

Terms and Conditions

GENERAL TERMS

1 Definitions

- 1.1 **Australian Consumer Law:** the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.2 **Claim:** includes all actions, suits, causes of action, arbitrations, debts, dues, costs, expenses, claims, demands, proceedings, complaints, objections, obligations, liabilities, interest, verdicts, orders and judgments, including any claim for restitution, unjust enrichment, compensation, reimbursement, contribution, damages or indemnity either at law or in equity or arising under a statute and whether or not the matter giving rise to those claims are known to the parties as at the date of these Terms, actual or contingent.
- 1.3 **Confidential Information:** means:
- (a) in respect of us:
 - (i) our Intellectual Property Rights;
 - (ii) all Information relating to the Equipment and Services;
 - (iii) all Information we submit or disclose to you;
 - (iv) all Information learned or accessed by you from us,
at any time and includes without limitation (but by extension):
 - (v) Information which at the time of disclosure by us is identified as being confidential;
 - (vi) Information which, of implied necessity, is confidential;
 - (vii) Information which you know or ought reasonably be expected to know is confidential;
 - (viii) any agreement, arrangement or understanding relating to the Equipment and Services;
 - (ix) all designs, plans, drawings, specifications, data sheets and information pertaining to the Equipment and Services or to any Intellectual Property in the Equipment and Services;
 - (x) all Intellectual Property Rights in the Equipment and Services;
 - (xi) all our commercially sensitive documents and information (including customer details, financial data, business plans and personal information); and
 - (xii) the content and subject matter of these Terms,
 - (b) in respect of you: any Information you give us which you indicate in writing is confidential.
- 1.4 **Consequential Loss:** any remote or indirect loss or damages, loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of goodwill, loss of opportunities, loss of anticipated savings or wasted overheads.
- 1.5 **Delivery Time:** the following relevant date:
- (a) in respect of Equipment that you hire, if we agree in writing:
 - (i) to deliver the Equipment to you by us – the time we first make the Equipment available to you on Site;
 - (ii) to deliver the Equipment to you by a third party carrier – the time the carrier takes possession of the Equipment from us, after which point in time the carrier will be deemed to be your agent; and
 - (iii) that you will collect the Equipment from us – the time we make the Equipment available for collection by you;
 - (b) in respect of Services we provide you – the date and time we first make the Services available to you; and
 - (c) to the extent that clause 4.4 applies – the deemed date of delivery.

You acknowledge that delivery may be in instalments, in which case there will be a different 'Delivery Time' for each instalment.

- 1.6 **Equipment:** all machinery and equipment we offer including trucks, trailers, tanks, earth-moving equipment and attachments, excavators, specialised attachments, low loaders, tag along floats or other similar items and all associated keys, remote controls, opening devices, and accessories such as steel rims and tyres, pumps, regulators and brakes that are listed in the Quote, or that are otherwise confirmed by us to you in writing, or that we provide to you, or that we otherwise make available to you.
- 1.7 **Force Majeure Event:** means any event or circumstance that:
- (a) is not within our reasonable control; and
 - (b) cannot reasonably be prevented or circumvented by us taking reasonable precautions; and
 - (c) prevents, hinders or delays us from performing any of our obligations under these Terms including:
 - (i) any act of God or inclement weather;
 - (ii) epidemic, pandemic or other government restrictions or public health and safety emergency;
 - (iii) war, armed conflict, imposition of sanctions, embargo, blockade, terrorist attack, civil commotion or riots;
 - (iv) sabotage, malicious damage or vandalism;
 - (v) any action taken by a Government Agency, including, imposing an export or import restriction, quota or prohibition, or failure to obtain or delay in obtaining a necessary approval, permit, licence or consent, where we have taken all reasonable steps to obtain that approval, permit, licence or consent;
 - (vi) labour or trade dispute, strikes, industrial action or lockouts;
 - (vii) non-performance by suppliers or subcontractors;
 - (viii) interruption, material reduction in the rate of, or failure of any utility service;
 - (ix) breakage, failure or malfunction of, or accident involving, any plant, equipment, machinery or other facility owned or operated by us that occurs notwithstanding that we have taken all reasonable steps to avoid or guard against such an event.
- 1.8 **Government Agency:** any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- 1.9 **GST:** has the meaning given to it in the GST Act.
- 1.10 **GST Act:** *A New Tax System (Products and Services Tax) Act 1999* (Cth).
- 1.11 **Information:** any information, inventions and ideas, which may be:
- (a) oral, written, recorded or stored by electronic, magnetic, electromagnetic, or in other form, process, media or otherwise in a machine readable form; or
 - (b) translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered.
- 1.12 **Insolvency Event:** any of the following:
- (a) if a party is incapable of paying its debts when due and payable;
 - (b) if a party enters into a deed of arrangement or an order is made for it to be wound up;
 - (c) if a party commits an act pursuant to which bankruptcy or insolvency proceedings may be commenced;
 - (d) if an administrator, receiver or receiver/manager, a liquidator, trustee in bankruptcy or similar is appointed to a party, including pursuant to the Corporations Act 2001(Cth); or
 - (e) if a party would be presumed to be bankrupt or insolvent by a court in any of the circumstances referred to in the Corporations Act.
- 1.13 **Intellectual Property Rights:** all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business

and domain names, database rights, the right to have confidential information kept confidential (including know how, trade secrets and datasets), inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights.

- 1.14 **Loss:** any loss including Consequential Loss, liability, damage, cost or expense of a property, personal or other nature arising and whether present or future, known or unknown, actual or contingent, including all legal and other professional expenses on a solicitor client basis incurred in relation to investigating, disputing, defending or settling any Claim (including any Claim based on these Terms).
- 1.15 **Other Property:** all of your Secured Collateral, and your present and after-acquired rights and interests in Secured Collateral that is not Personal Property.
- 1.16 **Personal Property:** means all of your present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) and all present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) in which you have rights.
- 1.17 **PPSA:** *Personal Property Securities Act 2009* (Cth).
- 1.18 **Price:** the price is the total amount stated in the Quote or as otherwise agreed by the parties in writing.
- 1.19 **Privacy Act:** *Privacy Act 1988* (Cth).
- 1.20 **Quote:** means the relevant document we advise you is, or is labelled as, a 'Quote'.
- 1.21 **Related Bodies Corporate:** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).
- 1.22 **Secured Collateral:** all your present and future assets, and all your present and after-acquired property, of any nature or description (including any real property), situated anywhere in Australia or overseas and all your legal right, title and interest to or in each of those assets, and each item of that property, at any time.
- 1.23 **Security Interest:**
- (a) in relation to any Personal Property, a Security Interest as defined in the PPSA;
 - (b) in relation to any Other Property means:
 - (i) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, arrangement, caveat, assignment, bill of sale, hypothecation, power, title retention, deposit arrangement or power;
 - (ii) right, interest or arrangement that has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
 - (iii) an easement, restrictive covenant, caveat, priority notice or similar restriction over property; or
 - (iv) any agreement to create any of them or allow them to exist.
- 1.24 **Services:** the services we provide to you as stated in the Quote or as otherwise agreed in writing.
- 1.25 **Site:** the site where we will provide the Equipment and Services to you, or where you will use the Equipment, as set out in the Quote or as otherwise agreed in writing by us.
- 1.26 **Stipulated Rate:** means the Reserve Bank of Australia's 'cash rate' for the month in which the interest accrues plus a margin of 10% per annum.
- 1.27 **these Terms:** these terms and conditions.
- 1.28 **Tracker:** a tracking device installed on or within the Equipment to track and monitor the geographical location of Equipment;
- 1.29 **us:** all references to "us", "we", "our" etc, refers to East Coast Rock Works Group Pty Ltd ACN 668 403 567 and its current or future Related Bodies Corporate and partnerships, and any other entity controlled by any one or more of any such entity and each of their officers, employees, consultants, subcontractors and agents.
- 1.30 **you:** all references to "you", "your", etc refer to the entity or individual noted on any Quote, credit application, other form or documentation, or that we otherwise deal with in relation to the Equipment and Services (whether

or not the Equipment and/or Services are provided), its representatives and if more than one, each of them jointly and severally.

2 Applicability of Terms

- 2.1 These Terms apply to the provision of all Equipment and Services including any credit application you sign (whether or not the Equipment and Services are provided to you on credit or otherwise).

3 Orders and payment

- 3.1 **Authority.** You warrant that your officers, employees or agents have authority to enter into and bind you to these Terms and any agreed variation and such authority will not be revoked for the duration that these Terms apply.
- 3.2 **Quote.** All Quotes including any schedule, list, annexure or other information we provide to you in writing relating to the Equipment and/or Services (whether provided to you at the same time or not) are subject to these Terms. Any Quote we give you is open for acceptance for the period set out in the Quote and, if no date is stipulated in the Quote, within 14 days from the date we provide it to you. You are responsible for checking the Quote carefully before accepting it to ensure it is complete, accurate and meets your intended needs and purpose. We may provide you with a Quote for each request for Equipment and Services you make.
- 3.3 **Acceptance.** You accept the Quote on the date which is the earlier of:
- (a) you making payment in full in accordance with the Quote;
 - (b) you signing and returning a copy of the signed Quote to us by email or post;
 - (c) you otherwise notifying us the Quote is accepted (in writing or otherwise);
 - (d) you submitting a purchase order consistent with the Quote; or
 - (e) the Delivery Time.
- 3.4 **Price.** The total amount payable to us by you is the Price plus any other additional amounts, fees, expenses or charges outlined in these Terms or as otherwise agreed in writing.
- 3.5 **Variation of price before Delivery Time.** We may change the Price if:
- (a) there is an increase in cost of materials, fuel, labour, freight or insurance charges between the date of the Quote and the Delivery Time;
 - (b) we agree to changes to the Quote including additional Equipment or Services;
 - (c) additional Services are required to be provided to you due to unforeseen or unexpected issues or circumstances beyond our reasonable control including a Force Majeure Event;
 - (d) there is a change in any relevant laws or regulations including changes to amounts we may charge for Equipment and Services; and
 - (e) any other cause or circumstance beyond our reasonable control including a Force Majeure Event, and those changes will be provided to you in writing, including any evidence we consider justifies the increase in costs, and you will be bound by the increased price which will be treated as an amendment to the Price in the accepted Quote provided it is before the Delivery Time (**Amended Quote**). Payment for all variations as outlined in the Amended Quote must be made in full in accordance with these Terms as if they were stated in the original accepted Quote.
- 3.6 **Variation of price after Delivery Time.** We may at any time after the Delivery Time increase the Price by providing you with written notice (**Price Increase Notice**). If you object to the increase, you may in your discretion terminate these Terms in writing to us and if we have:
- (a) provided you with Equipment, return the Equipment within seven (7) business days of receiving the Price Increase Notice; or
 - (b) provided Services to you, we will immediately cease providing Services to you and are under no obligation to provide Services to you,

and you must pay us the amount payable in accordance with the rates set out in Quote per day or part thereof that you either had the Equipment or we provided the Services to you (as relevant).

If you do not notify us of any objection within seven (7) business days of receiving the Price Increase Notice, and if we provided you with Equipment, return the Equipment within that time, you will be deemed to have accepted the increased Price stated in the Price Increase Notice and that increased price will apply from the date stated in the Price Increase Notice.

- 3.7 **Variation of Quote.** If you request, and we agree in writing, to vary the Quote including altering the Equipment and/or Services, without limiting any other right in these Terms we may charge you any Loss we suffer or incur as a result of those variations.
- 3.8 **Methods of payment.** Unless we advise in writing that payment is required in full before any Equipment or Services are provided to you, payment for the Equipment and/or Services will be made in accordance with clause 5.1. We accept payment by way of direct deposit into a bank account nominated by us to you in writing..
- 3.9 **Changing these terms.** We may change these Terms if we:
- (a) give you reasonable notice before those changes come into effect (and in any event no less than 14 days' notice) (**Change Notice Period**); and
 - (b) make reasonable efforts to notify you of those changes.

Without affecting any accrued rights or obligations of the parties:

- (c) you may terminate the accepted Quote at any time during the Change Notice Period if the changes will substantially and materially adversely affect you; and
 - (d) if you do not terminate the accepted Quote during the Change Notice Period in accordance with clause 3.9(c), the new Terms will apply from the date immediately after the last day of the Change Notice Period.
- 3.10 **Instalments.** We may supply or deliver the Equipment and Services by instalments. Each instalment will be deemed to be sold under a separate contract. You cannot cancel the accepted Quote if we supply or deliver the Equipment and Services in instalments or fail to deliver one of the instalments.
- 3.11 **Invoicing.** All invoices must be paid by you by the due date stated in the Quote or invoice, or if there is no due date in the Quote, within 14 days from the date the invoice was issued without any deduction or set-off. You are responsible for all applicable taxes and statutory charges including but not limited to GST. If you fail to make a payment by the due date, then, without limiting our rights and remedies under these Terms and at general law, we may charge you interest at the Stipulated Rate accruing daily and capitalised monthly up to and including the date you make payment in full. You will be liable for any Claim or Loss we suffer or incur in relation to recovering, or attempting to recover, amounts you owe us including debt collection agency fees.

4 Delivery and cancellation

- 4.1 **Delivery.** Delivery will occur at the Delivery Time. You are responsible for any Loss we suffer or incur in respect of delivery including carrier costs.
- 4.2 **Cancellation.** If you cancel an accepted Quote up to 72 hours prior to the projected date of delivery in your accepted Quote we will only charge you Loss we reasonably suffer or incur in fulfilling the accepted Quote up until the date you notify us in writing of the cancellation. If you cancel an accepted Quote less than 72 hours before projected date of delivery in your accepted Quote you are liable for the full Price pursuant to the accepted Quote plus any Loss we suffer or incur as a result.
- 4.3 **Unable to deliver.** If we are unable to provide the Equipment and Services to you on the projected delivery time in your accepted Quote and that inability was caused or contributed to by:
- (a) a Force Majeure Event that lasts for no more than 60 days without any act or omission by you – the Delivery Time will be delayed until a date agreed between you and us, and failing agreement, the next available date that we can deliver the Equipment and Services to you following that Force Majeure Event;
 - (b) an act or omission by you – we are relieved from the obligations to deliver the Equipment and/or provide the Services to you and you are liable for the full Price in the accepted Quote as if delivery had occurred including any Claim or Loss we suffer or incur as a result; or
 - (c) any other event including a Force Majeure Event that lasts for more than 60 days - we will notify you in writing and we may elect to:
 - (i) amend (by mutual agreement) the delivery time for the Equipment and Services; or

- (ii) cancel the accepted Quote and we will refund any amount paid by you and received by us in relation to the Equipment and/or Services we are unable to provide you.

We are not be liable for any Claim or Loss you suffer or incur due to failure by us to deliver under this clause.

- 4.4 **Failure to accept delivery.** If you fail to take or accept delivery of the Equipment and Services at the Delivery Time, then, except where caused by our failure to comply with these Terms:
 - (a) delivery is deemed complete at 9.00 am on the relevant date of the Delivery Time; and
 - (b) we will invoice you the Price plus any Loss that we suffer or incur as a result including additional delivery and waiting fees or storage charges, payable by you immediately on demand.
- 4.5 **Tracking.** You acknowledge the Equipment may have a Tracker and you will ensure that all persons authorised to use the Equipment are made aware the Equipment may have a Tracker. You must ensure the Tracker is not damaged, interfered or tampered with in any way including by obscuring or blocking or removing it from the Equipment.

5 Credit application and guarantee

- 5.1 **Equipment/Services on credit.** If we require the Equipment and/or Services to be provided to you on credit, you must complete the 'Credit Application Form'. Until we grant credit by notice in writing to you, or if having granted credit, we exercise our powers to withdraw, refuse or suspend credit under these Terms, we will only supply Equipment and Services to you on the basis of cash in advance. The granting of credit does not oblige us to extend any particular amount of credit to you.
- 5.2 **True and correct.** You warrant all information provided to us in connection with any credit application or to induce us to provide the Equipment and Services is true and correct, and not misleading or deceptive.
- 5.3 **Information and credit reports.** You acknowledge and agree that we may (in our absolute discretion):
 - (a) obtain a credit report containing your personal credit information in considering whether to approve your application for credit or otherwise in connection with the 'Credit Account Application' form you sign;
 - (b) refuse your application for credit;
 - (c) withdraw, vary or otherwise deal with credit facilities on reasonable prior notice; and/or
 - (d) withhold supply or take any other action irrespective of whether a Quote has been accepted if for any reason we determine no further credit is to be extended to you.
- 5.4 **Warrant, authorise and consent.** You and any person that signs the 'Credit Application Form':
 - (a) warrant none of you, that person or your members are undischarged bankrupts, have been bankrupt, convicted of any criminal offence or have pending criminal court proceedings;
 - (b) authorise us to collect, update and use information (whether personal or otherwise) about you and that person or that is collected from third parties permitted under the Privacy Act (including disclosing information in the manner permitted by the Privacy Act in accordance with our privacy policy) (**Credit Information**);
 - (c) consent to us obtaining from credit providers information which they are allowed to give us under the Privacy Act about your and that person's creditworthiness;
 - (d) consent to us providing information (including Credit Information) to credit reporting agencies in relation to us providing credit or recovering amounts you or that person owe including disclosing:
 - (i) that you or any person have applied for credit and the amount;
 - (ii) we are a credit provider to you or that person;
 - (iii) payments more than 60 days overdue;
 - (iv) payments that are no longer overdue;
 - (v) that a cheque drawn by you or that person has been dishonoured more than once; and
 - (vi) whether any credit provided by us to you or that person has been discharged;

- (e) consent to us providing information to other credit providers, mortgage insurers and debt collectors including disclosing the Credit Information for the following purposes:
 - (i) assessing any application by you or that person for credit;
 - (ii) assisting you or that person to avoid defaulting on your credit obligations;
 - (iii) notifying credit providers of a default by you or that person;
 - (iv) assessing your or that person's credit worthiness, history or capacity;
 - (v) where we suspect an unlawful activity has been or may be engaged in and the Credit Information is necessary for investigating or reporting the matter;
 - (vi) where we are required to disclose information to comply with our legal obligations;
- (f) acknowledge and agree this clause 5.4 will continue to remain in full force and effect until all credit facilities cease to be made available to you or that person and all amounts owing to us have been paid in full.

5.5 **Guarantor.** Where a guarantor is specified in the 'Credit Application Form' or we advise you in writing of any other person we require to be a guarantor for the purpose of the 'Credit Application Form', that guarantor (or those guarantors) must sign the personal guarantee and indemnity in a form required by us. We may require more than one guarantor to sign a personal guarantee and indemnity. If the guarantor does not, or the guarantors do not (as the case may be), sign the personal guarantee and indemnity we may cancel the accepted Quote on written notice to you and claim any Loss suffered or incurred by us as a result. If we cancel the accepted Quote in accordance with this clause you must immediately return Equipment to us and we are relieved from any obligations to provide Services or Equipment to you.

5.6 **Principal obligation.** Each guarantor's guarantee is a principal obligation and a continuing guarantee and will not be affected by any act or omission by either of us and will be binding on each guarantor despite any irregularity in the guarantee or its execution including if one of the named guarantors does not sign.

6 Your General Obligations

6.1 **Your obligations.** It is your responsibility to ensure (at your cost):

- (a) you have satisfied yourself in all respects that the terms of your Quote are complete, accurate and fit for your intended needs and purpose;
- (b) you cooperate with us in all matters relating to the Equipment and Services;
- (c) you read and comply with any document, instrument or other information we provide you;
- (d) you use the Equipment for their intended use only and in accordance with these Terms, and any manuals, directions, or instructions that we provide you about that Equipment;
- (e) you provide us with access to the Site, premises or other facilities we reasonably require to provide you with the Equipment and Services;
- (f) you provide us with all information and materials we may reasonably require to provide the Equipment and Services to you, and ensure such information is complete and accurate in all material respects;
- (g) the Site is safe and, if relevant, ready for us to provide the Services;
- (h) you have carried out any Site safety inspections required and undertaken all necessary preparatory works to the Site prior to the Equipment and/or Services being provided and/or used on the Site;
- (i) you do not do anything which does, or is likely to, void or adversely affect any manufacturer warranties in respect of the Equipment;
- (j) you obtain and maintain all necessary licences, permissions and consents required before the date on which we are to provide the Equipment and Services to you; and
- (k) you comply with all applicable laws, including health and safety laws, at all times.

6.2 **Your warranties.** You warrant that you will comply fully with your obligations under these Terms including those in clause 6.1.

6.3 **Right to enter.** You grant us an irrevocable licence to enter the Site and any other property we know, or reasonably to believe, the Equipment is located to inspect or seize the Equipment or otherwise enforce our rights

including under these Terms and you will do all things reasonably necessary to assist us in exercising our rights. You indemnify us for any Loss or Claims including damage to property or personal injury as a result of exercising our rights. If we seize or retake possession of any Equipment, we may deal with them as we think fit and invoice you for the full Price. You will be liable for our Loss as a result of exercising our rights to retrieve the Equipment. This clause 6.3 survives termination of these Terms.

6.4 **Risk.** You bear the risk of:

- (a) the Equipment from the Delivery Time including loss or theft of, or damage to the Equipment; and
- (b) any deterioration, loss or damage to your property at all times caused or contributed to by the Equipment and/or Services.

6.5 **Loss or damage.** After the time you bear the risk of the Equipment, if the Equipment is lost, stolen, damaged or destroyed, you are liable for any Claim or Loss we suffer or incur as a result and we will be entitled to full payment of the Equipment including the Price and if the Equipment is lost or stolen, the full replacement value of the Equipment.

6.6 **Trustee.** If you are a trustee of any trust, you warrant that:

- (a) you are bound by these Terms both personally (in relation to your own personal assets) and in your capacity as a trustee (in relation to the assets and any business activity of the trust you are a trustee of); and
- (b) you have complete and valid authority pursuant to the trust to execute and enter into these Terms and the consent of the beneficiaries is not required or if required has been obtained.

7 Warranty and liability

7.1 **Consequential Loss.** Subject to clause 7.3 we are not liable for any Consequential Loss however caused, suffered or incurred by you in relation to these Terms or the Equipment and Services.

7.2 **Aggregate Liability.** Subject to clause 7.3 our aggregate liability to you under or in relation to these Terms for all Claims whenever made, arising out of any one act, omission or event and any one series of related acts, omissions or events is limited to the Price paid or payable by you, either:

- (a) under the Quote; or
- (b) if we supply or deliver the Equipment and Services by instalments, then under the relevant instalment, relating to the act, omission or event or the first in the series of acts, omissions or events.

7.3 **Australian consumer law.** Nothing in these Terms is intended to limit any right you may have under Australian Consumer Law (**Non-Excluded Guarantees**). If Australian Consumer Law, or other law, states there is a Non-Excluded Guarantee in relation to the Equipment and Services, and our liability for failing to comply with that guarantee cannot be excluded, but may be limited, except to the extent permitted by law, then our liability for breach of a condition or warranty implied by any legislation, including Australian Consumer Law, is limited to the following remedies (at our discretion):

- (a) in the case of Equipment, any one or more of the following:
 - (i) providing you with replacement Equipment;
 - (ii) repairing the Equipment; or
 - (iii) the payment of the costs of having the Equipment provided again; and
- (b) in the case of Services:
 - (i) supply of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

7.4 **Exclusions and limitation of liability.** Subject to the Non-Excluded Guarantees, you expressly agree and acknowledge:

- (a) the Equipment and Services are provided to you at your sole risk and we give no guarantee, warranty, undertaking or representation in relation to them, including quality, fitness for any purpose, or compliance with any description or sample, or otherwise;

- (b) all information and specifications provided by us in relation to the Equipment and Services are approximations only and subject to any Non-Excluded Guarantees and small deviations or slight variations from them which do not substantially affect the provision of the Equipment and Services will not entitle you to reject the Equipment and Services, or to make any Claim in respect of them;
- (c) any advice, recommendation, guide, information or assistance we provide in relation to the Equipment and Services is given in good faith and believed to be accurate, appropriate and reliable at the time it is given and is provided without any warranty of accuracy, appropriateness or reliability and we do not accept any liability or responsibility for any Claim or Loss you suffer or incur as a result of your reliance on same;
- (d) we take no responsibility for any utility services damaged, exposed or interfered with during or in relation to the use of the Equipment and/or the provision of Services.
- (e) to the maximum extent permitted by law, all warranties and representations other than those expressly set out in these Terms or in the Quote are excluded;
- (f) to the maximum extent permitted by law, you release and discharge, and indemnify and hold us harmless, from and against all Loss and Claims arising out of or in relation to:
 - (i) any defect, deficiency or malfunction in the Equipment and Services that arose from (directly or indirectly, wholly or partially) any act, matter or circumstance after the Delivery Time except to the extent caused by our default or wilful negligence;
 - (ii) any environmental harm (including land or water contamination) caused by or in relation to the provision of the Equipment and Services unless we have failed to take reasonable and practicable measures to prevent the harm and comply with our environmental obligations at law;
 - (iii) any breach of our Intellectual Property Rights;
 - (iv) any omission, neglect or default by you, your employees, contractors, agents or third parties;
 - (v) use of the Equipment by any person (including third parties);
 - (vi) any damage to any property caused or contributed to by the Equipment and Services except to the extent caused by our default or wilful negligence; or
 - (vii) any injury or death of any person caused or contributed to by the Equipment and Services except to the extent caused by our default or wilful negligence;
 - (viii) recovery and the balance of any amount owing to us; and
 - (ix) any demand or action by any person in connection with any Loss arising from or incidental to the provision of the Equipment and Services, any request for the Equipment and Services or the subject matter of these Terms.

7.5 **Unauthorised provision of Equipment and Services.** Any person who provides the Equipment and Services without authorisation will void all warranties to the fullest extent permitted by law.

7.6 **Workplace Health & Safety (WHS).** Although we are responsible for ensuring the Equipment and Services we provide are delivered safely and in compliance with all applicable laws and regulations, you must comply with such obligations and advise us in advance of any real or potential risks or safety concerns. Unless specified by us in writing, all Quotes exclude costs for safety equipment required at the Site including barricades, additional tradespeople or other safety apparatus such as signage that may be required to ensure the Equipment and Services can be provided safely and in compliance with WHS regulations (or similar). If such safety items are required, it will be your responsibility to organise and pay for safety equipment.

8 Security Interest, Charge and Mortgage

8.1 **Charge.** To secure your obligations under these Terms, including payment of all monies owed or owing by you to us, you:

- (a) grant a Security Interest in; and
- (b) additionally and separately, charge by way of equitable mortgage, the Secured Collateral to and for the benefit of us:
- (c) by way of a Security Interest, in relation to any Personal Property;

- (d) by way of specific or fixed charge, in relation to any Other Property;
 - (e) by way of floating charge, in relation to Other Property, comprising any:
 - (i) book debts or other debts;
 - (ii) moneys, funds or sums of any form or nature, representing or being any credit or balance, whether denominated in Australian or foreign currency, deposited, applied or held by or on behalf of you to, in or into any current, term, deposit or other account held at any time by you with any bank or other financial institution in your name, whether alone, jointly or jointly and severally with any other person, and whether under a single contract or any number of separate contracts; and
 - (iii) accretions credited to any account specified in clause 8.1(e)(i) in relation to the principal sums comprising those moneys, funds or sums, whether in the nature of interest or otherwise.
- 8.2 **Security.** On our request, and without limiting the general nature of the charge outlined in clause 8.1, you will execute any documents and do all things necessary to create, register and perfect a mortgage security or other instrument of security over such property outlined in clause 8.1 on terms satisfactory to us. Where you do not do so within a reasonable time of our request, you irrevocably appoint each officer or solicitor appointed by us to be your true and lawful attorney to execute, register and perfect those security instruments.
- 8.3 **Costs.** You indemnify us on a full indemnity basis (which means you cover all costs that become payable by us including legal costs on an own solicitor client basis) against all Claims and Loss we may suffer or incur in relation to the preparation, registration and perfection of any such charge and mortgage documents.
- 8.4 **Consent.** You acknowledge and agree to:
- (a) consent unconditionally to us lodging a caveat or caveats noting our interest in any of your real property;
 - (b) sign any documents and provide all assistance required for us to attend to the registration, perfection and maintenance of any Security Interest including registration of a financing statement or financing change statement;
 - (c) ensure our security position, rights and obligations, are not adversely affected by the PPSA;
 - (d) not register, or allow a third party to register, a financing change statement in respect of a Security Interest relating to these Terms, without our prior written consent;
 - (e) not do anything that does, or may, result in us having less than the security or priority granted to us as we reasonably expected at the time of registering any Security Interest; and
 - (f) execute a legal or statutory mortgage over any real property that is Secured Collateral in favour of us.
- 8.5 **Instalments under PPSA.** For the purposes of the PPSA:
- (a) Equipment and Services provided by instalment made under these Terms are not a separate security agreement but form part of these Terms together with any credit application, guarantee or indemnity or other contractual documents with us;
 - (b) an instalment contract is, and is deemed to be, a single security agreement for the purposes of the PPSA; and
 - (c) these Terms form a continuous security agreement with any prior terms and do not constitute a separate security agreement. This applies regardless of any term to the contrary in these Terms, any invoice or any other document.
- 8.6 **Change of details.** You acknowledge and agree you will not change your name, ACN or ABN or other details required on the PPSR, without first notifying us in writing.
- 8.7 **Contracting out.** You acknowledge and agree to waive your right to receive any notice under the PPSA (including notice of a verification statement under section 157) unless the notice is required by the PPSA and cannot be excluded. To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 134(2), 135, 136, 137, 142 and 143. To the extent permitted by law, unless we otherwise agree in writing, you waive your right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 **Non-disclosure.** The parties agree not to disclose information in connection with these Terms not publicly available except if the information is:

- (a) disclosed with the prior written consent of the other party;
- (b) disclosed to each party's officers, employees, auditors, legal or other advisers; or
- (c) required by any law or stock exchange to be disclosed (except this clause does not permit us to disclose any information of the kind referred to in section 275(1) PPSA unless sections 275(7) PPSA applies).

9 Privacy and intellectual property

- 9.1 **Personal Information.** If you provide us with personal information (as defined in the Privacy Act) about any individual, you warrant that you have that individual's consent having regard to our privacy policy.
- 9.2 **Use of Information.** We may collect, use and disclose personal information for purposes of contracting with you under these Terms, monitoring and enforcing Security Interests, providing the Equipment and Services to you, processing your payment, business development, debt collection and customer relationship management. Further details of how we deal with personal information is set out in our privacy policy on our website, www.eastcoastrockworks.com.au. You acknowledge and agree that you have read and agreed to the terms of our privacy policy.
- 9.3 **Marketing.** We may provide marketing communications to you by email and other means, unless you opt out.
- 9.4 **Intellectual property.** We own and retain all Intellectual Property Rights in and connected to our business, the Equipment and Services and any related materials. You will not at any time do any act inconsistent with our Intellectual Property Rights. You warrant any drawings, designs, specifications or instructions you provide us for the purpose of providing the Equipment and Services will not cause us to infringe any Intellectual Property Rights, trade mark or similar and you indemnify us against any Claim or Loss in relation to any actual or alleged infringement.

10 Force Majeure

- 10.1 **Force majeure.** We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms caused by a Force Majeure Event. If a Force Majeure Event takes place which will, or is likely to affect the performance of our obligations under these Terms:
- (a) we will contact you as soon as reasonably possible to notify you of the Force Majeure Event and provide, if practicable, the predicted date it started and its likely duration; and
 - (b) our obligations to provide the Equipment and Services under these Terms will be suspended and the time for performing our obligations will be extended for the duration of the Force Majeure Event.
- 10.2 **Termination due to Force Majeure.** We will use reasonable endeavours to mitigate or minimise the effect of the Force Majeure Event on the performance of our obligations under these Terms. If the Force Majeure Event prevents, hinders or delays the performance of our obligations for a continuous period of more than 60 days, either party may terminate the accepted Quote by giving one weeks' written notice to the other party. If these Terms are terminated in accordance with this clause, we will refund you any amount you have paid to us, less any amounts, costs, charges, expenses or similar, reasonably and actually incurred by us in performing our obligations under these Terms up to the date of termination.

11 Retention of title

- 11.1 **Title.** Subject to clause 11.2, we own and retain title to the Equipment at all times. Nothing in these Terms or otherwise will create an interest in the Equipment in your favour. You must not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let on hire, grant any Security Interest over, or otherwise part with possession or otherwise deal with the Equipment other than as set out in these Terms.
- 11.2 **Third party owners.** You acknowledge that we may hire, lease or otherwise obtain Equipment from third parties, in which case, the title in the Equipment remains with that relevant third party at all time.

12 Insurance

- 12.1 **Insurance.** You are responsible to take out and maintain, for the duration that these Terms apply to you, insurance for:
- (a) all your property and the Site; and
 - (b) loss, damage and theft to the Equipment for an amount equal to not less than the full insurable or replacement value (whichever is higher) of the Equipment; and

- (c) public risk insurance for an amount of at least \$20,000,000.00.
- 12.2 **Insurer.** You must take out the relevant insurance policies with a reputable insurer noting our interest in the Equipment and, if applicable, our interest in being an occupant of the Site. On our request, you must promptly provide a copy of the certificate of currency for the insurance policy and details of the cover.
- 12.3 **Cover Fee.** If, on or before the Delivery Time, you do not provide us with a certificate of currency in accordance with clause 12.2 for the insurance policy in clause 12.1(b), which notes our interest in the Equipment, we may take out insurance in respect of the Equipment and charge you an additional amount equal to 15% of the Price to cover our costs relating to the policy (**Cover Fee**). The Cover fee will be charged in addition to the Price.
- 12.4 **Other fees and charges.** You are responsible:
 - (a) for all fees, costs and charges associated with your insurance policies;
 - (b) for any ongoing Loss suffered or incurred by us claiming on our insurance because of your act, default or omission; and
 - (c) for any shortfall or excess payments payable after an amount is received under your insurance policies;
 - (d) to pay an 'Environmental Levy' that we determine (acting reasonably) is needed to cover our costs of washing the Equipment and ensuring there are not pests in the Equipment (which at the date of these Terms will be \$15.00 per invoice)
- 12.5 **Your insurance obligations.** You must not do anything which does, or is reasonable likely to:
 - (a) invalidate or lead to an increase in the premiums payable for any insurance policy we have in relation to the Equipment; or
 - (b) conflict with any insurance policy or law in respect of the Equipment.

13 Default and termination

- 13.1 **Termination.** Without affecting any other right or remedy available:
 - (a) you may terminate these Terms immediately by giving written notice to us if we:
 - (i) commit a material breach of these Terms which is not capable of remedy or if that breach is capable of remedy, fail to remedy that breach within 21 days after being notified by you in writing to do so;
 - (ii) suffer an Insolvency Event;
 - (b) we may terminate these Terms immediately by giving written notice to you if you:
 - (i) fail to pay an amount due under these Terms;
 - (ii) suffer an Insolvency Event; or
 - (iii) commit a material breach of these Terms which is not capable of remedy or if that breach is capable of remedy, fail to remedy that breach within 7 days after being notified by you in writing to do so;
 - (iv) repeatedly breach these Terms in a manner to reasonably justify the opinion that such conduct is inconsistent with having the intention or ability to give effect to these Terms; or
 - (v) if we believe the ongoing provision of Equipment and Services to you will detrimentally affect our business reputation or good standing in the industry.
- 13.2 On termination under clause 13.1:
 - (a) each party must promptly return to the other party all equipment, materials, documents and property belonging to the other party including any Equipment;
 - (b) all amounts owed or owing to us become immediately due and payable; and
 - (c) we may, without notice to you:
 - (i) immediately recover possession of the Equipment and you waive the right to receive any statutory or PPSA notice;
 - (ii) cease providing to you, and cancel future deliveries of, the Equipment and Services;

- (iii) exercise any right or remedy available under contract, the PPSA or any other applicable law, including to enforce any Security Interest.
- (iv) terminate any existing credit account you have with us; and
- (v) commence a Claim including proceedings to enforce payment of any outstanding amounts and any Loss we incur in enforcing our rights.

This clause 13.2 survives termination of these Terms.

- 13.3 **Loss.** Where you are in breach of these Terms, we will not be liable for any Claim or Loss you incur or suffer resulting (directly or indirectly) from the exercise of our rights under these Terms or our failure or delay in providing the Equipment and Services to you in accordance with this clause 13. You are responsible for and must indemnify us from and against any Loss or Claim we suffer or incur arising from or in relation to your breach of these Terms. We do not have to incur and expense or cost before claiming the benefit of the indemnity provided under this clause.

14 General

- 14.1 **Relevant law.** These Terms will be construed in accordance with the laws of Queensland and the parties submit to the exclusive jurisdiction of the Queensland Courts.
- 14.2 **Waiver.** Our failure to exercise any rights under these Terms will not waive that right, nor will any practice developed between us waive or lessen our respective rights under these Terms.
- 14.3 **Severance.** Any provision of these Terms which is found by a Court of competent jurisdiction or any competent Government Agency to be invalid, illegal or unenforceable, will be severed from these Terms and will be deemed never to have been part of them.
- 14.4 **No restraint.** No provision expressed or implied in these Terms restricts our right to provide the Equipment and Services to third parties.
- 14.5 **Confidentiality.** At any time during or after termination of these Terms, both parties undertake not to disclose any of these Terms, or any Confidential Information except:
- (a) where the information is in the public domain;
 - (b) if it is required to be disclosed by applicable law or for use in legal proceedings regarding these Terms;
 - (c) where the disclosure is expressly permitted under these Terms;
 - (d) to each party's officers, employees and professional advisers to the extent necessary to properly perform all obligations under these Terms or to conduct business generally, in which case each party must ensure such persons keep the information confidential and not disclose it to any other person; or
 - (e) if the party to whom the information relates has given its prior written consent.
- 14.6 **Notice.** Any notice to be given under these Terms must be in writing and given to the other party either by pre-paid post or email to the last notified postal or email address of the other party. Any notice sent by post will be deemed to be given at the time when by the ordinary course of post it would have been delivered. Any notice given by email will be deemed to have been given at the time it was sent unless an automated response is received that the email has not been sent.
- 14.7 **Entire agreement.** Unless agreed otherwise in writing these Terms apply to all Quotes and requests for Equipment and Services and includes all schedules, lists, forms and annexures we provide you with. These Terms supersede all prior communications, negotiations, arrangements and agreements, whether oral or written, in respect of any matter the subject of these Terms.
- 14.8 **Assignment.** We may assign, licence or transfer our rights and obligations under these Terms to another entity but will always notify you in writing if this happens. You may only assign or transfer your rights or your obligations under these Terms to another person if we agree in writing. A breach of clause 14.8 by you entitles us to immediately terminate an accepted Quote. If you accept a Quote via a corporation whose shares are not traded on the Australian Stock Exchange, any change in the corporation's shareholding and/or directorship will be deemed an assignment under this clause requiring our prior written consent, which consent can be withheld in our absolute discretion. We may impose conditions on giving approval including requiring any new shareholder and/or director to provide a personal guarantee and indemnity under any new or existing credit application.

- 14.9 **Time.** Time is of the essence in these Terms.
- 14.10 **GST.** Where the GST Act (or any similar tax) applies to any supply under or in connection with these Terms (including any supply as defined by GST Act) and you are required to make payment for that supply to us, then you will pay the applicable GST in addition to the base amount payable.

TRANSPORTATION AND DELIVERY TERMS

To the extent that your Quote relates to us delivering and/or transporting Equipment, in addition to the 'GENERAL TERMS', this 'TRANSPORTATION AND DELIVERY TERMS' section also applies. The TRANSPORTATION AND DELIVERY TERMS' will apply to the extent of any inconsistency with the 'GENERAL TERMS'.

15 Transportation and carrier services

- 15.1 **Delivering and transporting.** As part of providing Equipment and Services, we may agree in writing to deliver and/or transport Equipment to you which includes the loading, unloading, packing, unpacking and other ancillary services in connection with delivering and/or transporting Equipment (**Transportation**). We reserve the right to refuse Transportation in our discretion. We are not a common carrier and, to the fullest extent permitted by law, accept no liability as such.
- 15.2 **Our obligations.** If we agree in writing to provide Transportation, we will do all things reasonably necessary to deliver the Equipment safely to you and on the date we agreed to deliver the Equipment in writing. Unless caused by our wilful negligence, we are not liable for any Claim or Loss you suffer or incur if we are unable to deliver the Equipment by the date agreed in writing or at all.
- 15.3 **Your warranties.** You warrant that:
- (a) we can safely and easily access the Site to deliver the Equipment to you;
 - (b) you will accept delivery of the Equipment at the Delivery Time and have someone on Site who is authorised to, and will, sign the relevant forms or documentation we provide to accept delivery of the Equipment; and
 - (c) if you are unable to personally accept delivery of the Equipment, any person who accepts delivery will be authorised by you to do so and you will be liable for their acts or omissions in respecting of accepting delivery.
- 15.4 **Transportation charges.** The amount payable to us by you for Transportation will be in the Quote or otherwise provided to you in writing. In addition, you are responsible for all amounts we incur associated with Transportation including all costs, charges, duty, expenses, fees or fines. In addition to any other amounts we can charge you in accordance with these Terms, if we are unable to deliver the Equipment to you, because the Site is unattended or any other reason other than due to our wilful negligence, we may store the Equipment until such time as you can accept delivery and you will be liable for any Claim or Loss we suffer or incur as a result, including storage charges.
- 15.5 **Delivery.** We will be deemed to have delivered the Equipment to the Site, and fulfilled our obligations with respect of Transportation, at the Delivery Time. However, if we are unable to procure a signature from a person on Site to confirm acceptance of delivery of the Equipment, we reserve the right to take the Equipment and charge you all Loss we may suffer or incur as a result including storage fees. Nothing in this clause limits our rights under these Terms.
- 15.6 **Risk.** During Transportation (either to the Site or from the Site back to our premises), the Equipment is at your sole risk and, to the maximum extent permitted by law, we are not liable for any Claim or Loss you suffer or incur as a result of:
- (a) us following your directions including where to load or unload Equipment;
 - (b) Transportation not being completed, in full or at all; or
 - (c) the Equipment being damaged including as a result of inclement weather, vibrations, or other cause outside our reasonable control,
- except to the extent caused by our wilful negligence.

EQUIPMENT ON HIRE TERMS

To the extent that your Quote relates to Equipment on hire, in addition to the 'GENERAL TERMS', this 'EQUIPMENT ON HIRE TERMS' section also applies. The 'EQUIPMENT ON HIRE TERMS' will apply to the extent of any inconsistency with the 'GENERAL TERMS'.

16 Definitions

The following definitions apply to this section in addition to the 'GENERAL TERMS' definitions.

- 16.1 **Hire Period:** the agreed period you will hire the Equipment as stated in or annexed to the Quote or otherwise agreed in writing commencing at the Delivery Time and ending on the earlier of the date:
- (a) agreed between you and us in writing;
 - (b) we collect the Equipment provided it is in the condition required in accordance with these Terms;
 - (c) the Equipment is returned to us in the condition required in accordance with these Terms;
 - (d) we terminate these Terms in accordance with these Terms.
- 16.2 **Hire Place:** unless otherwise advised by us in writing, the place the Equipment must be collected from and returned to will be stated in the Quote.
- 16.3 **Inspection Period:** the earlier of the following periods commencing from when the Equipment is returned to us or we collect it from you and have returned the Equipment to our premises (whichever applies):
- (a) as soon as we have suitable staff available to carry out the inspection; or
 - (b) 14 days.
- 16.4 **Return Time:** (unless we agree to collect the Equipment) the time the Equipment must be returned by, stated in the Quote or as otherwise advised by us in writing.

17 Your use of Equipment

- 17.1 **Delivery and collection.** The Quote will state if we will deliver and collect the Equipment, or if you will collect it from and return it to the Hire Place by the Return Time. In addition to delivery costs, you are responsible for any costs we incur to collect the Equipment (if relevant).
- 17.2 **Hire Period.** The first and last days of the Hire Period are charged as full days. Public holidays and weekends are included in the Hire Period. If you return the Equipment to us before the end of the Hire Period, we may charge you for the full Hire Period.
- 17.3 **Extension of Hire Period.** The Hire Period can only be extended by agreement in writing and we may refuse any request for an extension at our discretion. If the Hire Period is extended, you will pay us at the rate we charge for the Equipment at the time of your request, based on each additional hour, day or month (as the case may be).
- 17.4 **Hire price.** The Price payable by you to us for the Equipment for the Hire Period will depend on the type of Equipment being hired and will also be based on the following rates depending on the Hire Period:
- (a) *Daily rate:* based on each 24 hour period;
 - (b) *Weekly rate:* based on each seven (7) day period; and
 - (c) *Monthly rate:* based on each four week, 28 day, period,
- subject to additional amounts, charges, costs or extension in accordance with these Terms.
- 17.5 **Availability.** If the Equipment is not available, we will notify you in writing and you will not be charged for the period it is not available. We do not have to provide the Equipment to you unless and until it is available for hire and we will not be liable for any Claim or Loss you suffer or incur as a result (except to the extent caused by our wilful negligence).
- 17.6 **Unauthorised drivers.** You must not allow any person to use the Equipment who:
- (a) has not been approved by us in writing;
 - (b) is under the age of 18 or does not hold a valid licence to use the Equipment (if applicable);

- (c) has alcohol or drugs (legal or otherwise) in their blood system or been advised by a medical professional (or similar) not to operate equipment of the same or similar nature of the Equipment; and
- (d) gave false, misleading or incomplete details to us or intends to use the Equipment for any illegal or unlawful purpose or for any other purpose for which the Equipment was not intended.

17.7 **Pre-hire Condition.** You acknowledge and agree you have inspected the Equipment prior to taking possession of it and warrant you are:

- (a) satisfied it is clean, in good repair and safe working order and suitable for the purpose you intend to use it;
- (b) aware of the proper and safe use for which it was designed; and
- (c) satisfied we have made available to you the Equipment manuals and safety instructions.

17.8 **Hire Use.** At all times, you must:

- (a) use the Equipment:
 - (i) only at the Site unless we otherwise agree in writing;
 - (ii) in a safe and proper manner only for the purpose and within the capacity for which it was designed;
 - (iii) with due care and skill; and
 - (iv) in compliance all relevant authorities, laws, and regulations;
- (b) obtain any relevant licences, consents, permits and approvals in connection with the Equipment (at your cost) and pay any traffic or other infringement received while using or in possession of the Equipment;
- (c) observe the manufacturer's instructions when in possession of the Equipment;
- (d) comply with all our directions, instructions and manuals communicated or otherwise made available to you;
- (e) wear suitable clothing and protective equipment when using the Equipment;
- (f) keep the Equipment safe and secure;
- (g) maintain the Equipment in the condition it was in at the Delivery Time;
- (h) not allow any other person to use, hire or have possession or control of the Equipment unless you have our prior written approval;
- (i) ensure you, and any approved person, are suitably trained to use the Equipment and (if necessary) obtain the relevant licence to perform high risk work;
- (j) conduct a thorough job safety analysis prior to using the Equipment;
- (k) display and comply with relevant safety signs and instructions (required by law) while using the Equipment;
- (l) not take the Equipment into water or outside of Queensland;
- (m) not cause any contaminant, hazardous or dangerous chemical or substance to come into contact with the Equipment;
- (n) not deface, remove or alter any identifying marks, numbers, notices or safety information on the Equipment;
- (o) not in any way alter, modify, change or repair the Equipment without our prior written consent; and
- (p) not load the Equipment in excess of its gross vehicle mass.

17.9 **Accident and damage.** You must immediately notify us:

- (a) of any accident or incident involving the Equipment;
- (b) if the Equipment is broken, damaged, defective or dirty (including concrete, excess mud, grease, chemicals, paint, hazardous or dangerous substances or liquids on or affecting the Equipment); or
- (c) any other event or circumstances which may give rise to any Claim or Loss in connection with the Equipment, and

you must maintain a comprehensive written record of the damage or incident and fully cooperate with us and our insurer.

- 17.10 **Repair.** If any of the circumstances in clause 17.9 occur, you must make the Equipment immediately available to us at our direction (either by returning it to the Hire Place or having it available for our collection) so we can inspect the Equipment and carry out any necessary repairs (including to any accessories, batteries, tyres etc.). If the Equipment is damaged and/or needs repair, you are responsible to pay any Loss we suffer or incur including any charges not covered by insurance except to the extent caused by our wilful negligence. If the cost of repair is greater than the Equipment's value or the Equipment cannot be returned to us, you will be liable for the full replacement value of the Equipment (having regard to its age and general condition at the Delivery Time). If we need to take the Equipment for inspection and/or repair during the Hire Period, you are still liable for the full costs of the Hire Period even if the Equipment is not available for use because of the repair work (irrespective of whether repair works are actually carried out). If the Equipment is repaired by us before the end of the Hire Period, we will use reasonable endeavours to make it available to you for collection at the Hire Place until the end of the Hire Period.
- 17.11 **Loss or theft.** You must advise us immediately of any loss or theft of the Equipment. If the Equipment is lost or stolen during the Hire Period you are liable for an excess cost to replace the Equipment in addition to any amounts we can charge or recover from you under these Terms.
- 17.12 **Failure to return.** If you fail to return the Equipment to the Hire Place by the Return Time, or prevent us from collecting the Equipment, then, in addition to other rights we have under these Terms or at law, you:
- (a) must pay us the rates set out in Quote per day or part thereof that the Equipment is not returned or collected after the Return Time; and
 - (b) indemnify us from any Claim or Loss we suffer or incur in connection with the Equipment being returned or collected after the Return Time;
- until the Equipment is returned to us or able to be collected by us
- For the avoidance of doubt, nothing in these Terms requires us to collect the Equipment unless we have agreed otherwise in writing.
- 17.13 **Post-hire Condition.** The Equipment must be returned in the same condition it was in at the Delivery Time (except for fair wear and tear) and, if applicable, with a full tank of fuel (or for oil, must be filled to the recommended manufacturer's guidelines). If the Equipment does not have a full tank of fuel (or oil filled to the recommended manufacturer's guide) at the end of the Hire Period, we will charge you the costs incurred to fill the tank.
- 17.14 **Periodic Inspection:** In addition to our rights set out in clause 6.3, we may inspect, or may engage a third party to inspect, the Equipment. You must allow us and/or the third party access to the Equipment for the purpose of carrying out the inspection. For the purpose of this clause, if we engage a third party, that third party is taken to be our agent and covered by the indemnity set out in clause 6.3.
- 17.15 **Inspection on Return of Equipment.** We will inspect the Equipment within the Inspection Period to assess its condition, quality and description to ensure the Equipment has been returned in full and in the same condition as it was at the Delivery Time (except for fair wear and tear). Within the Inspection Period (including any extended period), we may notify you (orally or in writing) if:
- (a) the Equipment is not in the correct condition including issues, damage or defects that were not noted by us when the Equipment was provided or made available to you; or
 - (b) not all of the Equipment is returned (e.g. items are missing including accessories, keys, remote controls).
- 17.16 **Extension of Inspection Period:** Until all of the Equipment is returned, we may, without notice, extend the Hire Period and Inspection Period until all Equipment is returned to us and charge you for the total Hire Period and any Loss we suffer or incur as a result.
- 17.17 **Additional charges.** In addition to the Price, we may charge you:
- (a) cleaning costs if the Equipment is returned to us dirty;
 - (b) costs to repair the Equipment or replace anything on or in the Equipment including flat or damaged tyres;

- (c) a daily fee for each day the Equipment is being cleaned, repaired or restored until it is available for re-hire; and
 - (d) any other amounts outlined in these Terms and/or the Quote relating to the Equipment.
- 17.18 **Recovery.** We can exercise our rights under clause 6.3 at any time if we reasonably believe you have abandoned the Equipment or have breached these Terms. Recovery of the Equipment will not affect our rights or remedies under these Terms or at general law.

WET HIRE SERVICES TERMS

To the extent that you request wet hire services, in addition to the 'GENERAL TERMS', this 'WET HIRE SERVICES TERMS' section also applies. The 'WET HIRE SERVICES TERMS' will apply to the extent of any inconsistency with the 'GENERAL TERMS'.

18 Definitions

The following definitions apply to this section in addition to the 'GENERAL TERMS' definitions.

- 18.1 **Futile Fee:** an amount equal to 25% of the total Price.
- 18.2 **Mobilisation Fee:** the costs we incur to mobilise and demobilise daily, including travel to and from the Site, as set out in the Quote or as otherwise provided to you in writing which may be calculated according to Zone.
- 18.3 **Personnel Fee:** the amount stated in the Quote (or otherwise provided in writing) based on the number of personnel needed and calculated by each 15 minute increment or part thereof that our personnel are required on Site (or as otherwise determined by us in writing).
- 18.4 **Service Period:** the agreed period we will provide the Services to you as stated in or annexed to the Quote or otherwise agreed in writing commencing at the Delivery Time and ending on the earlier of the date:
- (a) agreed between you and us in writing;
 - (b) we complete the Services and you sign the Acceptance Form in accordance with clause 20.3;
 - (c) the Equipment is returned to us in the condition required in accordance with these Terms;
 - (d) we terminate these Terms in accordance with these Terms.
- 18.5 **Stand-down Fee:** the greater of the following amounts:
- (a) the amount:
 - (i) stated in the Quote to be the Stand-down Fee;
 - (ii) otherwise provided to you by us in writing,which may be based on the Zone and calculated by each 15 minute increment or part thereof or as otherwise determined by us in writing; or
 - (b) 50% of the Price charged for every full day (being from 7am until 5pm) that we cannot provide the Services in accordance with clause 19.4.
- 18.6 **Zone:** the location of the Site which may determine applicable fees including the Mobilisation Fee.

19 Pricing and Scheduling

- 19.1 **Wet hire price.** The Price payable by you to us will depend on the Services and Equipment provided and will be charged each hour for the duration of the Hire Period. Any part of an hour will be rounded up to the nearest hour (for example, Services and Equipment to be provided for 1.5 hours will be charged as if the Hire Period was 2 hours). We charge a minimum amount depending on the Services and Equipment provided which will be the amount stated in the accepted Quote or as otherwise provided to you in writing.
- 19.2 **Delayed Service Period.** We may alter the timing or date for the Services to be provided due to actual or anticipated weather conditions, a Force Majeure Event, Site safety concerns or improper preparation of the Site, and we will not be liable for any Claim or Loss you suffer or incur as a result (except where caused by our wilful negligence). Unless such alteration or delay is caused by our wilful negligence, we will charge you in full for the Service Period irrespective of whether we are able to provide the Services to you in full, or at all.

19.3 **Cancellation.** If you wish to cancel the Services you must notify us in writing by no later than 8:00am (AEST) at least three (3) business days before the Delivery Time (**Cancellation Period**) and provide us the following information:

- (a) reason(s) for cancellation;
- (b) proposed rescheduled date (if any); and
- (c) any other information we may reasonably require.

If you cancel any time before or after the Cancellation Period, we can charge you at our discretion, and in addition to the costs in clause 4, the Mobilisation Fee (if you cancel after we have mobilised), and the Futile Fee or Loss, and any other amounts reasonably incurred by us, payable immediately on demand. This amount is payable irrespective of any subsequent Force Majeure Event that would have otherwise delayed our delivery of the Services.

19.4 **Futile Fee.** This clause applies if we decide to charge the Futile Fee in accordance with clause 19.3. You must pay us (within 30 days of demand) the Futile Fee in relation to the period between accepting the Quote and date on which you cancel in accordance with clause 19.3. You acknowledge that the Futile Fee payable under these Terms represents an amount commensurate with our interests which will be adversely affected if you cancel in accordance with clause 19.3. Our rights under this clause do not derogate from our rights in respect of any Loss we may suffer or incur from terminating these Terms. Payment of the Futile Fee is in addition, and without prejudice, to any other right or remedy available to us under these Terms or at law.

19.5 **Stand-down.** If you know, or ought reasonably to know, there will be downtime on any given day during the Service Period, you must call us by 7:00am the morning we are required to be on Site to provide the Services if downtime will, or might, occur that day. If you do not speak with us before 7:00am, and we attend Site or are headed to Site when we are notified of the possible downtime, we will charge the Stand-down Fee and any other amounts we can charge in accordance with these terms.

19.6 **Variations.** You may at any time after accepting the Quote and before completion of the Services, request variations to the Services in writing which we may accept or reject by written notice to you. Any variation that we agree to in writing will incur additional costs in accordance with these Terms.

20 Site Assessment

20.1 **Site inspection.** We may, but are not obliged to, arrange a Site inspection prior to providing any part of the Services to assess:

- (a) the safety of the Site to ensure the Services can be completed in compliance with all applicable laws and regulations including workplace health and safety laws;
- (b) reasonableness of access to the Site to ensure we can safely and easily access the Site; and
- (c) any other condition of the Site we deem necessary to ensure we can safely and properly provide the Services.

20.2 **Site assessment.** Following a Site inspection we may decide (acting reasonably) that the Site is not suitable, safe or accessible for the purpose of carrying out the Services and we will either:

- (a) delay the Services until such time as we deem the Site to be suitable, safe and accessible; or
- (b) refuse to carry out the Services, and

we will not be liable for any Claim or Loss incurred or suffered as a result of not carrying out the Services in accordance with this clause 20.2 and we may charge you the Futile Fee and any Loss we suffer or incur.

20.3 **Acceptance of Services form.** On completion of the Services, we will provide you (or your nominated site manager) with an acceptance form (**Acceptance Form**) to sign which outlines the Services provided, time sheet, stand-down times, any variations and any other additional fees and charges payable in accordance with these Terms including those set out in clause 22. We will provide you with an invoice based on the Acceptance Form. Obtaining your signature is for convenience only, and a failure to sign or obtain your signature on the Acceptance Form does not limit, reduce or otherwise extinguish your obligations to pay us under these Terms. Once we have completed the Services we are not liable or responsible for anything except to the extent caused by our wilful negligence.

21 Your wet hire obligations and warranties

- 21.1 **Your wet hire obligations.** To enable us to safely and properly provide the Services, you must take all reasonable steps to ensure (at your cost):
- (a) the Site is easily accessible by us and is appropriately prepared for the Services in accordance with our reasonable directions;
 - (b) you have undertaken all necessary safety compliance procedures;
 - (c) you have carried out 'before you dig' checks, inductions and obtained all relevant certificates; and
 - (d) the Site is approved for any required earthworks to take place.
- 21.2 **Representations.** You expressly acknowledge and agree that to the fullest extent permitted by law extraneous factors outside our reasonable control can affect the Services including contaminated land and water, poor soil quality, ground gradient and/or unviable land, and to the maximum extent permitted by law, you release and discharge, and indemnify and hold us harmless, from and against all Loss and Claims arising out of or in relation to the provision of Services except to the extent caused by wilful negligence.
- 21.3 **Warranties.** You warrant that:
- (a) our personnel, while on Site and/or providing the Services, will be under your sole direction, responsibility and control during the Service Period and will comply with your reasonable and lawful directions except to the extent that complying with your directions would, or is likely to, cause us to suffer Loss or result in us being in breach of our insurance policies;
 - (b) we are not responsible or liable to you for any act or omission of our personnel while under your direction, on Site and/or providing the Services;
 - (c) you will not allow any other person other than our personnel to operate the Equipment without our prior written consent which can be withheld in our absolute discretion;
 - (d) you will not do anything to cause us to breach environmental laws;
 - (e) any information regarding the Site as stated in the Quote or otherwise provided to us in writing is accurate unless you expressly notify us in writing of the inaccuracy;
 - (f) you will advise us in writing of the location and buried depth of all utility services in or around the Site, and
 - (g) we are not liable for any services interrupted by or as a result of the Services and/or use of Equipment, and to the maximum extent permitted by law, you release and discharge, and indemnify and hold us harmless, from and against all Loss and Claims arising out of or in relation to any of the above.
- 21.4 **Risk.** If we leave the Equipment at the Site (including overnight) during the Service Period, all risk in the Equipment remains with you and you are responsible for securely and safely storing the Equipment. You are liable for Loss or damage or any Claim relating to unattended Equipment at the Site except to the extent caused by our wilful negligence.
- 21.5 **Indemnity:** You indemnify us against all Claims and Loss arising from or incurred in connection with any act or omissions of any personnel supplied by us to provide the Services where that personnel is acting under your direction and control during the Service Period.

22 Additional fees and charges

- 22.1 **Additional charges.** You expressly acknowledge and agree in some circumstances where it becomes reasonable and necessary for us to do so we will without notice charge you additional fees not included in the original accepted Quote, if:
- (a) we provide any consumables, fuel or other materials required to provide the Services;
 - (b) we have to stand down or stop work:
 - (i) for any reason (other than where caused by our wilful negligence) including due to inadequate Site access, safety issues or other reasons as reasonably determined by us;
 - (ii) to undertake training, or attend inductions or medicals,



we will charge the Stand-Down Fee for the period we are unable to provide the Services (except where caused by our wilful negligence);

- (c) we have to meet certain site requirements for on-boarding including vehicle wash downs or Equipment modification, we will charge you for our reasonable costs in complying with on-boarding requirements;
- (d) additional mobilisation other than as stated in the Quote is required to complete the Services (other than where caused by our wilful negligence) we will charge you an additional Mobilisation Fee for each additional mobilisation/demobilisation; or
- (e) we have to bring additional personnel on Site, including to provide the Services or inspect the Site, which was not contemplated at the time of providing the Quote including due to safety reasons or other reasons as reasonably determined by us we will charge you the Personnel Fee for the period that each additional personnel required on Site.

Version 1 effective 4 September 2024.