

PREAMBLE

1. Preamble

- 1.1 All Services of Tracklink WA Pty. Ltd. whether gratuitous or not, are supplied subject to these Conditions and:
- (a) The provisions of Part I shall apply to the provision of all and any Services.
 - (b) The provision of Part II shall apply to the provision of Civil Works.
 - (c) The provisions of Part III shall only apply to the provision of Equipment Hire.
 - (d) The provisions of Part IIII shall only apply to the provision of Labour Hire.

PART I – GENERAL CLAUSES

2. Definitions

- 2.1 **"Acknowledgment Document"** means the document signed by the Client in conjunction with these Terms and Conditions of Trade and applicable if the Contractor elects, whereby the Client acknowledges the extent and effect of the provision of security the Client provides to the Contractor in consideration of the provision of Goods/Equipment.
- 2.2 **"Attachments"** means any attachments included with the hired Equipment, which may include, but is not limited to, normal blades, ripper, bucket, fork, compactor drum, water tank and pumps, couplings and truck body wear including truck tray.
- 2.3 **"Business Day"** means Monday to Friday and shall not include Saturday or Sunday, a public holiday, special holiday and/or bank holiday in the state of Western Australia (whether a whole or part of a day).
- 2.4 **"Charges"** means the price payable (plus any GST where applicable) for the Services and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 7 of this Contract.
- 2.5 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor 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.
- 2.6 **"Contract"** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 2.7 **"Contractor"** means Tracklink WA Pty. Ltd., its successors and assigns or any person acting on behalf of and with the authority of Tracklink WA Pty. Ltd.
- 2.8 **"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.
- 2.9 **"Dry Hire"** means that the Equipment is supplied by the Contractor without an operator.
- 2.10 **"Equipment"** means all Equipment (including any accessories, machinery, tools and associated items, manuals, log books and vehicles as accompanies such Equipment) supplied on hire by the Contractor 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, special conditions or any other work authorisation forms as provided by the Contractor to the Client.
- 2.11 **"G.E.T"** means Ground Engaging Tools and refers to any bolt-on/pin-on wearing parts such as blades, cutting edges, bucket teeth, hardware, ripper teeth, ripper tyres, roller feet, track rollers, idlers, and tracks.
- 2.12 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 2.13 **"Hire Docket"** means the form issued by the Contractor at the time an order is submitted to the Contractor and includes job details, Equipment and other relevant details.
- 2.14 **"Hire Period"** means the Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Client.
- 2.15 **"Labour"** or **"Candidate"** shall mean any individual sent by the Contractor to the Client for employment by the Client on a temporary, casual, or part time basis.
- 2.16 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Client.
- 2.17 **"PPSA"** means the Personal Property Securities Act 2009 (Cth) and associated regulations, as amended from time to time.
- 2.18 **"PPSR"** means the Personal Property Securities Register established under the PPSA.
- 2.19 **"Site"** means the location/s at which the Services or Labour is to be supplied and/or the Equipment is to be operated.
- 2.20 **"Wet Hire"** means that the Equipment is supplied by the Contractor with an operator who shall at all times remain an employee or representative of the Contractor.

3. Interpretation

- 3.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$), is a reference to Australian currency; and

- (e) this Contract is not to be interpreted against the Contractor merely because they prepared this Contract; and
- (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules/appendices.
- (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

4. Acceptance

- 4.1 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.
- 4.2 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.
- 4.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 4.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 4.5 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Services supplied is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services. Accordingly, the Contractor offers no warranty in regard to the aforementioned.
- 4.6 Both parties acknowledge and agree that this Contract does not constitute a partnership between the parties or constitute one party as agent or representative of another.
- 4.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Errors and Omissions

- 5.1 The Client acknowledges and accepts that the Contractor 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 Contractor 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 Contractor in respect of the Services.
- 5.2 In circumstances where the Client is required to place an order for Services, 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 Services ("**Client Error**"). The Client must pay for all Services it orders from the Contractor notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

6. Change in Control

- 6.1 The Client shall give the Contractor 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 Contractor as a result of the Client's failure to comply with this clause.

7. Charges and Payment

- 7.1 At the Contractor's sole discretion the Charges shall be either:
 - (a) as indicated on any invoice provided by the Contractor to the Client upon placement of an order for Services; or
 - (b) the Contractor's current Charges as at the date of delivery, according to the Contractor's current pricelist rates as previously disclosed to the Client upon the Client's placement of an order for Services, (rates are subject to change upon written notice to the Client and shall take effect from the date of notice). In the event that the Client does not accept the revised rates, the Client has the right to terminate without prejudice upon the required notice of termination); or
 - (c) calculated on a working day of eight (8) hours per day (from 7.00am to 3.30pm, allowing a thirty (30) minute lunch break); or
 - (d) the Contractor's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 The Contractor reserves the right to change the Charges:
 - (a) if a variation to the quotation (including any applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, safety considerations and/or health hazards (such as the discovery of asbestos or other toxic materials, etc.), poor weather conditions, limitations to accessing the Site, availability of machinery, obscured Site defects, prerequisite work by any third party not being completed, changes to the Client's and/or Site requirements, hard rock barriers below the surface, iron reinforcing rods in concrete, latent soil conditions and/or soil contamination (including the removal of any contaminated soil), or hidden or unidentified underground locations, etc.) which are only discovered on commencement of the Services; or
 - (c) where the Contractor is required to mobilisation and demobilisation Equipment when the Contractor is required to transport the Equipment to and from the Contractor's depot, unless otherwise agreed; or

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- (d) where Equipment is used outside the Contractor's standard working hours (as specified in clause 7.1(c) above) or on a weekend or public holiday. "Excess" is more than eight (8) hours per calendar day; or
 - (e) rates in respect of the Contractor's personnel are subject to additional Charges for loading, penalties and allowances as applicable to the Contractor personnel pursuant to their terms of engagement (including, but not limited to, night shifts, weekends, standby, overtime, public holidays, meals, travel and accommodation rates); or
 - (f) a fuel levy shall be payable where the price of diesel fuel exceeds the fuel price specified in the Contractor's pricelist rates.
- 7.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) Business Days. Failure to do so will entitle the Contractor to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 7.4 Time for payment for the Services/Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on completion of the Services
 - (b) by way of instalments/progress payments in accordance with the Contractor's payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
 - (d) for Equipment supplied on hire, due and payable thirty (30) days following any invoice for hire given to the Client. The Client shall be invoiced at the end of each month on hire or every Hire Period (whichever first occurs); or
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) 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 Contractor.
- 7.5 Receipt by the Contractor 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 and until then the Contractor's ownership or rights in respect of the Services shall continue.
- 7.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
- 7.7 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Services/Equipment.
- 7.8 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Client's account into default and subject to default interest in accordance with clause 12.2(a).
- 7.9 Unless otherwise stated the Charges does not include GST. In addition to the Charges, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other contract for providing the Contractor's Services/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.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 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 Services/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 8.3 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 Contractor 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 8.2(a)(i) or 8.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor 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 Services/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
 - (e) immediately advise the Contractor of any material change in its business practices.
- 8.4 The Contractor 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.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 8.2 to 8.5.

- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 8.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 8 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 8 will apply generally for the purposes of the PPSA.
- 9. Security and Charge**
- 9.1 In consideration of the Contractor agreeing to supply the Equipment and as acknowledged by the Contractor in accordance with any Acknowledgment Document the Client grants the Contractor a security interest by way of a floating charge (registerable by the Contractor 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, including, but not limited to, those set out in any Acknowledgment Document, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment under this Contract and/or permit the Contractor to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 9.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 9.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 31,36.4(b),8.2 and 9.1 as applicable, is deemed insufficient by the Contractor to secure the repayment of monies owed by the Client to the Contractor, the Client hereby grants the Contractor 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), in accordance with the Acknowledgement Document.
- 10. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 10.1 The Client must inspect the Contractor's Services on completion, and the Equipment on delivery and must within twenty-four (24) hours notify the Contractor in writing of any evident defect in the Services/Equipment (including the Contractor's workmanship), or of any other failure by the Contractor to comply with the description of, or quote for, the Services/Equipment which the Contractor was to supply. The Client must notify any other alleged defect in the Contractor's Services, Equipment as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to review the Services or Equipment that were provided.
- 10.2 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**).
- 10.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Services/Equipment under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment which have been provided to the Client which were not defective.
- 11. Intellectual Property and Confidentiality**
- 11.1 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, images or Equipment which the Contractor has created for the Client.
- 11.2 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 11.3 The quotation, hire agreement or any other information provided by Client to the Client is done so on a "commercial in confidence" basis thereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of Client.
- 12. Default and Consequences of Default**
- 12.1 Without prejudice to the Contractor other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if an event of default ("**Default Event**") occurs if:
- (a) any money payable under this Contract is not paid before or on the due date for payment;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (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;
 - (d) the Client fails to observe and perform any of the Client's covenants, other than the failure to pay money, and such failure continues for more than three (3) days after the Contractor had given the Client notice requiring the Client to remedy the breach;
 - (e) the Client, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
 - (f) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
 - (g) a mortgagee takes possession of any property of the Client;
 - (h) any execution or similar process is made against the property of the Client;
 - (i) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Client to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
 - (j) a compromise or arrangement is made between the Client and its creditors;

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- (k) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Client to be placed under official management;
 - (l) the Client admits in writing its inability to pay its debts;
- 12.2 On the occurrence of an Default Event:
- (a) interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
 - (i) if the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements:
 - (ii) incurred; and/or
 - (iii) which would be incurred and/or
 - (iv) for which by the Client would be liable;in regard to legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under these terms and conditions, internal administration fees, the Contractor'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.
- 12.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, 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 Contractor under this clause 12 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.
- 13. Cancellation/Termination**
- 13.1 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 or purchase of Goods/Equipment 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 13.1.
- 13.2 If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Services/Equipment and/or provide Labour to the Client, the Contractor may cancel any Contract to which these terms and conditions apply or cancel delivery of Services/Equipment at any time before the Services/Equipment are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Services/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 The Client may cancel delivery of the Services/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 13.3, the Client will not be liable for the payment of any costs of the Contractor, except where a deposit is payable. Failure by the Client to otherwise accept delivery of the Services/Equipment shall place the Client in breach of this Contract.
- 13.4 Further to clause 13.3, after the forty-eight (48) hours has lapsed, in the event that the Client terminates this Contract, or otherwise cancels delivery, the Client:
- (a) must provide notice of such to the Contractor at least fourteen (14) days prior to the date specified date of delivery and/or the Equipment's demobilisation date; and
 - (b) the Client shall be liable for any and all loss incurred (including, but not limited to, any loss of profits) up to the time of cancellation or by the Contractor as a direct result of the cancellation, notwithstanding that at the Contractor's sole discretion, where appropriate notice is not received a minimum cancellation fee equal to the hire Charges payable until such notice is given.
- 13.5 Except so far as clause 13.2 applies, on termination the Contractor shall be entitled to:
- (a) retain all monies paid to it under this Contract; and
 - (b) recover from the Client any other monies due and owing under this Contract as at the date of termination.
- 13.6 On termination, the Client must deliver up to the Contractor the Equipment (together with all parts, accessories and Attachments) within forty-eight (48) hours, in clean and good order as delivered (with allowance for fair wear and tear).
- 13.7 Upon termination of this Contract following the occurrence of a Default Event, the Client must pay to the Contractor without prejudice to any other right or remedy of the Contractor, an amount equal to the total of:
- (a) the unpaid balance of the Charges for the Hire Period of either Equipment or Labour which would have been payable until the expiration of the Hire Period had the Contract not been terminated; and
 - (b) the Contractor's costs and expenses incurred in repossessing and storing, insuring and registering the Equipment and in entering on and removing the Equipment from land or premises on which the Equipment was situated, and make good any injury or damage caused to the land or premises; and
 - (c) the Contractor's costs and expenses of repairs reasonably necessary to bring the Equipment to an operational/useable condition; and
 - (d) interest calculated in accordance with clause 12.2(a) of this Contract;
 - (e) any lost hire fees the Contractor would have otherwise been entitled to for the Equipment and/or Labour, under this, or any other Contract.
- 13.8 On, or before, termination of this Contract, the Client shall return the Equipment to the Contractor's premises and the Client acknowledges and agrees that the Charges are payable:
- (a) until such time as the Equipment is returned to the Contractor's premises and returned to its condition as specified in the on-hire inspection, normal wear and tear excepted; and
 - (b) for the entirety of the Hire Period, notwithstanding that the Equipment may be returned to the Contractor prior to termination.
- 14. Dispute Resolution**
- 14.1 Where a dispute arises between the Client and the Contractor, it will be referred to the Contractor and Client or the Client's representative for resolution. The Contractor and Client agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 14.2 The dispute resolution process will be as follows:

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- (a) a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the parties) to reach agreement on:
 - (i) a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process should initially be dealt with by the Australian Commercial Disputes Centre ('ACDC') in accordance with the Mediation Guidelines);
 - (ii) the steps to be taken by each Party and the timing of those steps;
 - (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/body's professional fees and expenses; and
- (b) if the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either the Contractor or the Client may commence court proceedings or arbitration proceedings to resolve the dispute.

15. Privacy Policy

- 15.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 0, and therefore considered Confidential Information. The Contractor 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 III C 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 Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor 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.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to the Contractor in respect of cookies where the Client utilises the Contractor's website to make enquiries. The Contractor 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 Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing cookies by deleting them from the browser history when exiting the site.
- 15.3 The Client agrees for the Contractor 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 Contractor.
- 15.4 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 15.5 The Client consents to the Contractor being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 15.6 The Client agrees that personal credit information provided may be used and retained by the Contractor 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.
- 15.7 The Contractor may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.8 The information given to the CRB may include:
 - (a) Personal Information as outlined in 0 above;
 - (b) name of the credit provider and that the Contractor 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 Contractor 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 Contractor 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 Contractor, the Client has committed a serious credit infringement;

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- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.9 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
 - (b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 15.10 The Contractor 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.
- 15.11 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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.
- 15.12 Customer Verification and Risk Assessment: We use HireShield, a customer verification platform operated by Australasian Rating and Notification System (ARANS) Pty Ltd, to check customer identity and assess hire risks. Your personal information (including name, date of birth, address, contact details, and driver's licence number) will be securely submitted to HireShield for verification purposes. If your details match records from other hire businesses in the HireShield network, your hire history and reviews may be shared with those businesses. Reviews about your hire transactions may be submitted to and viewed by other verified HireShield subscribers. Your information is stored securely on Australian servers and handled in accordance with the Privacy Act 1988. You have the right to access and correct your information by contacting us or HireShield directly at privacy@hiresield.com.au

16. Building and Construction Industry (Security of Payment) Act 2021

- 16.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Building and Construction Industry (Security of Payment) Act 2021 may apply.
- 16.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Building and Construction Industry (Security of Payment) Act 2021 of Western Australia, except to the extent permitted by the Act where applicable.

17. Force Majeure

- 17.1 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 Contractor, once the parties agree that the Force Majeure event has ceased.
- 17.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this Contract:
- (a) the party must give the other party prompt written notice of:
 - (i) detailed particulars of the Force Majeure;
 - (ii) so far as is known, the probable extent to which the party will be unable to perform or will be delayed in performing the duty or obligation.
 - (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
 - (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible; and
 - (d) shall be entitled (at its option) to terminate this Contract or extend the time for performance without penalty, if the Force Majeure event continues for a period in excess of fourteen (14) Business Days.

18. Service of Notices

- 18.1 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;
 - (e) if sent by email to the other party's last known email address.
- 18.2 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.

19. Trusts

- 19.1 If the Client at any time upon or subsequent to entering in to 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 Contractor may have notice of the Trust, the Client covenants with the Contractor 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 Contractor (the Contractor 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.

20. Non-solicitation

- 20.1 The Client agrees that during the term of the Contract and for twelve (12) months following the termination of the Contract for any reason, the Client will not attempt to canvass, solicit, entice, encourage or persuade any contractor/s, employee or consultant of the Contractor to terminate their contract or employment with the Contractor.
- 20.2 The Client agrees that if clause 20.1 is contravened the Contractor will be able to invoice the Client at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this Contract.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Perth Magistrates Court of Western Australia. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 21.3 The Contractor 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.
- 21.4 The Client cannot licence or assign without the written approval of the Contractor.
- 21.5 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 21.6 The Client agrees that the Contractor 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 Contractor to provide Services and/or Equipment to the Client.
- 21.7 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.
- 21.8 This Contract and these contract conditions constitutes the entire agreement between the parties with respect of the subject matter and contains all of the representations, undertakings, warranties, covenants and agreements of the parties. This Contract supersedes all prior negotiations, contracts, arrangements, understandings, purchase orders supplied by the Client and agreements with respect to such subject matter. There are no representations, undertakings, warranties, covenants or agreements between the parties express or implied except as contained in this Contract.
- 21.9 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.
- 21.10 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.

PART II – CIVIL WORKS

22. Provision of the Services

- 22.1 Subject to clause 22.2 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 22.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Site ready for the Services; or
 - (c) notify the Contractor that the Site is ready.
- 22.3 The cost of delivery will be payable by the Client in accordance with the quotation provided by the Contractor to the Client, or as otherwise notified to the Client prior to the placement of an order for Services.
- 22.4 The Contractor may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 22.5 Any time specified by the Contractor for delivery of the Services is an estimate only and the Contractor 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 Services to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Services as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

23. Site Access and Condition

- 23.1 The Client shall ensure that the Site is made available, and that the Contractor has clear and free access to the Site (and that such access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Contractor), at the agreed date/s and time/s, to enable the Contractor to provide the Services, and:
- (a) the Contractor shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas, or gardens or landscaping,) unless due to the negligence of the Contractor; and
 - (b) the Client agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable; and

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- (c) if the Services are interrupted by the failure of the Client to adhere to the work schedule agreed to between the Contractor and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 7.2
- 23.2 It shall be the Client's responsibility (where applicable) to ensure that, prior to commencement of the Services:
- (a) all gas and electricity are cancelled and disconnected (from the main supply at the street); and
 - (b) the Client must advise the Contractor of the precise location of all underground services on Site and clearly mark the same:
 - (i) the underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site;
 - (ii) whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per sub-clause 23.2(b)(i).
- 23.3 It is the intention of the Contractor and agreed by the Client that:
- (a) it is the Client's responsibility to provide the Contractor, whilst at the Site, with adequate access to any utilities/facilities required in order for the Contractor to complete the Services (including, but not limited to, electricity, water, safety lighting, toilet, waste disposal amenities, eating and first aid facilities etc.); and
 - (b) unless otherwise agreed, it shall be the Client's responsibility to organise either temporary fencing and/or security guards to secure the Site during the performance of the Services by the Contractor and shall be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft. Failure to comply with this clause 23.3(b), in the event that the Site is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 23.4 The Client agrees to be present at the Site when and as reasonably requested by the Contractor and its employees, contractors and/or agents.
- 23.5 Site Inductions
- (a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Contractor is in control of the Site, the Client and/or the Client's third party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Services will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.
- 24. Risk**
- 24.1 The Contractor shall maintain Workers' Compensation Insurance, Public Liability Insurance (\$20m) and insurance in respect of risk of damage to the Services for the duration of the Services. It is the Client's responsibility to ensure that they are similarly insured.
- 24.2 Notwithstanding the provisions of clause 24.1, where the Contractor requires that materials, fittings and appliances, or plant and tools required for the Services be stored at the Site, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 24.3 If, for any reason the Contractor or the Contractor's employees reasonably forms the opinion that the Site is unsafe then the Contractor shall be entitled to delay the delivery of the Services (in accordance with clause 22.2 above) until the Contractor is satisfied that it is safe for the Services to proceed. If the Client request the Contractor to make the Site safe (including, but not limited to, the hire of specialised equipment), the Client agrees to indemnify the Contractor against all additional costs incurred in such an event, this will be invoiced as a variation in accordance with clause 7.2. The Contractor shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe Site.
- 24.4 The Client acknowledges that, under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on Site:
- (a) the Contractor shall suspend the Services; and
 - (b) the Client shall be fully responsible for the resolution of any resulting problems; and
 - (c) any additional cost incurred by the Contractor shall be added to the Charges under clause 7.2.
- 24.5 The Contractor shall be entitled to rely on the accuracy of any plans, specifications geotechnical reports and other information provided by the Client. In the event that any of this information provided by the Client and/or marking out of the proposed area by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccuracies where installation decisions need to be made by the Contractor in the Client absence because the Client has failed to comply with this clause.
- 24.6 **Concrete**
- (a) Detailed drawings of any services that will be embedded in the concrete are to be provided to the Contractor prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by the Contractor for damage to the services or any other element embedded in the concrete.
 - (b) The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Services such as:
 - (i) hairline cracking of paving and grout; or
 - (ii) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (iii) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
 - (c) The Client acknowledges and agrees that:
 - (i) it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client; and
 - (ii) variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
 - (d) The Contractor shall not be liable for any defect in the Services if the Client does not follow the Contractor's recommendations, including:

- (i) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
 - (ii) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - (iii) that no heavy furniture is to be placed on the concrete area for a minimum of twenty-four (24) hours.
- (e) The Client shall supply an area suitable for washing out the Contractor's equipment and for depositing all unused concrete and slurry.
- (f) **Measurement of Concreting Works** - at the completion of the Services the Client or the representative of the Client shall be in attendance and the Services shall then be duly measured. In the absence of either the Client or their representative the Contractor shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the Services completed.

24.7 Drainage

- (a) The Client acknowledges that choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, the Contractor cannot give any guarantee against reoccurrence or further damage. In the event that the Client requests the Contractor to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and the Contractor does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Contractor may require the Client or their agent to authorise commencement of the Services in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- (b) The Client acknowledges that the Contractor is only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure.

25. Compliance with Laws

- 25.1 The Client and the Contractor 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.
- 25.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Home Building Contracts Act 1991, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 25.3 The Client shall obtain (at the expense of the Client) all licenses and approvals (including, but not limited to, local council permits) that may be required for the Services.

PART III - EQUIPMENT HIRE

26. Hire Period

- 26.1 For Equipment in which a timing device is installed the Hire Period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 26.2 Where the Equipment does not have a timing device installed hire Charges shall commence, and Charges shall be paid by the Client to the Contractor, from the time the Equipment departs from the Contractor's premises and will continue until (whichever last occurs):
- (a) the termination of the Hire Period; or
 - (b) the return of the Equipment to the Contractor's premises in good operating condition, reasonable wear and tear excepted; or
 - (c) the date which the Equipment is available for Recovery by the Contractor, as notified by the Client (if such Recovery is agreed to by the Contractor), provided the Equipment is recovered in good operating condition, reasonable wear and tear excepted; or
 - (d) the expiry of the Minimum Hire Period.
- 26.3 The Client acknowledges and agrees to return all G.E.T to its supplied condition. The condition of the G.E.T will be noted prior to mobilisation and can be obtained from the Contractor by the Client upon request. Usage of G.E.T will be measured at the commencement and expiry of the Hire Period by a joint inspection of both parties on a percentage basis.
- 26.4 Notwithstanding clause 26.1 and 26.2, the Client shall provide a minimum of fourteen (14) days' notice to the Contractor of their intention to return the Equipment, and the date of expiry or cessation of this Contract shall in all cases be treated as a full day's hire.
- 26.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Contractor confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Contractor 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.
- 26.6 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of the Contractor, which may be arbitrarily withheld.

27. Extension of the Hire Period

- 27.1 If, and only if no later than twenty-four (24) hours before the expiry of the Hire Period, the Client gives notice the Contractor requesting an extension of the Hire Period, such extension is, if any, subject to the Contractor's agreement, the availability of the Equipment and the following conditions:
- (a) the Charges and all other payments due under this Contract having been received by the Contractor in full as at the expiry of the Hire Period;
 - (b) there is no breach of the Client's covenants, the Hire Period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the Hire Period and at the Charges, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.

28. Delivery and Recovery

- 28.1 As agreed by the Contractor and at the Contractor's sole discretion:

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- (a) delivery of the Equipment (“**Delivery**”) shall take place when either the Client collects the Equipment from the Contractor premises, or the Contractor (or the Contractor’s nominated carrier) delivers the Equipment to the Site;
 - (b) recovery of the Equipment (“**Recovery**”) will be completed when the Equipment has been either collected from the Site and/or returned to the Contractor’s premises.
- 28.2 Unless otherwise specified:
- (a) the costs of Delivery and Recovery, including the supply of additional labour, equipment, materials and transportation expenses and other requirements are in addition to the Charges; and
 - (b) the Client is responsible for the supply of all necessary craneage, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Site.
- 28.3 In the event the Client is unable to accept Delivery and/or Recovery as arranged, or there are any delays due to free and clear access to the Site not being available, the Contractor shall be entitled to charge all additional costs involved with the redelivery and/or storage, or subsequent attempts at Recovery, as applicable, and all Charges lost as a direct result of the Equipment being unavailable.
- 28.4 Any time or date given by the Contractor to the Client is an estimate only. The Client must still accept Delivery even if late and the Contractor will not be liable for any loss or damage incurred by the Client as a result of any delay in Delivery and/or Recovery of the Equipment, commencement of work or interruption to the continuity of work due to reasons beyond the practical control of the Contractor (including, but not limited to, any Force Majeure event as outlined in clause 17, breakdown of plant, transport delays, accidents, or other labour difficulties, etc.). In the event that the Contractor is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.
- 29. Insurance**
- 29.1 The Client accepts full responsibility for the safekeeping of the Equipment and must effect insurance (and maintain any such insurance) with an insurer acceptable to the Contractor in the name of the Contractor and the Client for their respective rights and interests whilst the Equipment is at the Site, or in transit between the Site and the Contractor’s premises in respect of the following:
- (a) the full replacement value of the Equipment against such risk as the Contractor may nominate, or in the absence of such nomination, against loss or damage by theft, fire, accident and such other risks as are insured against by prudent persons engaged in a similar business to that of the Client, excluding liability for claims being the subject of compulsory third party injury insurance on vehicles registered by the Contractor;
 - (b) a policy of employer’s indemnity insurance and works compensation insurance in respect of all employees of the Client in respect of damage or loss caused by the use, maintenance, repair and storage of the Equipment;
 - (c) public liability of at least ten million dollars (\$10M) and product defect liability, and any other such insurance in support of the indemnities contained in this Contract, and must in respect of any policy of insurance, deliver to the Contractor a copy of the policy and promptly pay all premiums and stamp duty payable in respect of the policy.
- 29.2 The Client must provide the Contractor with a Certificate of Currency via email to accounts@tracklinkwa.com.au (which shall state the Contractor as the owner of the Equipment, list the hired Equipment and the commencement and expiry dates) for the above insurance prior to taking possession of the Equipment.
- 29.3 Both the Contractor and the Client are entitled to receive payments of money under that insurance policy affected pursuant to clause 29.1 according to its interest in the policy. Each party agrees to assist and cooperate with the other in making, pursuing and settling any claim made under the policy.
- 29.4 The Client must not:
- (a) do anything to prejudice insurance taken out in accordance with this Contract; or
 - (b) enforce, conduct or settle a claim without the Contractor’s consent.
- 29.5 Where the Contractor lodges a claim against the Client’s insurance under this clause 29, the Client’s liability in respect to any amount due pursuant to clause 7.1 shall cease fourteen (14) days following lodgement of the claim, or seven (7) days following receipt of an offer of settlement, whichever event occurs earlier.
- 29.6 Without limiting the generality of sub-clause 33.2(a), and if the Contractor requests, the Client will expend all money received by it under the policy in respect to damage to the Equipment in restoring or replacing the Equipment in its condition prior to the commencement of this Contract, subject to reasonable wear and tear, and if such money is insufficient, the Client will make good the deficiency at their own cost.
- 30. Risk to Equipment**
- 30.1 The Contractor retains property in the Equipment, nonetheless all risk for the Equipment passes to the Client on Delivery.
- 30.2 The Client accepts full responsibility for and shall keep the Contractor 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.
- 30.3 The Client shall be solely responsible for any loss or damage to the Equipment, including (without limiting the generality of the foregoing) damage done by corrosion, rust, oxidation, and chemical reactions of every nature and kind whatsoever.
- 30.4 The Client acknowledges and agrees that:
- (a) the Client has satisfied themselves as to the condition and suitability of the Equipment, and its fitness for the Client’s purposes;
 - (b) the Client has, prior to signing this Contract, examined the Equipment and satisfied themselves as to its compliance with the specifications and validity of the warranties of the manufacturer or the Contractor;
 - (c) once satisfied with the condition and suitability of the Equipment, the Client must sign the Contractor’s pre-hire check sheet.
- 31. Title to Equipment**
- 31.1 The Equipment is and will at all times remain the absolute property of the Contractor.
- 31.2 If the Client fails to return the Equipment to the Contractor when requested then the Contractor or the Contractor’s nominated agent may (as the invitee of the Client) enter upon and into 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.

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

32. Condition of Equipment and Inspections

32.1 The Equipment will be inspected by a representative of each party to establish the general condition thereof and a statement of condition of the Equipment will be prepared:

- (a) immediately prior to the commencement of this Contract; and
- (b) as soon as practicable following termination of this Contract.

32.2 If the Client is unable to attend the joint inspection, they are then required to complete and pre-work inspection sheet (supplied by the Contractor) before any work is to be performed. To be emailed to accounts@tracklinkwa.com.au once completed and signed. If the pre-work inspection sheet is not received by the Contractor within one (1) week of mobilisation, the inspection performed by the Contractor will be deemed as proof of condition (which shall include if Equipment is in a clean and serviceable condition). It is the Client's responsibility to inspect the Equipment at the commencement of the Hire Period and to satisfy themselves that the Equipment is suitable for its intended use and is in a clean and serviceable condition.

32.3 The Client acknowledges and agrees that they will, at their own cost, reinstate the Equipment to its condition as specified in the pre-hire inspection, normal wear and tear excepted.

32.4 The Contractor reserves the right to and the Client expressly authorises the Contractor to carry out repairs required at the Site. If by agreement, the Client carries out repairs on behalf of the Contractor, it will be only be at the Contractor sole discretion upon issuing the Client a purchase order for such repairs. The Client is required to then invoice the Contractor separately and shall not deduct from or pledge a credit from the Charges (as per clause 31.3). Payment by the Contractor will be made in accordance with the payment terms detailed in the purchase order issued upon completion of the repairs.

33. Dry Hire

33.1 If the Client requires the Equipment to be delivered, and/or returned from the Site, then the Client shall notify the Contractor in writing, and pay in addition to the Charges all freight, transportation and other charges and/or costs incurred, including loading and unloading at the Site, if applicable.

33.2 The Client shall:

- (a) at their own expense, keep and maintain the Equipment in proper working order and good and substantial repair (including, but not limited to, lubricating, refuelling, daily servicing, servicing as required by the Contractor, running repairs, marking mechanical, structural and electrical repairs, and where necessary replacing tyres and other wearing parts) and in accordance with the Equipment scheduled servicing intervals as per the manufacturers specifications (Equipment is to be serviced every 250/500/750/1000/1250/1500/1750/2000 hours, (service sheets can be supplied upon request)) It is the responsibility. Throughout the Hire Period, the Client must:
 - (i) maintain the Equipment to the OEM recommended schedules for servicing and preventative maintenance; and
 - (ii) not exceed the SMU hours for the OEM recommended servicing intervals (a minimum twenty (20) hour allowance may be acceptable, the Client acknowledges and accepts that any servicing that occurs over the allow service intervals will be charged out at twenty (20) hours at the normal Equipment hire rate); and
 - (iii) maintain all records of OEM servicing and provide copies to the Contractor via email to accounts@tracklinkwa.com.au; and
 - (iv) complete at every oil change period (on all compartments) a manufacturers' oil sampling analysis; and
 - (v) advise the Contractor as soon as reasonable practical if the Client is unable to meet their servicing obligations. In this instance the Contractor will arrange (at the Client's expense) a field service unit to the complete the relevant servicing/repairs required. The costs associated shall be charged at the Contractor's current hourly rate, plus any consumables used, plus a margin of ten percent (10%).
- (b) notify the Contractor immediately by telephone of the full circumstances of any mechanical breakdown or accident. Following such verbal notification the Client shall then provide the details noted in writing via email to accounts@tracklinkwa.com.au. The Client acknowledges that:
 - (i) the Client is not absolved from the requirements to safeguard the Equipment by giving such notifications; and
 - (ii) the Client shall be responsible for all breakdown repairs (excluding power train failures) including, but not limited to, power train faults, electrical, hydraulic hoses, fuel and oil leaks, etc.; and
 - (iii) the Contractor shall be responsible for any power train failures (including, but not limited to, engine torque convertor, transmission, final drives, and differential) provided that the Client has complied with all servicing schedules and oil sampling and the Equipment is not subject to misuse or abuse by the Client (in accordance with clause 33.2). The Contractor reserves the right to investigate any claim made by the Client with the use of an independent evaluator; and
 - (iv) the Contractor will not be responsible for any downtime or third party expenses or any consequential loss caused by any breakdowns of the Equipment.
- (c) 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 Contractor or posted on the Equipment;
- (d) ensure that:
 - (i) all persons operating 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 Contractor 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.
- (e) comply with any regulatory body requirements and/or all occupational health and safety laws relating to the Equipment and its operation;
- (f) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean (weed and seed standard), in good order as delivered and in a serviceable condition, fair wear and tear accepted, to the Contractor;

- (g) 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;
- (h) 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;
- (i) refuel the Equipment and ensure that all oil's and lubricates are full prior to its return from Hire. In the event the Equipment needs to be refuelled and/or any oil or lubricates need to be replaced upon its return from hire then the costs of such shall be charged to the Client in addition to the costs of the Equipment hire;
- (j) be responsible for minor repairs which includes all minor running repairs to the Equipment (including, but not limited to, electrical wiring, electrical switches, light, oil leaks, vee belts, hydraulic hoses and air-conditioning systems, etc.);
- (k) supply the Contractor (via email) the meter reading as at the close of business on the last day of the month or end of the Hire Period (whichever occurs first) to accounts@tracklinkwa.com.au.

33.3 The Client shall not:

- (a) be responsible for major repairs (provided not attributable to negligence or abuse) including, but not limited to, power train, engine assembly, transmission assembly, radiator, torque converter, differential, wheel ends, bevel gears, all steering components, hydraulic pumps, motors or cylinders, pump drives, swing gear/bearings, engine couplings, injectors, oil coolers, brakes, major electrics or cab major, etc.;
- (b) 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;
- (c) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
- (d) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (e) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;

33.4 The Client indemnifies the Contractor against, and shall pay the Contractor immediately on demand, all costs relating to:

- (a) servicing and/or repair of the Equipment, if found to be required by the Contractor on Recovery (including where it is found that scheduled servicing has not been performed or there is no evidence of completion of such), and the Client shall:
 - (i) be charged (in addition to the Charges) for each and every service not completed, and any repairs deemed necessary as a consequence, at the Contractor's current technician charge out rate (available upon request) and the cost of parts/lubricants, freight, plus twenty percent (20%);
 - (ii) continue to pay the Charges at a rate of ninety percent (90%) of the original hire Charges until the Equipment is returned to good operating condition as determined by the Contractor;
- (b) parking toll charges, or traffic infringement and offences, impoundment, towage and storage; and
- (c) fuels and consumables provided by the Contractor and used by the Client;
- (d) any insurance excess payable in relation to a claim made by either the Client or the Contractor in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Client, and irrespective of whether charged by the Client's insurers or the Contractor's.

33.5 In the event of damage to the Equipment and/or Attachments, the Client shall be responsible to pay on demand all costs involved in repairing such damage, including but not limited to:

- (a) damage caused by the negligence of the Client, or its agent(s);
- (b) damage caused by vandalism;
- (c) damage caused to the Equipment by operator misuse thereof;
- (d) damage to the tracks and/or tyres of the Equipment, other than damage caused by fair wear and tear; and/or
- (e) damage caused by the ordinary use of the Equipment.

34. Wet Hire

34.1 The Client shall:

- (a) be responsible for:
 - (i) ensuring the Contractor has clear and free access and egress to the Site;
 - (ii) ensuring that adequate lighting is provided during the provision of Services;
 - (iii) making all necessary arrangements where any access is required through private property;
 - (iv) notifying the Contractor of the location of any underground services on Site;
 - (v) ensuring that no other party ever attempts to use or operate the Equipment without the expressed written consent from the Contractor;
 - (vi) the costs to mobilise personnel to the Site, including pre-employment medicals, travel and inductions.
- (b) provide amenities and first aid services to the Contractor's employees in compliance with all applicable health and safety legislation in operation in the state where the services are undertaken;
- (c) provide the operator with all PPE (excluding pants and boots). PPE must be worn at all time, such items include, but are not limited to:
 - (i) hard hat, safety glasses, long sleeve collar shirt, long pants, steel capped lace-up safety boots, reflective vest; and
 - (ii) failure to comply with this clause may lead to permanent removal from the Site.
- (d) should it be necessary for the Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Charges and either:
 - (i) charged to the Client's account, plus a margin of ten percent (10%); or
 - (ii) payable direct to the salvage company by the Client.
- (e) provide adequate security for any Equipment left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that the Contractor arrange such security on the Client's behalf.

34.2 The Contractor shall:

- (a) be responsible for ensuring their employees, contractors and persons working under its direction or control shall:
 - (i) take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Equipment;

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- (ii) maintain daily maintenance and servicing of the Equipment in accordance with the Contractor's OEM pre-start checks: clean, maintain, lubricate and fuel the Equipment to the standard and level specified in the manual or as otherwise specified by the Contractor and record such checks in the log book provided;
 - (iii) be qualified and trained personnel who will operate the Equipment and that they possess current licences to operate the Equipment, vehicle orientation and familiarity;
 - (iv) wear suitable protective and high visibility clothing when working with on or around the Equipment;
 - (v) operate the Equipment to a standard of skill, knowledge and competence of an experience and professional operator of the assigned tasks in compliance with all relevant laws;
 - (vi) comply with all health, safety and environmental requirements of the Client and the Site in accordance with any occupational health and safety laws and the Environmental Protection Authority;
 - (vii) be fit for duty and not under the influence of drugs or alcohol and (where requested) provide evidence of the same. In the event that the Contractor's operator returns a positive test result, the Client shall reserve the right to remove the operator from the Site and terminate this Contract in accordance with clause 13.
- 34.3 The Contractor reserves the right not to enter the Site if the Contractor believes it unsafe, and the Client shall remain liable for the Charges payable until the issue is resolved.
- 34.4 Notwithstanding that the operator of the Equipment shall at all times remain an employee or representative of the Contractor and the operator shall operate the Equipment in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.
- 34.5 In the event the Client requires an employee of the Contractor to undertake a recognised safety course or medical examination during working hours, the Client will be liable to pay the hourly hire Charges for that period, notwithstanding that the Equipment is not being operated during such time. If any course is undertaken outside of the Hire Period then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate.
- 34.6 Should the operator be found to be unsatisfactory by the Client at any time after the commencement of the Services, the Client shall be entitled to seek a replacement operator, no charges will apply during the handover process.
- 34.7 Notwithstanding the above clause 34.6, if the replacement operator is deemed to be unsuitable or otherwise unavailable, the Client may elect to operate the Equipment using their own operators at the Dry Hire rate subject to clause 33.

35. Tyres and Undercarriage

- 35.1 Tyres on the Equipment will be supplied in a fair and reasonable condition. The Client will advise the Contractor (via email to accounts@tracklinkwa.com.au) immediately upon identification of an issue or defect.
- 35.2 The Client will be responsible for tyre, undercarriage (including any grouser plate, tracks, rollers and idlers) wear and track wear costs (including any replacement tyres or damage to tyres).
- 35.3 The Client shall adhere to any track tension and tyre pressure manufacturers' recommendations provided.
- 35.4 A tyre measurement report will be completed prior to mobilisation and upon completion of the Hire Period. All costs in the difference in wear shall be borne by the Client.

PART III - LABOUR HIRE

36. Services

- 36.1 The Contractor undertakes to:
- (a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Client's requirements;
 - (b) make the payment of all:
 - (i) amounts due to the Candidate under the terms of any relevant industrial instrument or contract; and
 - (ii) leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee.
 - (c) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law;
 - (d) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
 - (e) maintain Workers Compensation Insurance for all Candidates, except where state laws specify otherwise.
- 36.2 The Contractor's quotation shall specify the:
- (a) Services to be provided by each Candidate;
 - (b) job description of each Candidate;
 - (c) commencement and termination dates of the Services;
 - (d) location where Services shall be performed;
 - (e) Charges payable by the Client for the Services.
- 36.3 The Contractor must be advised by the Client of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Client accordingly.
- 36.4 The Client acknowledges and agrees that:
- (a) only lunch breaks shall be deducted from total hours charged by the Contractor to the Client;
 - (b) the Client's obligations to the Contractor for the supply of Services shall not cease until the Client has:
 - (i) paid the Contractor all amounts owing for the particular Services; and
 - (ii) met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.

37. Client's Responsibilities / Agreements

- 37.1 It is the responsibility of the Client to:
- (a) provide:
 - (i) supervision of Candidates to ensure that work is carried out to a satisfactory standard;

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- (ii) Candidates with appropriate information, supervision and training to enable them to work safely;
 - (iii) Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Client;
 - (iv) safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Occupational Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Client;
 - (v) where a Candidate may be required to 'stand down' because of adverse weather conditions a minimum 'stand down' payment of not less than four (4) hours per Candidate, unless an alternative minimum payment has been agreed between the Contractor and the Client in writing.
- 37.2 The Client agrees that:
- (a) they shall supply to the Contractor (on the day specified by the Contractor) a duly authorised timesheet to enable the Contractor to pay the Candidate when due;
 - (b) it will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for;
 - (c) they will immediately notify the Contractor of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate;
 - (d) it will immediately notify the Contractor of any injury sustained by the Candidate;
 - (e) any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Client agrees to immediately notify the Contractor if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services.
- 37.3 The Client acknowledges that:
- (a) they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees;
 - (b) the Contractor makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.
- 37.4 In no circumstances shall the Contractor be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify the Contractor against all such liability whether alleged or proved. The Client is to include all Candidates in the Client's own public liability insurance cover.
- 37.5 If any event arises which is likely to lead to any dispute or claim, the Client must notify the Contractor of the same within thirty (30) days of the event. If the Client shall fail to comply with this provision then all Services provided by the Contractor shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.