sold notwithstanding that ownership of the Equipment has not passed to the Client.

33. Risk

33.1 Risk of damage to or loss of the Equipment passes to the Client on Delivery and the Client must insure the Equipment on or before Delivery.

33.2 If any of the Equipment 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 Equipment. 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.

33.3 If the Client requests the Supplier to leave Equipment outside the Supplier's premises for collection, or to deliver the Equipment to an unattended location, then such Equipment shall be left at the Client's sole risk.

34. Warranty

34.1 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 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 goods, and calculated the price thereof, in reliance of this clause 34.1.

35. Returns

35.1 The Supplier may, in its absolute discretion, accept non-defective Equipment for return, in which case the Supplier may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Equipment plus any freight costs.

“At Focus Machinery, we’re more than a hire service - we’re your partner in progress. From selecting the right equipment to ensuring optimal performance on-site. We’re here to help you achieve your project goals”

Go Ahead and Dig®

FOCUS MACHINERY

Focus Machinery
ABN 27 624 650 406
908-920 Mountain Hwy BAYSWATER VIC 3153
03 9756 3950
sales@focusmachinery.com.au
www.focusmachinery.com.au