

## 1. INTRODUCTION

### 1.1 Application of these Terms and Conditions

The Hirer agrees that prior to placing an order with the Contractor, the Hirer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this Agreement, "Contractor" is BETTA EARTHMOVING A.B.N. 75 769 416 856 or their approved representative and the "Hirer" is the applicant named on the account with the Contractor or where no account exists then on the Application Form and/or Job Docket provided by the Contractor to the Hirer. In this Agreement "Equipment" means machinery and associated wet driver services supplied by the Contractor to the Hirer for a fee pursuant to this Agreement.

## 2. HIRE PERIODS AND CHARGES

### 2.1 Hire Periods

- (a) The hire rate is based upon the Equipment being hired for a minimum period as specified in the Quote, Application Form and/or Job Docket.
- (b) The hire shall commence from the time and date the Equipment leaves the premises of the Contractor or their approved representative.
- (c) The Hirer shall pay the Contractor a surcharge to allow for overtime costs (rates on application) should the hire period and/or work performed by the Contractor include night work, weekends, statutory or gazetted public holidays and rostered days off.

### 2.2 Hire Charges

The Hirer shall pay the Contractor on completion of the Hire Period for the following:

- (a) The rate/s specified in the written Quote, Application Form and/or Job Docket for the full Hire Period that the Equipment is out of possession of the Contractor at the Hirer's request;
- (b) All hiring charges and any other amounts payable in accordance with these Conditions of Hire within the time specified in the Quote, Application Form or Job Docket;
- (c) All charges including and not limited to all freight and other charges incurred by the Contractor in transporting the Equipment or loading and unloading the Equipment at the site. Travelling time charges from depot to job site is to be assessed according to time and distance involved. Charges are to be paid by the Hirer. Where applicable float charges shall also be payable by the Hirer as specified in the Contractor's Plant Hire Price List.
- (d) Where the Hirer is responsible for the loss or damage to the Equipment the whole or part of the cost of replacement or repair of the Equipment will be added to the invoice total;
- (e) The amount of tolls, levies offences (traffic/parking) or like charges paid or payable by the Contractor to any Government body in respect of use of the Equipment.
- (f) Tipping fees charged to the Contractor's tip account shall attract a surcharge.

## 3. DAMAGES

### 3.1 Recoverable Costs

The Hirer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Hirer's failure to pay to the Contractor all sums outstanding as owed by the Hirer to the Contractor including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a Solicitor and own client basis.

**3.2 Interest** - The Contractor may charge interest at 10 % per calendar month or part thereof on amounts not paid within the time specified in the Quote, Application Form or Job Card.

## 4. PROGRESS PAYMENTS

When agreed progress payments are not honoured by the Hirer, the Contractor reserves the right to halt any further work until such time as the outstanding payment is forthcoming. In addition penalty interest (as specified in clause 3.2) may be charged.

## 5. THE HIRER'S RESPONSIBILITIES

**5.1** Prior to the use of the Equipment, the Hirer, in consultation with the Contractor, shall determine the condition and suitability of the Equipment hired for the purpose required and obtain all necessary permits and/or plans and pay any fees payable to any local or government authority in relation to the hire.

**5.2** During the Hire Period the Hirer shall:

- (a) Clearly mark the exact location and identify all services above and below ground at the hire site, including, but not limited to drains, pipes, sewers, mains, telephone and data cables, to enable the Contractor's Equipment operator to prevent damage to all such services;
- (b) Be responsible for any loss or damage to the Equipment whether such loss is caused by the negligence of the Hirer or any persons under his control or for any reason whatsoever;
- (c) Accept full responsibility for, and indemnify the Contractor against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Equipment by the Hirer, or any persons under his control during the Period of Hire;
- (d) Not alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (e) Be liable for any costs should the Equipment, as a result of instructions given by the Hirer, become bogged. Costs referred to being the agreed hire and the additional hire of whatever equipment is necessary to recover the machine;
- (f) Keep all persons, including the Hirer, away from the Equipment, whilst in operation;
- (g) Not repair or attempt to repair or cause any repair to be made to the Equipment without the prior consent of the Contractor.

## 6. RETENTION OF TITLE

### 6.1 Title

The Equipment shall remain the property of the Contractor at all times. The Hirer is not entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor, without the Contractor's prior written permission, part with possession of the Equipment nor assign the benefit of the Hire Agreement.

### 6.2 Repossession

If the Hirer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Equipment and commence proceedings to recover the balance of any monies owing the Contractor by the Hirer.

## 7. TERMINATION BY THE CONTRACTOR

**7.1** The Contractor may notwithstanding the specified Period of Hire or any other waiver of some previous default by the Hirer terminate this Agreement and repossess the Equipment

- (a) If the Hirer shall fail to pay any hiring charges within two days of the due date; or
- (b) If the Hirer does or permits any act or thing to be done to the Equipment by way of which the Contractor's right in the Equipment may be prejudiced; or
- (c) If the Hirer should become or is made insolvent or bankrupt or makes any arrangement or composition with his creditor or should any order be made or resolution passed for its winding up;
- (e) If the Hirer commits any breach of these Conditions of Hire.

**7.2** For the purposes of repossessing the Equipment the Contractor may enter into or upon any premises where the Equipment may be to recover the Equipment from the Hirer, without prejudice to the rights of the Contractor and recover from the Hirer in respect of any claims, damages or expense arising out of any action taken under this clause.

**7.3** On the Contractor repossessing the Equipment the determination of the Period of Hire shall be without prejudice to any claim or demand the Contractor may have against the Hirer in respect of any matter or thing arising out of the hire of the Equipment AND the Hirer shall pay to the Contractor hiring charges at the rate appearing on the Quote, Application Form and/or Job Docket.

## 8. PRIVACY

**8.1** The Hirer hereby authorises the Contractor to collect, retain, record, use and disclose commercial and/or consumer information about the Hirer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Supplier, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.

**8.2** The Hirer also authorises the Contractor to make enquiries with respect to the Hirer's commercial and/or consumer credit worthiness; to exchange information with other Credit Providers in respect to previous commercial and/or consumer defaults of the Hirer and to notify other Credit Providers of a commercial and/or consumer default by the Hirer.

## 9. LIABILITY

### 9.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Hirer in relation to the provision of the Equipment or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

### 9.2 Disclaimer of Liability

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Hirer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Equipment and/or any services again or payment of the cost of having the Equipment and/or services supplied again.

### 9.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Hirer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in completing the Order or to deliver the Equipment.

### 9.4 Force Majeure

The Contractor will have no liability to the Hirer in relation to any loss, damage or expense caused by the Contractor's failure to complete the Order or to deliver the Equipment as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary material or any other matter beyond the Contractor's control.

## 10. SECURITY AND CHARGE

The Hirer hereby charges all property, both equitable and legal, present or future of the Hirer in respect of any monies that may be owing by the Hirer to the Contractor under the Terms and Conditions or otherwise and hereby authorises the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Hirer at any time or to register this charge over assets of the Hirer with the Australian Securities and Investments Commission.

## 11. GENERAL MATTERS

### 11.1 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 11.2 Governing Law and Jurisdiction

These terms and Conditions are governed by the law in force in the State or Territory in which the Contractor's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.