

1. DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS

Approved Credit Account means the credit facility provided by MINIQUIP whereby the Client has been authorised and approved by MINIQUIP to hire the Equipment on credit extended by MINIQUIP in accordance with the terms and conditions applying to the Credit Account.

Attachments means any accessories or attachments parts provided by MINIQUIP for use with the Equipment.

MINIQUIP means BUDGET MINIQUIP EXCAVATORS PTY LTD (ABN 29 055 804 414) trading as Miniquip Hire its successors and permitted assigns, employees and authorised agents.

Charges means any and all amounts payable by the Client to MINIQUIP in accordance with these terms and conditions.

Claim means any claim, action, proceeding or demand, however arising, whether by breach of contract, tort, negligence equity or otherwise, whether present, future, fixed or unascertained, actual or contingent.

Client means the person or entity (and where more than one of them each person(s) and/or entity(ies) jointly and severally), hiring the Equipment from MINIQUIP and bound these terms and conditions.

Credit means credit advanced by MINIQUIP to the Client for to be repaid by the Client at a future date that is at least thirty (30) days after the month in which the credit was granted.

Credit Terms and Conditions means the Credit Account Terms and Conditions set out in Schedule 2 attached to these terms and conditions which the Client agrees will apply to the hire of Equipment provided by MINIQUIP to the Client on Credit

Day means, in relation to Weekly Hire Period or Monthly Hire Period, the 24 hour period from 12:00am to 11:59pm. In relation to Daily Hire Period means between the hours of 7am to 5pm.

Equipment means any machinery, plant or equipment (and includes any Vehicle or Truck unless specifically excluded) hired by the Client from MINIQUIP, including all accessories and any Attachments used in connection with the Equipment provided by MINIQUIP in relation to the Client's hire of Equipment.

Fair Wear and Tear means any minor stone chip dents, scratches that may be polished out and not go through to the undercoat or minor upholstery wear or any other type of minimal wear as determined by MINIQUIP.

Guarantor means any Guarantor guaranteeing performance of the Client's obligations under these terms and conditions.

Hire Contract means the Contract between the Client and MINIQUIP specifying particulars of the Equipment hired including these terms and conditions as amended from time to time.

Hire Documents means the following documents containing the terms and conditions of the contract between the Client and MINIQUIP in the following order of precedence, as applicable:

- (a) The Hire Contract;
- (b) These terms and conditions;
- (c) Credit Account Application;
- (d) Any Personal Guarantee / Corporate Guarantee; and
- (e) any other document(s) required by or referred to by MINIQUIP as forming part of the Hire Documents from time to time.

Hire Fees means the fee for hire of the Equipment calculated by reference to the Hire Period and the applicable Hire Rates and in accordance with these terms and conditions.

Hire Period means the period the Equipment is hired by the Client as set out in the Hire Contract and any extension or variation to that period in accordance with these terms and conditions.

Hire Rates means the hourly rate payable for hire of the Equipment calculated in accordance with these terms and conditions.

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

Light Vehicle means a utility vehicle or other road vehicle hired or otherwise made available by MINIQUIP for use by the Client in connection with the Client's hire of Equipment.

- Loss** means:
- (a) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
 - (b) liability;
 - (c) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
 - (d) cost or expense including legal costs on a full indemnity basis;

Major Breakdown means failure of a major component of the Equipment, for example, engine, hydraulic pumps, drive motors, differentials etc.

MINIQUIP's Authorised Representative means the Managing Director of Miniquip.

MINIQUIP's Depot means MINIQUIP's address as specified on the Hire Contract.

Security Bond means any additional amount or required by MINIQUIP from the Client as security for safe return of the Equipment or to otherwise secure the Client's obligations under these terms and conditions in accordance with clause 9.12.

Services means the supply of Equipment for hire by the Client and related services supplied by MINIQUIP.

Single Shift means a daily Hire Period of 8 hours, unless otherwise determined by MINIQUIP.

Truck means a tipper truck, or other similar type of truck hired by the Client from MINIQUIP subject to these terms and conditions but excludes a Light Vehicle.

Truck Hire Terms means the additional terms and conditions applying to the hire of Trucks as set out in Schedule 1 attached to these terms and conditions.

Weed and Seed Cleaning means a higher standard of cleaning required for certain Equipment for the purpose of complying with an industry standard.

2. AGREEMENT TO HIRE EQUIPMENT & ENTER INTO HIRE CONTRACT

- 2.1 By submitting a Hire Request to MINIQUIP the Client agrees to be bound by these terms and conditions and agrees that these terms and conditions will apply to all Equipment hired by the Client on and from the first date the Client submits a Hire Request to MINIQUIP unless otherwise agreed by MINIQUIP in writing.
- 2.2 The Client agrees that these terms and conditions override any other terms and conditions provided by the Client, whether before or after the Client is taken to have accepted to be bound by these terms and conditions in accordance with clause 2.1.

3. HIRING OF EQUIPMENT

- 3.1 Hire of Equipment is to be done by the Client contacting MINIQUIP's Booking Department and submitting a Hire Request to hire Equipment from MINIQUIP.
- 3.2 A Hire Request should specify:
- (a) the type and quantity of Equipment the Client wishes to hire;
 - (b) the Site conditions that the Client expects the Equipment to be subject to i.e.: sand, clay, limestone, rock, demolition, confined space, caustic, shallow water etc. (disclosing site conditions will help MINIQUIP to determine whether it will elect to supply Services or decline supply for the job task);
 - (c) details of the scope of the work and the tasks the client intends to use the Equipment;
 - (d) the first and last Day the Equipment will be required for use by the Client;
 - (e) if the Client requires the Equipment to be delivered to and collected from the Client, or both, on behalf of the Client, including details of the location for delivery and collection;
 - (f) the location or site the Client will be using the Equipment; and
 - (g) if the Client requires MINIQUIP to conduct routine maintenance and servicing, and/or Ground Engaging Tools (GET) during the Hire Period.
- 3.3 The minimum period the Equipment (including Trucks) must be hired is 8 hours or one Day (from 7am to 5pm) at the Daily Hire Rate. If the Equipment is returned after 5pm on the last Day of the Hire Period, the Client will be liable for an additional Day's hire at the Daily Hire Rate.
- 3.4 If MINIQUIP is able to satisfy a Hire Request MINIQUIP will issue confirmation to the Client. Confirmation will include the applicable Hire Rates, an estimate of the Hire Fees and any other Charges payable in relation to a Hire Request. The Client agrees that the actual Charges payable may vary as a result of these terms and conditions.
- 3.5 MINIQUIP reserves the right to change the Hire Rates or amend any confirmation in the event of any change to the intended use of the Equipment or location the Equipment will be used. .
- 3.6 If the Equipment hired includes Truck(s), then the Client acknowledges the "Truck Hire Terms" as set out in Schedule 1 to these terms and conditions will apply in relation to the Truck and will prevail to the extent of any inconsistency.
- 3.7 A weed and seed Equipment Hire Request will require the hire of the Equipment for a period prior to the Client receiving custody of the Equipment in order to conduct Weed and Seed Cleaning.
- 3.8 If the Client intends to use the Equipment in any place where the Equipment must be registered, including a restricted concession code 401 type license, then it is the Client's sole responsibility to ensure that this requirement is communicated to MINIQUIP with sufficient notice prior to the commencement of the Hire Period to facilitate registrations as required and legally available.

4. CHARGES

- 4.1 In consideration for MINIQUIP hiring the Equipment to the Client the Client agrees to pay:
- (a) the Hire Fees calculated in accordance with these terms and conditions;
 - (b) all Charges; and
 - (c) any other amounts payable in accordance with these terms and conditions.

5. HIRE FEES, HIRE PERIODS & HIRE RATES

- 5.1 The Hire Rate will vary depending on the relevant Hire Period for the Equipment. Each Hire Period includes a maximum amount of hours the Equipment can be operated by the Client, before the Client incurs additional fees.
- 5.2 The maximum number of hours the Equipment can be operational for during each Hire Period as set out in the following table, unless otherwise determined by MINIQUIP.

Hire Period (number of Days Equipment is hired)	Hire Rate	Maximum amount of hours Equipment may be operated during the Hire Period before being subject to additional charges
1 – 4 Days	Daily Hire	8 hours per Day (7am to 5pm)
5 – 7 Days / up to 27 Days	Weekly Hire	40 hours over 5 consecutive Days
28 Days and over	Monthly Hire	160 hours over 20 consecutive Days

- 5.3 If the Equipment is operated for more than the maximum hours allowed for each Hire Rate as set out above, the Client will be liable to pay an additional fee of the Daily Hire Rate (per hour and pro rata) for the time the Equipment was operated in excess of the maximum hours allowed.
- 5.4 The Client will incur Hire Fees as soon as the Client takes possession, custody or control of the Equipment; or, if the Equipment is being delivered to the Client, immediately upon the Equipment leaving MINIQUIP's depot.

- 5.5 The Client's liability for Hire Fees includes:
- (a) the whole period the Equipment is in the Client's custody, possession or control, until the Equipment has been returned to MINIQUIP's depot and the Client's obligations as set out in clause 13 have been satisfied.
 - (b) any period that the Equipment is unable to be hired out by MINIQUIP, due to it requiring repairs as a result of damage sustained while in the Client's custody, possession or control.

- 5.6 MINIQUIP reserves the right to vary the Hire Rates at any time. The Client will be given no less than seven (7) days written notice of MINIQUIP's intention to vary the Hire Rates including the date on which they come into effect.

- 5.7 If the Client wishes to extend the Hire Period it must notify MINIQUIP as soon as possible and in any event before expiry of the Hire Period.

- 5.8 If the initial Hire Period is thirty (30) days or more, with Monthly Hire or quoted Hire Rates payable (which are discounted from the Daily Hire and Weekly Hire Rates), and the Client returns the Equipment prior to expiry of the Hire Period, a surcharge equal to 15% of the Daily Hire Rate of the Equipment may be charged for each Day after the Equipment is returned until the last Day of the initial Hire Period, at MINIQUIP's discretion.

- 5.9 The Client must return the Equipment to MINIQUIP upon expiry of the Hire Period, unless MINIQUIP has agreed to extend the Hire Period and any additional Hire Fees have been paid.

- 5.10 If the Hire Period is less than ninety (90) days then the parties agree that this Hire Contract will not constitute a PPS Lease for the Purposes of the Personal Properties Securities Act 2009 (Cth) and does not give rise to a security interest thereunder.

- 5.11 The Client acknowledges and agrees that MINIQUIP has fitted GPS tracking devices in the Equipment which is used to monitor and record use of the Equipment during the Hire Period for the purpose of determining additional Charges for hire payable by the Client.

- 5.12 In order to hire weed and seed Equipment, the Client must hire it for a minimum period of three (3) Days.

6. ADDITIONAL CHARGES

- 6.1 The Client must pay any Charges to MINIQUIP in accordance with these terms and conditions which may include at MINIQUIP's discretion:
- (a) in relation to weed and seed Equipment, additional Charges for:
 - (i) Weed and Seed Cleaning;
 - (ii) the preparation of the Equipment; and/or
 - (iii) MINIQUIP's completion of the Client's or a third party's documentation, as requested by the Client;
 - (b) costs for delivery or collection of the Equipment in accordance with clause 10;
 - (c) costs for maintenance and servicing of the Equipment in accordance with clause 14;
 - (d) costs incurred by MINIQUIP as a result of the Client's failure to comply with its obligations under clause 12 including;
 - (i) the cost of fuel supplied by MINIQUIP, charged at cost to MINIQUIP plus a margin per litre;
 - (ii) cleaning costs per hour (charged in 15 minute intervals) to be determined by MINIQUIP from time to time acting reasonably (or the actual costs of any third party cleaning service);
 - (iii) the cost of any oils, lubricants or other consumables required to bring the Equipment's levels up to full; and
 - (iv) the costs incurred or associated with repairing any damage or conducting any routine maintenance or servicing or replacement of GET.
 - (e) a markup on any goods or services supplied by MINIQUIP, which shall be a percentage (%) of the cost of the Good(s) or Service(s) to MINIQUIP at MINIQUIP's discretion;
 - (f) any surcharges, levies, excises or duties as a result of increases to the price of goods and/or services to be provided by MINIQUIP or which MINIQUIP may become liable in relation to the hire of the Equipment, and which may be temporary or permanent;
 - (g) a Charge for non-Fair Wear and Tear, which considers the Equipment's age, milage, hours and overall condition, from the mechanics, hydraulics, electrics, tracks, track pads, tires, wear parts, body works, and upholstery. Fair Wear and Tear is the degree of deterioration judged to be reasonable at the end of a hire contract period as determined by MINIQUIP. Lack of daily pre-start inspections, lubrication, attention to preventative measures, misuse and/or neglect, are the main reasons why Equipment suffers from excessive wear and tear. The Client can expect to incur refurbishment charges from MINIQUIP if the Equipment is returned with a degree of wear and tear that is in excess of Fair Wear and Tear, at the end of a hire contract period; and
 - (h) any other amounts incurred by MINIQUIP arising from the Client's hire of the Equipment.

- 6.2 Unless the Client has an Approved Credit Account, any Charges payable by the Client (other than Hire Fees) in accordance with these terms and conditions are due and payable by the Client to MINIQUIP on demand without deduction or set-off whatsoever.

- 6.3 MINIQUIP reserves the right to increase or vary the amount of any markup, margin, surcharge or levy recoverable from the Client in accordance with this clause, upon seven (7) days' notice in writing to the Client of any change.

7. STAND DOWNS

- 7.1 Stand downs are generally available in the event Equipment cannot be used on the Day due to inclement weather (**Stand Down**) and the decision to accept a Stand Down is at the sole discretion of MINIQUIP. MINIQUIP may consider accepting additional Stand Down Days, on a case-by-case basis, upon application by the Client.

- 7.2 Stand Downs must be notified before 8.00 am on the Day of the proposed Stand Down. There will be no charge for twenty-four (24) hours Stand Down. The second and subsequent Days of any Stand Down will be charged at fifty percent (50%) of the Hire Rate. Except for in the case of extreme weather conditions where MINIQUIP may at its discretion allow additional Days of Stand Down at no charge.

- 7.3 Stand Downs are not available in relation to the weed and seed Equipment where the Client is required to hire this Equipment for a minimum period of three (3) days in accordance with clause 5.12.

8. GST

- 8.1 Any amount stated as payable under these terms and conditions is stated exclusive of GST unless otherwise specified.

- 8.2 The Client acknowledges the amounts stated in these terms and conditions and any Hire Documents are to be increased to reflect any GST, or other taxes and/or duties which may be applicable (which are to be paid by the Client) unless otherwise stated.

9. PAYMENT

- 9.1 Unless and until the Client has received written confirmation from MINIQUIP's Authorised Representative confirming that the client has an Approved Credit Account, the Client must make payment of all Charges and any other amounts payable under these terms and conditions in accordance with this clause 9.

- 9.2
- Upon the Client having an Approved Credit Account, or if MINIQUIP agrees that the Client can hire the Equipment on Credit, then the Client agrees the provision of Credit is subject to the Client complying with any additional Credit Account Terms and Conditions including as set out in Schedule 3.
- 9.3
- Payment of any amount by the Client to MINIQUIP before commencement of any Hire Period is held by MINIQUIP as payment on account for payment of any amounts payable by the Client to MINIQUIP pursuant to these terms and conditions and as security for the return of the Equipment.
- 9.4
- MINIQUIP will be entitled to apply any payments from the Client towards any amounts payable by the Client pursuant to these terms and conditions, any balance remaining upon expiry or termination of the Hire Contract will be refunded to the Client.
- 9.5
- Unless otherwise agreed with MINIQUIP in writing, the Client must pay the Hire Fees set out in the Hire Contract in advance of the Equipment being made available to the Client. The Hire Fees may be paid by the Client providing valid credit or debit card details to MINIQUIP and MINIQUIP successfully charging the credit or debit card account, or by receiving payment in cleared funds via electronic funds transfer to MINIQUIP's nominated bank account.
- 9.6
- By supplying credit card details to MINIQUIP the Client:

(a)authorises MINIQUIP to charge the credit or debit card with the whole amount of any Charges due and payable by the Client from time to time in accordance with these terms and conditions;

(b)authorises MINIQUIP to charge and hold the whole amount of any Security Bond required in accordance with clause 9.12;

(c)warrants and represents to MINIQUIP that the Client is the named holder of the account attached to the credit or debit card, or is otherwise authorised by the named holder(s) of the relevant account to provide the credit or debit card details to MINIQUIP for payment of the Charges; and

(d)warrants and represents to MINIQUIP that MINIQUIP is authorised to deduct the Charges payable by the Client from time to time in accordance with these terms and conditions, such authority will continue after termination of the Hire Contract.
- 9.7
- If no credit card is provided the Client must make payment of all Charges as directed by MINIQUIP from time to time.
- 9.8
- The Client is not entitled to set off against or deduct from any Charges any sums owed or claimed to be owed by MINIQUIP to the Client.
- 9.9
- Invoices issued by MINIQUIP must be paid in full and strictly by the due date for payment stated on the invoice, or if no date stated within thirty (30) days of the date of the Invoice.
- 9.10
- The Client is not relieved of the obligation to make payment of any amount due and payable in accordance with these terms and conditions, notwithstanding that the Client has raised a dispute in relation to the Charges.
- 9.11
- MINIQUIP reserves the right to charge interest on any Charges due and not paid, at the rate of 2.5% per annum calculated daily, and compounded monthly on the overdue balance up to the date that payment in cleared funds is received.
- 9.12
- MINIQUIP may in its sole discretion, require that the Client provide a Security Bond which may be treated as Security in accordance with clause 27 prior to the Client taking possession of any Equipment.
- 9.13
- The requirement for Security Bond does not limit MINIQUIP's entitlement to require additional Security in accordance with these terms and conditions.
10.
- DELIVERY & COLLECTION OF EQUIPMENT**
- 10.1
- If the Client has requested that Equipment be delivered to, or collected from the Client, the Client must:

(a)specify the location for delivery and collection of the Equipment;

(b)provide a flat, level unloading and loading area for the Equipment to be unloaded or loaded by MINIQUIP;

(c)be present and available at the time of and delivery and collection of the Equipment including during the loading and unloading and any inspections of the Equipment;

(d)ensure that at the time of collection, the Equipment is neatly organised and together including any Attachments and located within 30 metres of the loading area so that MINIQUIP can clearly identify the Equipment.
- 10.2
- MINIQUIP may refuse to deliver or collect the Equipment if any of the requirements in clause 10.1 are not met, or for any reason if it is not satisfied with condition of the delivery or collection location.
- 10.3
- Delivery or collection of Equipment is subject to the discretion of MINIQUIP a case by case basis. The Client agrees that additional costs will be payable for delivery or collection of Equipment, including (but not limited to, fuel costs, transportation costs, labour costs, etc.
11.
- INSPECTION OF EQUIPMENT**
- 11.1
- The Client must inspect the Equipment and notify MINIQUIP of any alleged defect, shortage in quantity, damage or failure to comply with the Hire Request, or description of the Equipment within four (4) hours of the earlier of: the Equipment being unloaded at the Client's nominated delivery location; or the Client taking custody, possession or control of the Equipment from MINIQUIP's depot.
- 11.2
- If the Client fails to give notice in accordance with clause 11.1, the Client is deemed to have waived any right or entitlement to make any Claim against MINIQUIP under this clause, and the Equipment will deemed free from defects and in the condition described in the Hire Contract, immediately prior to commencement of the Hire Period.
- 11.3
- If the Client gives notice under clause 11.1, MINIQUIP must be given an opportunity to inspect the Equipment within a reasonable time following receipt of the notice.
12.
- RETURN OF EQUIPMENT UPON EXPIRY OF HIRE PERIOD**
- 12.1
- The Client must return the Equipment to MINIQUIP's depot by 5pm on the last Day of the Hire Period stated in the Hire Contract or otherwise extended in accordance with these terms and conditions.
- 12.2
- The Client will be liable for any costs incurred by MINIQUIP for towing or salvage of Equipment which is not returned to MINIQUIP's depot. The Client will continue to incur Hire Fees until such time that the Equipment is returned to MINIQUIP in accordance with clause 12.4.
- 12.3
- If MINIQUIP is collecting the Equipment, the Equipment will be deemed returned subject to the Client's compliance with any requirements under clause 10.
- 12.4
- The Client must ensure the Equipment is returned to MINIQUIP:

(a)with a full tank of fuel;

(b)with all oils, lubricants and other consumables topped up to the same level as at the commencement of the Hire Period;

(c)in clean condition, free of any and all Client or third party decals, grout, cement, red dust, salt, bitumen, mud, clay, soil, liquid, solid or contaminated waste of any nature, vacuumed fluids, graffiti etc.;

(d)otherwise in good working order, free of damage and in the same condition (fair wear and tear excluded) as it was at the commencement of the Hire Period.
- 12.5
- MINIQUIP will inspect the Equipment upon its return by the Client. The Client may continue to incur Hire Fees up until the inspection has been completed and the Equipment accepted as by MINIQUIP.
- 12.6
- If the Client fails to return the Equipment by or before expiry of the Hire Period, or otherwise fails to comply with the obligations under clause 12.4, the Client will be liable to pay Hire Fees per hour (pro rata) until the Client has satisfied the obligations set out in clause 12.4, or MINIQUIP has caused the Client to comply its obligations.
- 12.7
- The Client agrees to indemnify and keep indemnified MINIQUIP for all costs incurred by MINIQUIP as a result of the Client's non-performance of any of the obligations under this clause 12.4, and will be liable to MINIQUIP for any costs incurred by MINIQUIP in performing the Client's obligations as set out in clause 12.4 as a debt due to MINIQUIP payable on demand.
13.
- CLIENT'S OBLIGATIONS DURING THE HIRE PERIOD**
- 13.1
- Without limiting the Client's general obligation to take care of the Equipment, as soon as the takes custody, possession or control of the Equipment and for the whole Hire Period, or such other period that the Equipment remains in the Client's custody, possession or control, the Client must:

(a)take all reasonable care when using the Equipment;

(b)Not remove the Equipment from the state of Western Australia or use or relocate the Equipment outside a 200km radius of Perth metropolitan area without the prior written consent of MINIQUIP;

(c)not use or permit any person to use the Equipment in any abnormal or unusual purpose or in a manner in which it was not intended to be used by its manufacturer, or contrary to any direction from MINIQUIP;

(d)only use the Attachments which have been supplied by MINIQUIP with the Equipment;

(e)monitor site conditions including asphalt surface temperatures to ensure Equipment tracks, tyres & or blades do not damage asphalt surfaces;

(f)take all necessary precautions to protect the Equipment against theft, burglary, vandalism and any other foreseeable risks of damage or harm including inclement weather, fire, tempest, storm or other natural disaster;

(g)when the Equipment is not in use, keep the Equipment in a safe and secure location behind locked gate or entryway, which is not accessible by the general public in a location not the subject of extreme or abnormal acidity, or environmental conditions which could damage the Equipment;

- (h)ensure that any plates or other markings MINIQUIP has affixed to the Equipment that identifies the Equipment as the property of MINIQUIP are not removed or obscured and ensure that the Equipment is stored in a manner that it is readily distinguishable from other Equipment held by the Client;
- (i)comply with all Applicable Laws, when using the Equipment, or undertaking any repairs or maintenance to the Equipment, subject to these terms and conditions;
- (j)conduct inspections of the Equipment (no less than daily) and comply with the provisions of clause 15.7 relating to maintenance of the Equipment;
- (k)replace and repair any damage to the Equipment's tyres or tracks including punctures and stakes;
- (l)ensure that only properly qualified persons that have the appropriate licenses, knowledge and experience about the Equipment operate or work on the Equipment;
- (m)ensure that if the Equipment is required to be registered with any Government Agency as a condition of being used on any road, verge or other area, then it is properly registered and is only used in accordance with the requirements of the registration;
- (n)take reasonable care to locate or otherwise be completely aware of all necessary structures and obstructions prior to commencing any excavation, earthworks, demolition or otherwise using the Equipment, and take all precautions to avoid any damage to any surrounding property, foundations, retaining walls, cables, utility services etc;
- (o)immediately notify MINIQUIP in the event that any use of the Equipment results in any damage or destruction to any third party property, or affects any utility services;
- (p)not and must not permit any other person to interfere with GPS monitoring devices fitted to the Equipment, without MINIQUIP's prior consent in writing, unless in the case of an absolute emergency and such consent cannot reasonably be obtained;
- (q)not and must not permit any other person to remove or interfere with, or cause damage to ROPS structures or canopies without the express written consent of MINIQUIP obtained first on each occasion; and
- (r)not assign, sell, mortgage, sub-lease, lend, part with possession custody or control of the Equipment, or otherwise deal with the whole or part of the Equipment and any Attachments without the prior consent of MINIQUIP.
- 13.2
- Without limiting the Client's obligations under these terms and conditions, the Client must at its expense repair or replace any part or the whole of the Equipment which may be damaged during the Hire Period (fair wear and tear excluded) with new replacement parts of equal or greater value (to MINIQUIP's satisfaction)
- 13.3
- Without prejudice to any other rights under these terms and conditions at law, or in equity, the Client agrees to indemnify and keep MINIQUIP indemnified against any Loss incurred by MINIQUIP arising from the Client's failure to comply with its obligations under this clause.
14.
- ROUTINE MAINTENANCE & SERVICING OF EQUIPMENT**
- 14.1
- The Client undertakes to ensure that the Equipment and Attachments are subject to routine maintenance and servicing by the Client at the Client's cost which shall include (**Routine Maintenance and Servicing**):

(a)Inspections of the Equipment (at least once a Day) to identify any visible damage or excessive wear and tear of the Equipment;

(b)Servicing checks (at least once a Day) to check and attend to:

(i)has proper levels of fuel, oil, coolants, lubrication etc;

(ii)there are no obstructions or blockages to any filter components (e.g. air filter, fuel filter etc); and

(iii)is otherwise in good working condition prior to any use or operation.
- 14.2
- The Client must at the Client's cost as part of any Routine Maintenance and Servicing:

(a)replace any part of the Equipment or Attachments which become worn out or damaged (e.g. teeth, cutting edges, rock breaker tools etc) with new parts of the same brand and quality as those which were supplied with the Equipment by MINIQUIP; and

(b)otherwise ensure that the Equipment is in good working condition prior to being used or operated.
- 14.3
- All Trucks and Equipment will be returned by the Client to a MINIQUIP depot for scheduled OEM servicing. MINIQUIP may at its discretion, with or without the Client's request, attend sites to conduct servicing on Equipment (excluding Trucks) within fifty kilometres (50km) of a MINIQUIP depot without additional travel charges.
15.
- MAJOR BREAKDOWNS, SERVICING AND REPAIRS**
- 15.1
- If the Equipment suffers Major Breakdown the Client must:

(a)immediately cease using the Equipment and must give MINIQUIP written notice of the breakdown as soon as possible setting out details of the breakdown and any additional information that MINIQUIP could be expected to require;

(b)move the Equipment to a safe and secure location away from any risks of damage or harm, provided it is safe to do so without causing further damage to the Equipment;

(c)not attempt to repair the Equipment without MINIQUIP's prior consent; and

(d)follow all directions from MINIQUIP, in relation to the Equipment.
- 15.2
- MINIQUIP will as soon as reasonably practicable after receiving notice of a Major Breakdown attend the location of the Equipment to diagnose and repair the Equipment. If the Equipment cannot be repaired within a reasonable time MINIQUIP will arrange for replacement Equipment to be provided to the Client.
- 15.3
- If the Equipment suffers a breakdown that is not a Major Breakdown, or the breakdown is due to error of the Client (including its authorised agents) resulting from matters including incorrect refuelling, flat battery, lost keys, keys locked in vehicle, tyre & track changing or refitting, repairs to tip truck tail gates, then the Client will be liable for all costs incurred by MINIQUIP in to the breakdown including: towing, travel, parts, labour costs etc to return the Equipment to the condition it was at the commencement of the Hire Period.
- 15.4
- In the event of a breakdown or failure of the Equipment, which in the opinion of MINIQUIP is the result of the effluxion of time or fair wear and tear, MINIQUIP will at its cost restore the Equipment to working order as quickly as reasonably possible or provide replacement Equipment at MINIQUIP's discretion.
- 15.5
- The Client acknowledges and agrees that MINIQUIP will not be liable to the Client for any Loss or Claim as a result of any Equipment being unavailable during a Hire Period due to a breakdown, and that the Client's sole remedy is for MINIQUIP to provide replacement Equipment for the Client's use.
- 15.6
- If MINIQUIP is required to send any personnel to a location greater than 200km from MINIQUIP's depot, or otherwise outside the Perth Metropolitan Area, in relation to a Major Breakdown, or to conduct any repairs to the Equipment, the Client will be liable to reimburse MINIQUIP for any costs incurred by MINIQUIP including:

(a)Labour costs (per hour) for personnel required to assess the Equipment and conduct repairs, maintenance or servicing as required, including for any time spent waiting or travelling;

(b)Transportation costs (e.g. air/bus/train fares, vehicle hire, fuel costs) accommodation costs including meal allowances;

(c)All costs incurred as part of the maintenance, servicing and repair of the Equipment.
- 15.7
- If the Equipment is being used is more than 200km MINIQUIP's depot, or in a regional or remote location, at MINIQUIP's discretion, the Client will be responsible for conducting all Routine Maintenance and Servicing of the Equipment, and any repairs (excluding in the case of a Major Breakdown) at the Client's cost.
- 15.8
- If the Equipment is used by the Client at a location which is less than 200km of MINIQUIP's depot, MINIQUIP will be responsible for conducting scheduled servicing of the Equipment. Any repairs (excluding in the case of a Major Breakdown) will be at the Client's cost.
- 15.9
- The Client agrees to indemnify and keep MINIQUIP indemnified against all costs incurred by MINIQUIP in relation to any Routine Maintenance and Servicing, general maintenance, servicing or repairs to the Equipment as required under clause 14 and 15. This clause survives termination of the Hire Contract and completion of any period of hire of the Equipment.
16.
- INSURANCE**
- 16.1
- The Client acknowledges that unless specifically agreed to in writing by MINIQUIP or by supplying an independent insurance certificate for hired in plant that it is bound by the provisions of the insurance cover provided by MINIQUIP and its insurers and the Client will be liable for such excesses where applicable, Damages not subject to an insurance claim are the Clients responsibility.
- 16.2
- A standard excess of: twenty-five thousand dollars (\$25,000) or ten percent (10%) of the total sum insured, whichever is the higher amount of the two applies to all equipment, a greater amount of twenty-five thousand dollars (\$25,000) or twenty percent (20%) applies to all motor vehicles and trucks
- 16.3
- Subject to clause 16.8 an Excess Reduction Fee (ERF) charge of ten percent (10%) will be applied to hire of all Equipment.
- 16.4
- The Client shall not be required to pay the ERF if the Client produces a certificate of currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Vehicle/Truck or Equipment during the hire period for an amount not less than the full new replacement value of the Vehicle/Truck or Equipment. The COC must be provided to MINIQUIP prior to the supply of Vehicle/Truck or Equipment by MINIQUIP.
- 16.5
- The ERF is not insurance but is an agreement by MINIQUIP to reduce your Insurance Excess Fee in the incidence of loss, theft, or damage, to MINIQUIP Vehicles/Truck or Equipment.

- 16.6
- Where the Client has paid the ERF, MINIQUIP will waive MINIQUIP’s right to claim against you the full insurance excess fee of the higher amount for loss, theft or damage to the Vehicle/Truck or Equipment if:
- (a)

the Client has promptly reported the incident to the Police and Provided MINIQUIP with a written Police report;
- (b)

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

the loss, theft or damage does not fall into one or more of the circumstances in clause 16.8; and
- (d)

the Client has paid to MINIQUIP the ERF.
- 16.7
- The ERF for each item of Equipment is the amount equal to:
- (a)

five thousand dollars (\$5,000) or (if the replacement cost of the Equipment is less than five thousand, dollars (\$5,000) the replacement cost of the Equipment;
- (b)

the excess is subject to increase where the Vehicle/Truck or Equipment is more than a one hundred (100km) from MINIQUIP depot or if in the instance of a tip truck when the hoist has been engaged or the truck is tipping; and
- (c)

whichever is the greater.
- 16.8
- Even if the Client has paid the ERF, MINIQUIP shall not waive MINIQUIP’s rights to claim against the Client for loss, theft or damage to the Vehicle/Truck or Equipment and the ERF shall not apply if the loss, theft or damage:
- (a)

has arisen as a result of the Client breaching a clause of this hire agreement;
- (b)

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

has arisen as a result of the Client’s use of the Vehicle/Truck or Equipment in violation of any law(s);
- (d)

has been caused by the Client’s failure to use the Vehicle/Truck or Equipment for its intended purpose or in accordance with MINIQUIP’s instructions or the Manufacturer’s instructions;
- (e)

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

has been caused by a lack of lubrication or a failure to service or properly maintain the Vehicle/Truck or Equipment
- (g)

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

has been caused by the overloading of the Vehicle or Equipment or any components thereof;
- (i)

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

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

is caused by vandalism;
- (l)

is to tyres, tubes, or glass;
- (m)

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

is animal & livestock related damage.

17. **DEFAULT**

- 17.1
- Any failure or delay by MINIQUIP at the commencement of the Hire Period to deliver the Equipment to the Client or to otherwise make the Equipment available to the Client does not entitle the Client to treat the Hire Contract as repudiated.
- 17.2
- The Client will be in default of these terms and conditions if the Client:
- (a)

fails to make payment of any amounts due and payable within seven (7) days of the due date for payment or within seven (7) days after receiving demand from MINIQUIP for payment;
- (b)

has exceeded any approved credit limit on any Approved Credit Account provided by MINIQUIP or is otherwise in breach of the terms of any Approved Credit Account;
- (c)

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)

a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
- (e)

is otherwise in breach of any of its obligations under these terms and conditions.

18. **CONSEQUENCES OF DEFAULT**

- 18.1
- If the Client is in default of in accordance with clause 17 above, such default being capable of remedy, MINIQUIP may at its discretion issue a notice to the Client (**Default Notice**) setting out:
- (a)

the nature of the Default(s);
- (b)

what must be done to remedy the Default(s); and
- (c)

the time by which the Default must be remedied
- 18.2
- If the Client has failed to comply with a Default Notice; or the default is incapable of remedy then MINIQUIP may, without further notice to the Client and without prejudice to any other rights or remedies available to MINIQUIP under these terms and conditions, at law or in equity:
- (a)

terminate the Hire Contract with immediate effect;
- (b)

cancel any Approved Credit Account;
- (c)

take steps to immediately repossess the Equipment as per clause 19;
- (d)

suspend or terminate further hire of Equipment to the Client, and cancel all or any part of any hire by the Client which remains unperformed; and
- (e)

demand immediate payment of any Charges due and payable by the Client whether or not they are due and payable as at the date of the default as a debt due by the Client to MINIQUIP.
- 18.3
- The Client acknowledges and agrees that MINIQUIP will not be liable to the Client for any Claim, or Loss suffered by the Client arising from MINIQUIP exercising its rights under this clause.
- 18.4
- The Client indemnifies, keeps indemnified and holds harmless MINIQUIP against any Claim or Loss arising as a result of MINIQUIP’s exercise of its rights under these terms and conditions, at law or in equity.
- 18.5
- Clauses 18.3 and 18.4 survive termination of this Agreement.

19. **REPOSSESSION OF THE EQUIPMENT**

- 19.1
- The Client hereby authorises MINIQUIP to enter onto any land and into any premises or property owned or under the control of the Client (or as an invitee of the Client where the land, premises or property is not owned or under the control of the Client) where the Equipment may be located or stored for the purposes of repossessing the Equipment if:
- (a)

Any amounts due and payable have not been paid the Client has failed to comply with a demand for payment by MINIQUIP within 24 hours of written demand being issued;
- (b)

the Client fails to return the Equipment to MINIQUIP within 48 hours of expiry of the Hire Period without prior agreement with MINIQUIP to extend the Hire Period;
- (c)

MINIQUIP reasonable opinion the Client is not complying with its obligations under these terms and conditions such that the Equipment is being damaged, or is likely to suffer damage; or
- (d)

In MINIQUIP’s reasonable opinion it necessary to preserve or protect the Equipment or preserve MINIQUIP’s rights under these terms and conditions.
- 19.2
- In addition to any other Charges which might be payable at the time MINIQUIP repossesses the Equipment, MINIQUIP reserves the right to recover from the Client all costs and expenses incurred by MINIQUIP arising out of the repossession of the Equipment, including but not limited to the costs of transporting such Equipment from the location where it was housed at the time of repossession.
- 19.3
- MINIQUIP may but is not obliged to give at least 24 hours’ notice to the Client of the time and date in which it intends to enter onto any land or premises owned, occupied or used by the Client for the purposes of repossessing the Equipment.
20. **TERMINATION BY THE CLIENT**
- 20.1
- The Client may terminate hire of the Equipment anytime, by notice in writing to MINIQUIP during usual office hours.
- 20.2
- If the Client terminates hire of the Equipment the Client agrees that it will still be liable to pay Hire Charges until the Equipment has been returned to MINIQUIP’s depot and the Client has complied with its obligations under clause 12.
21. **NO WARRANTY OR REPRESENTATION**
- 21.1
- MINIQUIP makes no warranty or representation that the Equipment is of any particular condition or quality, has any particular class of registration; or that the Equipment is fit for any particular purpose, including the purpose for which it may have been hired. It is the Client’s responsibility to request the appropriate Equipment.
- 21.2
- To the maximum extent permitted by law, any express or implied representations or warranties as to the condition or suitability of the Equipment, or the Equipment generally are hereby excluded. It is the Client’s responsibility to request the appropriate Equipment.

22. **CLIENT’S WARRANTIES & REPRESENTATIONS**

- 22.1
- The Client warrants and represents to MINIQUIP that:
- (a)

it has made its own enquiries with respect to the suitability of the Equipment, including any registrations the Equipment may be required to have if the Client intends the Equipment be used on public roads or thoroughfares.
- (b)

it has relied on its own skill and judgment in determining the suitability of the Equipment having regard to the Client’s needs.
- it will not permit any person to operate the Equipment unless they possess the appropriate licenses or qualifications as required by law to operate the relevant item of Equipment. The Client warrants to MINIQUIP that all persons who will operate the Equipment will hold the appropriate licenses and be authorised to operate the Equipment. The Client must provide information as reasonably required by MINIQUIP to verify the validity of any license or qualification of any person who has or will operate any Equipment.

23. **CLIENT DISCLAIMER**

- 23.1
- The Client hereby disclaims any right to rescind, or cancel the Hire Contract with MINIQUIP or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by MINIQUIP.

24. **LIABILITY**

- 24.1
- MINIQUIP will not be held liable for any Loss (including Consequential Loss) arising from or in connection with the Client’s hire of the Equipment or these terms and conditions. If for any reason MINIQUIP is found liable, then any liability will be limited to the value of the Charges.
- 24.2
- The Client is not entitled to any damages or compensation from MINIQUIP in relation to any Claim or Loss by reason of late delivery or breakdown of the Equipment. The repair or replacement of the Equipment is the sole remedy available to the Client for any breakdown of the Equipment, subject to any obligations imposed by law which cannot be excluded.
- 24.3
- MINIQUIP takes no responsibility for any goods transported by the Client using the Equipment and any goods, materials or items that are transported by the Client remain the sole responsibility of the Client.
- 24.4
- Nothing in these terms and conditions affects the duty of the Client to mitigate damages after a breach of these terms and conditions by the Client.
- 24.5
- The Client will be liable in respect of all claims whether for workers compensation or third party liability or otherwise, and the Client shall comply with all statutes, regulations and industrial awards relating to the labour and effect all such insurances as may be necessary.
- 24.6
- Further to any other rights or remedies MINIQUIP may have pursuant to these terms and conditions, if the Client has paid an amount to MINIQUIP which is subsequently reversed, dishonoured or recovered by any creditor of the Client, the Client will remain liable to MINIQUIP for the amount of the reversed transaction, and must reimburse MINIQUIP for any additional costs or expenses incurred by MINIQUIP arising from the reversed transaction.

25. **INDEMNITY**

- 25.1
- The Client indemnifies, keeps indemnified and holds harmless MINIQUIP against any Claim or Loss suffered by the Client or any third party arising from or in relation to the Client’s hire of the Equipment including any Claim or Loss a result of:
- (a)

The Client’s use or the Equipment, including operation of the Equipment by the Client’s employees, agents, contractors, subcontractors or permitted assigns;
- (b)

any personal injury to or death of any person;
- (c)

loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property);
- (d)

any Claim by the Client’s employees, agents, contractors, subcontractors or permitted assigns for workers compensation or any other employee entitlement;
- (e)

any breach or failure by the Client (including the Client’s personnel, permitted assigns, contractors agents, officers and employees) to comply with these terms and conditions;
- (f)

any conduct of the Client, including negligent acts or omissions or wilful or reckless disregard of the Client’s obligations and duties arising from the hire of the Equipment;
- 25.2
- Without limiting MINIQUIP’s rights to recover any amounts from the Client, the indemnity under this clause extends to all costs and disbursements incurred by MINIQUIP in recovering any amounts payable or recoverable under these terms and conditions (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, any default fees, bank dishonour fees etc.) and will apply irrespective of:
- (a)

whether the Equipment is covered by any policy of insurance effected or maintained by MINIQUIP or the Client or would have been indemnified but for the failure of the Client or MINIQUIP to comply with the terms of any such policy or insurance or to diligently pursue a claim.
- (b)

whether the loss, theft or damage was the result of any negligence or misconduct by the Client or any other party.
- 25.3
- The Client agrees to indemnify and keep MINIQUIP indemnified against any and all legal costs and disbursements including legal costs on a solicitor and own client basis incurred by MINIQUIP in exercising its rights and entitlements set out in the Hire Contract and these terms and conditions.
- 25.4
- The provisions of this clause, and each and every indemnity, or provision giving rise to any right in favour of MINIQUIP in these terms and conditions is a continuing indemnity, separate and independent from the other indemnities or obligations of a party, and which survives the completion of any Hire Period and termination of the Hire Contract and/or these terms and conditions.
- 25.5
- It is not necessary for MINIQUIP to incur an expense or make a payment before enforcing any indemnity under these terms and conditions or the Hire Contract.

26. **TITLE**

- 26.1
- Nothing in these terms and conditions or the Hire Contract gives rise to the Client having any legal title or claim to ownership of the Equipment.

27. **SECURITY AND CHARGE**

- 27.1
- Despite anything to the contrary contained herein or any other rights which MINIQUIP may have arising from these terms and conditions, upon the Client failing to make payment to MINIQUIP of any amount due and payable within seven (7) days of such amount becoming due and payable:
- (a)

where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to MINIQUIP or MINIQUIP’s nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that MINIQUIP (or MINIQUIP’s nominee) shall be entitled to lodge where appropriate an absolute caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b)

should MINIQUIP elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify MINIQUIP from and against all MINIQUIP’s costs and disbursements including legal costs on a solicitor and own Client basis.
- (c)

the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint MINIQUIP or MINIQUIP’s nominee as the Client’s and/or Guarantor’s true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 27.1 including signing any document on the Client and/or Guarantor’s behalf.
- 27.2
- The Guarantor guarantees to MINIQUIP the due and punctual payment of all moneys and performance by the Client of all of its obligations under these terms and conditions and the Hire Contract. This guarantee shall be continuing and shall not be discharged by the winding up of the Client and shall bind the successors and legal personal representatives of the Guarantor.
28. **DISPUTE RESOLUTION**
- 28.1
- If any dispute arises out of or in connection with the Hire Contract or the interpretation of its terms (“**Dispute**”), either party cannot commence any court proceedings relating to a dispute unless this clause has first been complied with, except where that party seeks urgent interlocutory relief.
- 28.2
- A party claiming that a Dispute has arisen under or in relation to the Hire Contract or these terms and conditions must give notice in writing to the other party specifying the nature of the Dispute.
- 28.3
- On receipt of that notice by the other party, all of the parties must use all reasonable efforts to expeditiously resolve the Dispute.
- 28.4
- If the parties have not resolved the dispute within fourteen (14) days of receipt of the notice referred to in clause 28.2, or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to arbitration in accordance with clauses 28.5 and 28.5(b).
- 28.5
- The arbitrator appointed to resolve the dispute will be:
- (a)

either as agreed in writing by the Parties or failing agreement within seven (7) days of a request by any Party to do so, then;
- (b)

as appointed by the President for the time being of the Law Society of Western Australia, or his nominee.
- 28.6
- The costs of the arbitrator will be borne equally by the parties to the Dispute and each Party must bear its own legal costs.

- 28.7Any legal action between the Parties must be commenced in the jurisdiction of Western Australian.
- 28.8Despite any other provisions in these terms and conditions, the Client agrees that if it disputes the amount in MINIQUIP’s invoice(s) the dispute may be referred a court of competent jurisdiction for determination without further demand or notice to the Client. If the court finds in MINIQUIP’s favour, the Client agrees to pay MINIQUIP interest up to the date of judgement.
- 28.9The Client also agrees to pay MINIQUIP legal costs (on a solicitor and own client basis) and debt recovery costs (if applicable).
- 29NOTICES
- 29.1Unless otherwise stated in the relevant Hire Document, any notice, Invoice or document relating to the Hire Contract is deemed to be served:
- (a)If sent by ordinary pre–paid post addressed to the Client:

(i)on the second business day after the date on which it was posted if posted within Western Australia;

(ii)on the seventh business day after the date on which it was posted if posted interstate within Australia;

(b)on the day on which it was sent – if it is sent by email transmission before or during normal business hours on a business day; or

(c)on the next business day following the day on which it was sent – if it is sent by email transmission after normal business hours on a business day or on a day other than a business day.
- 30VARIATIONS
- 30.1Any purported variation to these terms and conditions by the Client will be of no force and effect unless it is in writing signed by the Client and approved by MINIQUIP’s Authorised Representative.
- 30.2MINIQUIP may vary these terms and conditions at any time by giving the Client no less than seven (7) days written notice of the changes and the date the changes will take effect.
- 31CAPACITY
- 31.1Each party represents and warrants to the other that:
- (a)it has the power and authority to enter into the Hire Contract and to perform its obligations under the Hire Documents;

(b)the execution of the Hire Documents has been properly authorised;

(c)the Hire Contract constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms by appropriate legal remedy;

(d)it will not represent that it is authorised to act on behalf of the other party, except where expressly authorised to do so in writing; and

(e)it has and will maintain all licences, authorisations, consents, approvals and permits required by applicable laws and regulatory requirements in order to meet its obligations under the Hire Contract.
- 31.2The Client must give MINIQUIP fourteen (14) days written notice of any proposed changes to:
- (a)ownership of the Client;

(b)the Client’s legal entity name, trading or business name(s);

(c)the nature of the Client’s business;

(d)the contact details for the Client (i.e. principal place of business, registered office address, email addresses etc.)
- 31.3MINIQUIP will not be bound by any statement, representation, conduct or any agreement entered into by any person other than MINIQUIP’s Authorised Representative.
- 31.4Where the Client is a Trustee:
- (a)The Client warrants that it has full power and authority for the benefit purposes and objects of the trust to enter into the Hire Contract on behalf of the trust and that it shall be bound by these terms and conditions both personally and as trustee; and

(b)The Client confirms that the Trustees shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of any amounts due and payable by the Client in accordance with these terms and conditions.
- 32ELECTRONIC TRANSACTIONS
- 32.1Anything required to be given in writing, including execution of the Hire Contract, may be done electronically in accordance with the provisions of the *Electronic Transactions Act 2011* (WA) or such other legislation, as amended or replaced from time to time.
- 33PRIVACY & CREDIT REPORTING
- 33.1MINIQUIP will comply with its statutory obligations under the *Privacy Act 1988* (Cth) (**Privacy Act**) in relation to its dealings with Personal Information (as that term is defined in the Privacy Act.
- 33.2The Client agrees for MINIQUIP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by MINIQUIP.
- 33.3The Client agrees that MINIQUIP may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a)to assess an application by the Client; and/or

(b)to notify other credit providers of a default by the Client; and/or

(c)to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d)to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 33.4The Client consents to MINIQUIP being given a consumer credit report to collect overdue payment on commercial credit.
- 33.5The Client agrees that personal credit information provided may be used and retained by MINIQUIP for the following purposes (and for other agreed purposes or required by):
- (a)the provision of Goods; and/or

(b)analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Goods; and/or

(c)processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

(d)enabling the collection of amounts outstanding in relation to the Goods.
- 33.6MINIQUIP 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.
- 33.7The information given to the CRB may include:
- (a)personal information as outlined in 28.1 above;

(b)name of the credit provider and that MINIQUIP is a current credit provider to the Client

(c)whether the credit provider is a licensee;

(d)type of consumer credit;

(e)details concerning the Client’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f)advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and MINIQUIP has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);

(g)information that, in the opinion of MINIQUIP, the Client has committed a serious credit infringement;

(h)advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 33.8The Client shall have the right to request (by e–mail) from MINIQUIP:
- (a)a copy of the information about the Client retained by MINIQUIP and the right to request that MINIQUIP correct any incorrect information; and

(b)confirmation that MINIQUIP does not disclose any personal information about the Client for the purpose of direct marketing.
- 33.9MINIQUIP 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 these terms and conditions or is required to be maintained and/or stored in accordance with any Privacy Law.
- 33.10The Client can make a privacy complaint by contacting MINIQUIP via e–mail. MINIQUIP 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.

- 34GENERAL
- 34.1The 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.
- 34.2If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 34.3These terms and conditions are governed by the laws of Western Australia and the parties submit to the jurisdiction of the courts of Western Australia and any courts having appellate jurisdiction from them.
- 34.4MINIQUIP may licence, assign or novate all or any part of its rights and/or obligations under this contract without the Client’s consent. The Client authorises and appoints MINIQUIP to act as its attorney with respect to any execution of any documents to give effect to any assignment or novation under this clause.
- 34.5The Client must not license, assign or novate any or all of its rights and/or obligations under the Hire Contract without the prior written consent of MINIQUIP which will not unreasonably be withheld.
- 34.6If any provision of these terms and conditions is or at any time becomes void or unenforceable, the remaining provisions will continue in full force and effect and the parties agree that the void or unenforceable provisions shall be severed and rendered ineffective so far as possible without affecting the enforceability of the remaining provisions of the Hire Contract.

Schedule 1 –Truck Hire Terms

- 35TRUCK HIRE
- 35.1In addition to the maximum hours per Day, each Hire Rate includes a maximum allowance of kilometres per Day.
- 35.2Any distance travelled in excess of the maximum allowance under the relevant Hire Rate will be charged pro rata per kilometre based on the Daily Hire Rate divided by the maximum kilometres allowed under the Daily Hire Rate.
- Driver Licensing Requirements
- 35.3Where the Client is an individual then that person must have a valid driver’s licence, which must be maintained for the term of any Hire of a Vehicle or Truck. The driver must be twenty–five (25) years of age or over and have held and Australian licence for this class vehicle for more than two (2) years.
- 35.4Where the Client is a company, then the company warrants that all drivers that are to drive the Truck will have a valid driver’s licence, which must be maintained for the term of any Hire.
- 35.5All drivers must be twenty–five (25) years of age or over and have held and Australian licence for this class Vehicle continuously for more than two (2) years.
- 35.6The Client must provide any documentation required by MINIQUIP to enable MINIQUIP to check the validity and currency of any driver’s licence used in connection with any hire subject to these terms and conditions.
- 36VEHICLE OR TRUCK SERVICING, MECHANICAL REPAIRS & ACCIDENTS
- 36.1If the Truck is damaged, or requires repair, towing or salvage, whether because of any accident or breakdown, the Client shall advise MINQUIP of the full circumstances as soon as practical.
- 36.2The Client shall not arrange or undertake any repairs, towing or salvage without the authority of MINQUIP except to the extent that the repairs, towing or salvage are necessary to prevent further damage the Truck or to other property, and only then by use of MINIQUIP’s or their insurer’s, authorised repairer/towing contractor/salvager.
- 36.3The Client shall ensure that no person shall interfere with any GPS monitoring equipment, distance recorder or speedometer or, except in an emergency, any part of the engine, transmission, braking, electrical, or suspension systems of the Vehicle/Truck.
- 36.4All Trucks will be returned by the Client to a MINIQUIP depot for scheduled OEM servicing unless agreed otherwise by MINIQUIP in writing at the commencement of the Hire Period.
- 37UNSEALED ROAD COVER (“URC”)
- 37.1Where a Truck will be used on an unsealed road the Client will be required to obtain an Unsealed Road Cover (URC) to cover the Truck, allowing the Truck to be used only on unsealed roads that are gazetted and graded and maintained by a local, state, territory government body, authority or council.
- 37.2URC does not allow use of the Truck off road.
- 37.3If URC is required, the Client agrees to pay hire surcharges equal to twenty–five percent (25%) of MINIQUIP’s Daily Hire Rate in addition to the usual Hire Fees.
- Schedule 2 – Light Vehicle Hire–Loan Terms
- 38LIGHT VEHICLES
- 38.1If any Light Vehicle is provided by MINIQUIP for use by the Client arising as a consequence of the Client’s hire of Equipment or otherwise the Client acknowledges and agrees to comply with the Light Vehicle Conditions of Use set out in this Schedule 2.
- 38.2The Client agrees that it will not:
- (a)use or permit the Light Vehicle to be used for the carriage of passengers for hire or reward.

(b)Sublet or hire the Light Vehicle to any other person or company; or

(c)Permit the Light Vehicle to be operated without their authority; or

(d)Operate the Light Vehicle or permit it to be operated in any race, speed test, rally, or contest, or on any closed road or non–public roadway; or

(e)Operate the Light Vehicle or permit it to be operated to propel or tow any other vehicle; or

(f)Operate the Light Vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the Light Vehicle; or

(g)Drive or permit the Light Vehicle to be driven by any person if at the time of his or her driving the Light Vehicle the Client or person is not the holder of current drivers licence appropriate for the Light Vehicle; or

(h)Use or allow any Light Vehicle to be used in any way that would be deemed unlawful.
- 38.3The Client indemnifies and keeps MINIQUIP indemnified against any Loss or Claim arising from a breach of the provisions in this Schedule 2, by the Client and any of the Client’s Personnel who may be operating or responsible for the Light Vehicle at the time the breach occurs. This clause survives the termination or expiry of the Hire Contract.
- Schedule 3 – Credit Account Terms & Conditions
- 5The provisions of this Schedule 2 apply in addition to the above General Terms and Conditions in circumstances where the Client hires Equipment on credit provided by MINIQUIP.
- 39CREDIT ACCOUNT
- 39.1MINIQUIP reserves the absolute right to vary, withdraw or put on hold the Client’s credit account immediately in the event that the Client is in breach of the Hire Contract or these terms and conditions, and at any time upon thirty (30) days’ notice.
- 39.2The Client must ensure that all details provided in the Credit Account Application are up to date at all times and notify MINIQUIP of any changes as soon as practicable and in any event within fourteen (14) days of becoming aware of any notifiable change.
- 39.3It is the Client’s responsibility to ensure that the Client does not exceed any approved credit limit applicable to the Client’s credit account, and the Client will be liable for any credit provided over the approved credit limit.
- 39.4MINIQUIP shall have no liability for any Loss the Client incurs as a result of credit being withheld.
- 40ADDITIONAL SECURITY – PERSONAL PROPERTY SECURITIES ACT
- 40.1As consideration for MINIQUIP approving the hire of Equipment on Credit, the Client agrees to grant additional security as set out in this clause in favour of MINIQUIP to secure payment of the balance of any Approved Credit Account or other Credit granted by MINIQUIP.
- 40.2Defined terms in the Personal Property Securities Act 2009 (Cth) have the same meaning as the equivalent defined terms in this clause.
- 40.3The Client acknowledges that these terms and conditions constitute a registrable Security Agreement which creates the following Security Interests in favour of MINIQUIP in the following Collateral for the purpose of securing payments due to MINIQUIP under the Hire Contract and these terms and conditions:
- (a)a Purchase Money Security Interest in all Goods supplied by the MINIQUIP to the Client from time to time; and

(b)a Security Interest in All of Client’s Present and After Acquired Personal Property.
- 40.4The Client accepts, acknowledges and agrees that:
- (a)the Client waives its rights to receive notification of a Registration by MINIQUIP;

(b)Pursuant to section 275(6) of the PPSA, the Client agrees MINIQUIP is not required to disclose to an interested person information pertaining to MINIQUIP’s Security Interest unless required to do so pursuant to the PPSA or at law generally.

- 40.5

The Client will:

(a)

sign any documents and/or provide any further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) and/or assistance which MINIQUIP may reasonably require to register or amend its Security Interest on the PPSR;

(b)

indemnify MINIQUIP against any costs the MINIQUIP incurs in perfecting, maintaining and enforcing its Security Interests, its rights under this Agreement or at law generally;

(c)

procure from any persons considered by the MINIQUIP to be relevant to its security position, such agreement and waivers as MINIQUIP may at any time reasonably require; and

(d)

not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement in its own favour or in favour of a third party without MINIQUIP's prior written consent.
- 40.6

If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Client agrees, to the extent that s 115(1) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Agreement:

(a)

s 95 (notice of removal of accession), to the extent that it requires MINIQUIP to give a notice to the Client;

(b)

s 96 (when a person with an interest in the whole may retain an accession);

(c)

s 121(4) (enforcement of liquid assets – notice to grantor);

(d)

s 125 (obligation to dispose of or retain collateral);

(e)

s 130 (notice of disposal of collateral), to the extent that it requires MINIQUIP to give a notice to the Client;

(f)

s 132(3)(d) (contents of statement of account after disposal);

(g)

s 132(4) (statement of account if no disposal);

(h)

s 135 (notice of retention of collateral);

(i)

s 142 (redemption of collateral); and

(j)

s 143 (reinstatement of security agreement).
- 40.7

If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these terms and conditions apply, the Client agrees, to the extent that s 115(7) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Hire Contract:

(a)

s 127 (seizure by higher priority parties – notice);

(b)

s 129(2) and (3) (disposal by purchase);

(c)

s 132 (secured party to give statement of account);

(d)

s 134(2) (proposal of secured party to retain collateral);

(e)

s 135 (notice of retention of collateral);

(f)

s 136(3), (4) and (5) (retaining collateral free of interest); and

(g)

s 137 (persons entitled to notice may object to proposal).