

1 DEFINITIONS

- 1.1 **Additional Charges** means:
- fees or charges for additional work performed at the Hirer's request or reasonably required as a result of the Hirer's conduct, calculated in accordance with the BK Civil Group's current prices; and
 - expenses incurred by BK Civil Group, at the Hirer's request or reasonably required as a result of the Hirer's conduct.
- 1.2 **Agreement** means these General Terms and Conditions of Hire and any schedules or annexures to this Agreement.
- 1.3 **BK Civil Group** means BK Hire Pty Ltd ABN 99 153 715 578.
- 1.4 **Business Day** means a day other than a Saturday, Sunday or public holiday in Toowoomba, Queensland.
- 1.5 **Commencement Date** means the date that the Hirer takes possession of the Equipment.
- 1.6 **Completion Date** means the date of delivery of the Equipment to BK Civil Group.
- 1.7 **Credit Application** means the Credit Application for the provision of BK Civil Group Equipment on Wet and Dry Hire.
- 1.8 **Demobilisation Costs** means, in relation to the Equipment, the costs of decommissioning, disassembly, loading, transport, unloading and delivery of the Equipment from the Site to BK Civil Group's premises from which the Equipment was mobilised, including but not limited to freight costs, labour and equipment hire and crane hire.
- 1.9 **Dry Hire** means Equipment is provided without fuel or Operator supplied.
- 1.10 **Confidential Information** includes any information marked as confidential and any information received or developed by a party during the term of the Agreement, which is not publicly available and relates to processes, equipment and techniques used by the Company in the course of the Company's business including all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.
- 1.11 **Damage Waiver Amount** means an additional 12.5% of the Hire Fee, being the consideration for BK Civil Group's agreement to limit the Hirer's liability for physical loss or damage to the Equipment in certain circumstances. It is agreed that this is not insurance.
- 1.12 **Equipment** means the equipment specified in Hire Agreement Schedule and includes all attachments and fittings attached to and/or included with the Equipment.
- 1.13 **Force Majeure Event** means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under this Agreement and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency but does not include any act or omission of a sub-contractor (except to the extent that act or omission is caused by a Force Majeure Event).
- 1.14 **GST** means the Equipment and services tax payable pursuant to the A New Tax System (The Equipment and Services Tax) Act 1999 (Cth).
- 1.15 **Hire Agreement Schedule** means the document that details the Equipment to be hired, the applicable Hire Rates, the duration of the hire, and any other relevant details.
- 1.16 **Hire Period** means the period of time commencing on the Commencement Date and extending until the Completion Date.
- 1.17 **Hire Fee** includes the Hire Rate and any fees applicable for the provision of an Operator where this Agreement is a Wet Hire or as otherwise agreed by the parties.
- 1.18 **Hire Rate** means the monetary charge for the hire of the Equipment on an hourly, daily, monthly, kilometre basis or other calculated basis as agreed in the Hire Agreement Schedule, exclusive of GST unless otherwise stated, for Wet and Dry Hire.
- 1.19 **Initial Condition Report** means the report prepared jointly by the parties at or prior to the Hire Start Date setting out the condition of the Equipment.
- 1.20 **Insurance** means:
- a public liability insurance policy to the value of \$20 million for injury or damage caused to third parties by BK Civil Group, its

employees or contractors during the provision of Services at the Premises; and

- any other insurance required to be effected by law including worker's compensation insurance as prescribed by law for BK Civil Group and its employees and contractors.

- 1.21 **Laws** means Commonwealth, State or local government legislation including regulations, by-laws and other subordinate legislation; the common law; and Approvals (including any condition or requirement under them).
- 1.22 **Mobilisation Costs** means, in relation to the Equipment, all of the costs in connection with the assembly, commissioning, transport and delivery of the Equipment to the Site, including but not limited to freight costs, labour and equipment hire and crane hire.
- 1.23 **Operating Costs** means the costs of all consumables necessary for the day-to-day running and upkeep of the Equipment including but not limited to costs of all fuels, oils, lubricants and coolants, and, if the Hirer is not responsible for Minor Repairs, the costs incurred by BK Civil Group in undertaking all necessary Minor Repairs.
- 1.24 **Operator** means an operator of the Equipment provided by BK Civil Group in accordance with a Wet Hire arrangement.
- 1.25 **PPS Property** means any property over which a Security Interest can be legally granted under the PPS Act.
- 1.26 **PPSR** means the Personal Property Securities Register established under section 147 of the PPS Act.
- 1.27 **Site** means the location in the Hire Agreement Schedule at which the Hirer advises BK Civil Group the Equipment is to be used.
- 1.28 **Wet Hire** means Equipment is provided with fuel and Operator supplied.

2 HIRE OF EQUIPMENT

- 2.1 The hire of the Equipment will commence from the start date specified in the Hire Agreement Schedule and continue until the Equipment is back in BK Civil Group's possession and control and fit for the purpose of hire again and includes all weekends and public holidays during that period (the Hire Period).
- 2.2 The Hirer is entitled to use the Equipment for the Hire Period.
- 2.3 Any extension of the Hire Period must be agreed to by BK Civil Group.
- 2.4 A minimum Hire Period may apply. If such a minimum period applies, BK Civil Group will notify the Hirer.
- 2.5 If the Equipment is hired on a Wet Hire basis, the terms of the Hire Agreement Schedule apply in their entirety except where damage or fines result from the negligent operation of the BK Civil Group Operator. In such a case the costs of the damage and fines will be proportioned according to responsibility for the damage/fines in our sole discretion.

3 PAYMENT FOR HIRE

- 3.1 The Hirer agrees to pay BK Civil Group the Hire Rate and any Damage Waiver Amount (where applicable) for the Equipment for the Hire Period plus any applicable GST, stamp duties, tolls, fines, penalties, levies or freight and other charges relevant to the Rental Agreement and the hire, including other charges (collectively the **Hire Fees**).
- 3.2 Unless the Hirer has received Credit Approval, all Hire Fees must be paid to BK Civil Group in full, prior to the commencement of the Hire Period.
- 3.3 In the event the Hirer is Credit Approved, the account is payable within fourteen (14) days from the end of the month in which the invoice is issued, unless otherwise specified in the Hire Agreement Schedule or agreed upon in writing.

4 HIRE RATE & OTHER CHARGES

HIRE RATE

- 4.1 The Hirer agrees the Hire Rate is based on a maximum of ten (10) hours of use per day. Any use of the Equipment beyond ten (10) hours in a single day will incur Additional Charges on a pro-rata basis.
- 4.2 The Hire Rate does not include weekend or public holiday work for Wet Hire unless explicitly stated otherwise in the Hire Agreement Schedule.
- 4.3 In addition to the Hire Rate, the Hirer must pay:
- all Mobilisation Costs and Demobilisation Costs, if applicable;
 - all Operating Costs during the Hire Period;
 - any costs incurred by BK Civil Group in modifying the Equipment to conform with the Hirer's requirements;
 - any taxes, duties (including stamp duty), levies, charges or imposts on or in connection with this Agreement;
 - any costs or expenses reasonably incurred (including but not limited to legal costs on an indemnity basis) by BK Civil Group in

enforcing this Agreement as a result of the Hirer's breach of the Agreement or in order to return the Equipment to the same condition as at the Commencement Date (including but not limited to cleaning costs).

WET HIRE

- 4.4 In the event of a Wet Hire, the Hire Rate will commence when the Operator arrives at the Site and continue until the Operator departs the Site. Hire Rates will apply during pre-start meetings, pre-start inspections, morning tea breaks, and all other times on site, excluding lunch breaks.
- 4.5 BK Civil Group reserves the right to impose Additional Charges for:
- overtime related to Equipment use;
 - work or travel conducted on public holidays or outside the hours of 0600 to 1800, Monday to Friday.
- 4.6 Arrangements to stand down an Operator due to breakdowns must be mutually agreed to and documented in the Hire Agreement Schedule.

OTHER FEES

- 4.7 BK Civil Group may charge a cancellation fee where the Equipment has been reserved by booking and the Hirer cancels the booking without reasonable notice, or if the Hirer fails to take delivery of the Equipment.
- 4.8 BK Civil Group may charge you a fee of 2.5% of the Hire Fee for accepting payment by credit card.
- 4.9 The Hirer must pay all amounts owing under the Agreement on the date for payment specified in the relevant issued Tax Invoice, and otherwise on written demand. The Hirer is not entitled to set off any monies owing to it by BK Civil Group against monies owing to BK Civil Group without the express written consent of BK Civil Group.
- 4.10 If the Hirer does not pay the Hire Fees in full by the due date, BK Civil Group may charge the Hirer, in addition to any other costs recoverable under this Agreement, interest calculated monthly on the total outstanding balance. The interest rate used to calculate the interest payable is the 90 day Bank Bill Swap Rate as at the first business day of the month in which payment is due plus 5%.

STAND DOWNS

- 4.11 Stand downs may be permitted under specific circumstances, including but not limited to, rostered days off, adverse weather conditions, or industrial disputes. In such cases, BK Civil Group reserves the right to apply a charge, calculated as a percentage of the applicable Hire Rate.
- 4.12 The Hirer is required to notify BK Civil Group no later than 0800 hours local time on the morning of any intended stand down period. Failure to provide timely notice may result in related charges not being reviewed or considered by BK Civil Group.
- 4.13 If a stand down is approved by BK Civil Group, a stand down number will be issued. The Hirer must record this number as proof of the stand down. In the event of a dispute, if the Hirer is unable to provide the stand down number, BK Civil Group reserves the right to decline any consideration of stand down rates.
- 4.14 Stand down dates must be either current or set in the future. Retrospective application of stand down dates will only be permitted with prior written consent from BK Civil Group.

MAINTENANCE

- 4.15 BK Civil Group may undertake preventative maintenance on the Equipment. In this circumstance, BK Civil Group will charge the Hirer a per kilometre charge for distances travelled exceeding 50kms (round trip) plus the consumables and labour involved in the preventative maintenance.
- 4.16 For the avoidance of doubt, the Hirer remains responsible for the daily maintenance and care of the Equipment in accordance with the Hire Agreement Schedule, notwithstanding BK Civil Group's election to provide preventative maintenance.

5 WET HIRE

- 5.1 In the event of Wet Hire of the Equipment:
- BK Civil Group shall provide to the Hirer an Operator with the requisite qualifications, licenses, skills, training and experience required to operate the Equipment;
 - the Operator shall operate the Equipment in accordance with the Hirer's lawful direction and instructions;
 - BK Civil Group shall not be liable for any actions of the Operator or any direct or indirect loss or damage suffered or incurred either directly or indirectly by the Hirer or the Hirer's officers, employees, contractors or agents in connection with the operation of the Equipment by the Operator; and
 - the Hirer shall provide amenities and first aid services to BK Civil Group's Operator of the Equipment in compliance with all relevant Laws.
- 5.2 Subject to any applicable Laws, the fees applicable for the hire of an Operator shall be based on signed timesheets but will be no less than a minimum working day of ten (10) hours per day, allowing a thirty (30) minute unpaid lunch break. Additional charges shall apply if the

Equipment is used in addition to these hours or on a weekend or public holiday, at BK Civil Group's discretion.

- 5.3 It is the Hirer's responsibility to ensure that any required safety courses, medicals and inductions are attended or completed by the Operator of the Equipment and the Hirer agrees and acknowledges that any time taken to attend or complete such course will be charged as per the normal Hire Rate.
- 5.4 BK Civil Group and the Operator shall not be required to comply with any direction or instruction from the Hirer if it is unsafe, unlawful or unreasonable to do so.

6 DAMAGE WAIVER AMOUNT

- 6.1 If the Hirer does not elect to pay the Damage Waiver Amount, the Hirer must insure the Equipment and provide to BK Civil Group before the Hire Period starts a certificate of currency for an appropriate policy of insurance that covers physical loss or damage and theft to the Equipment during the Hire Period for an amount not less than the full new replacement value of the Equipment.
- 6.2 If the Hirer elects to pay the Damage Waiver Amount, BK Civil Group shall be responsible for the physical loss or damage and theft of the Equipment during the Hire Period save and except for any excess payable by BK Civil Group to BK Civil Group's insurer on any claim made for the Equipment by BK Civil Group pursuant to BK Civil Group's policy of insurance, and/or for any shortfall between the sum insured and the actual full new replacement value of the Equipment. Where any such excess and/or shortfall in the sum insured is payable by BK Civil Group, BK Civil Group will deliver an account to the Hirer for the excess and/or shortfall and the Hirer must make payment of that account within 7 days.
- 6.3 Clause 6.2 in no way entitles the Hirer to, or implies the availability of, compensation from BK Civil Group for any liability incurred by the Hirer in relation to the use of the Equipment.
- 6.4 BK Civil Group's responsibility under clause 6.2 will not continue if the loss or damage:
- has arisen as a result of the Hirer's breach of the Agreement;
 - has been caused by the Hirer's negligence;
 - has been caused by theft, loss or damage by whatever cause to tools and/or accessories supplied with the Equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
 - has been caused by any misuse, abuse, wilful or malicious acts or omissions, or reckless use (including overloading of the Equipment or components thereof) of the Equipment by the Hirer;
 - has arisen due to the lack of lubrication or non-adherence to other normal maintenance requirements that could reasonably be expected of the Hirer under the Hire Agreement Schedule;
 - has been caused by the Hirer's disregard for instructions given to the Hirer by BK Civil Group, in respect of the proper use of the Equipment or in contradiction of the Manufacturer's Instructions (including intended purpose of use) if supplied with the Equipment at the start of the Hire Period;
 - has arisen due to any unexplained disappearances of the Equipment;
 - has been caused by theft of the Equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, and where proper security is not used by the Hirer to secure the Equipment whilst it is left unattended;
 - has arisen out of the Hirer's use of the Equipment in, on, under or over water without express written permission by BK Civil Group;
 - has arisen out of the Hirer's use of the Equipment or Vehicle in forestry activities without express written permission by BK Civil Group;
 - has arisen out of by the Hirer's use of the Equipment in underground activities without express written permission by BK Civil Group; or
 - has arisen out of the Hirer's loading or off-loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of the Equipment on any wharf or bridge or over any body of water.
- 6.5 Our responsibility under clause 6.2 will not apply in the event of an on-Hire Agreement Schedule being entered into between the Hirer and a third party without BK Civil Group's express written permission.

7 HIRER'S OBLIGATIONS

- 7.1 The Hirer acknowledges that BK Civil Group retains full title to the Equipment notwithstanding the delivery of the Equipment to, and the possession and use of the Equipment by, the Hirer and that the Hirer

- will have possession of the Equipment as a Bailee subject to the terms and conditions of this Agreement.
- 7.2 The Hirer acknowledges and consents to the granting of security by BK Civil Group to BK Civil Group's financiers over its rights under this Agreement (Security). The Hirer further acknowledges and agrees that neither the execution of the Security nor the exercise by the holder of the Security, its agent or a security trustee of any power under the Security entitles the Hirer to terminate or suspend performance of its obligations under this Agreement.
- 7.3 The Equipment must not be used by anyone other than the Hirer or the Hirer's personnel without the BK Civil Group's express written consent. The Hirer acknowledges and agrees that it remains responsible for the Hirer's personnel at all times.
- 7.4 The Hirer must not on-hire, sub-lease or sub-licence the use of the Equipment to any third party without BK Civil Group's prior written consent. If BK Civil Group authorises a third party on-hire or sub-lease or sub-licence arrangement, the Hirer will remain liable to BK Civil Group as per the terms of this Agreement as though the arrangement did not exist, and such arrangement would also be subject to, without limitation, the third party agreeing to operate under the same terms and conditions as contained in this Agreement. BK Civil Group reserves the right to require a formal agreement to be prepared at the Hirer's cost which details any arrangement contemplated by this clause.
- 7.5 All risk in the Equipment passes to the Hirer on delivery of the Equipment to the Hirer and remains with the Hirer until the Equipment is collected by or returned to BK Civil Group. Delivery to the Hirer is deemed to occur either when the Equipment is made available to the Hirer's nominated carrier for shipment or when BK Civil Group delivers the Equipment to the Site or other location agreed between the parties, as the case may be.
- 7.6 The Hirer agrees that the use of the Equipment carries with it dangers and risks of injury, and the Hirer agrees to accept all dangers and risks.
- 7.7 The Hirer agrees to comply with all Laws relating to the use of the Equipment and associated operations.
- 7.8 Following delivery of the Equipment to the Hirer, the Hirer is liable to BK Civil Group for and indemnifies BK Civil Group against:
- any and all loss or damage to the Equipment, other than fair wear and tear;
 - any claim made against BK Civil Group arising from the operation of the Equipment by the Hirer, including but not limited to the Hirer's employees, contractors, personnel and agents;
 - any losses, costs or expenses incurred (including but not limited to legal costs on an indemnity basis) by BK Civil Group arising from or in connection with a breach by the Hirer of its obligations under this Agreement; and
 - all costs incurred in respect of repairing or replacing the Equipment at the full replacement cost, together with salvage costs and Hire Charges incurred while the Equipment is being repaired or replaced.
- 7.9 The Hirer has three (3) business days from the date of delivery to provide written notice to BK Civil Group of any fault or defect in the Equipment. BK Civil Group, upon receiving written notice, will take reasonable action without cost to the Hirer to investigate and where necessary repair the defect or provide replacement Equipment at BK Civil Group's discretion.
- 7.10 The Hirer must ensure that the Equipment is:
- operated only by competent and properly trained personnel who have all of the licences permits and approvals required by law to operate the equipment, are wearing appropriate protective clothing and equipment and are not under the influence of drugs or alcohol. BK Civil Group may request from time to time, evidence in support of the qualification of the Hirer's nominated operator to ensure that all conditions are in accordance with this Agreement;
 - operated in accordance with the methods and standards of operation recommended and approved by the Equipment's manufacturer or as required by any relevant Law;
 - serviced, maintained, cleaned and repaired according to the manufacturer's specifications and procedures so that the Equipment is at all times in good condition;
 - returned to BK Civil Group in the same condition as at the Commencement Date (except for fair wear and tear)
 - used only for the general purpose for which it was designed, in suitable terrain and in a manner this has regard to the capacity, capabilities and limitations of the Equipment;
 - not removed from the Site without BK Civil Group's prior written consent;
 - not modified without BK Civil Group's written consent; and
 - at all times stored safely and protected from theft, loss or damage.
- 7.11 If the Equipment breaks down or becomes unsafe to operate, the Hirer must immediately stop using the Equipment, ensure it does not sustain any further damage, prevent the Equipment from causing injury, loss or damage to any person or property and advise BK Civil Group in writing

as soon as practicable of the breakdown or the circumstances which make the Equipment unsafe to operate.

- 7.12 The Hirer must:
- ensure that all safety and operating information supplied with the Equipment is attached to or otherwise kept with the Equipment and brought to the attention of any person using the Equipment;
 - not alter, deface, erase or remove any identifying mark, plate or number on or in the Equipment or otherwise interfere with the Equipment,
 - must not alter, affix or attach anything to the Equipment without BK Civil Group's prior written consent;
 - maintain any manuals and logbooks supplied with the Equipment.
- 7.13 The Hirer must comply with all relevant Laws in relation to the use of the Equipment and must not permit the Equipment to be used for any illegal purpose or in any manner that would amount to a breach of any relevant Law.
- 7.14 If during the term of this Agreement the Equipment is involved in any incident which results in physical injury to a person, damage to or loss of the Equipment or damage to or loss of any property of the Hirer or a third party, the Hirer must as soon as practicable advise BK Civil Group in writing and provide details of the incident.
- 7.15 The Hirer must not dispose (by sale, lease or otherwise) of, or otherwise create an interest in the Equipment.
- 7.16 The Hirer's nominated official must advise BK Civil Group of any times during which the Equipment has been unavailable as a result of major mechanical breakdown not caused as a result of the Hirer's negligence.
- 7.17 The Hirer must, upon being given reasonable notice by BK Civil Group, allow BK Civil Group and its representatives to gain entry to the Site to inspect, maintain and/or repair the Equipment or to repossess the Equipment.

8 INSURANCE

- 8.1 BK Civil Group will maintain current insurance policies in respect of the Equipment to its full insurable value. This insurance does not cover the Hirer unless the Hirer elects to pay the Damage Waiver Amount and then only to the extent set out in the Hire Agreement Schedule.
- 8.2 BK Civil Group shall provide, when reasonably requested by the Hirer, evidence of the insurance applying to the Hirer which BK Civil Group maintains under the Hire Agreement Schedule.
- 8.3 The Hirer:
- is satisfied as to the nature and extent of BK Civil Group's insurance (including any exclusions, conditions and excesses noted on the policies);
 - may, if required, take out insurance to insure for any risks not insured by BK Civil Group's insurance or to cover any exclusions, conditions or excesses in BK Civil Group's insurance;
 - will have no claim against BK Civil Group arising out of or in connection with the failure by BK Civil Group to effect or maintain the relevant insurance policies in accordance with the terms of the Hire Agreement Schedule; and
 - acknowledges the Damage Waiver Amount is not insurance, but rather an amount payable to limit the Hirer's liability to BK Civil Group for physical loss and damage to the Equipment during the Hire Period in certain circumstances.

9 MAJOR REPAIRS

- 9.1 All Major Repairs not caused or contributed to by the Hirer's neglect or a failure to comply with its obligations under this Agreement are the responsibility of BK Civil Group. However, BK Civil Group has the right, instead of carrying out such repairs, to replace the Equipment with similar Equipment or alternatively terminate this Agreement in so far as it relates to the damaged Equipment.

10 CONFIDENTIALITY

- 10.1 BK Civil Group agrees that they must keep all Confidential Information of the Hirer confidential and not deal with it in any way that might prejudice its confidentiality.
- 10.2 The Hirer agrees that they must keep all Confidential Information of BK Civil Group confidential and not deal with it in any way that might prejudice its confidentiality.
- 10.3 BK Civil Group and the Hirer acknowledge that information resulting from the activities of BK Civil Group pursuant to this Agreement will be regarded as Confidential Information and that this clause extends to the Background IP in clause 12.1.
- 10.4 The obligations of the parties in clause 10.1 and 10.2 will continue for so long as this information is maintained on a confidential basis.
- 10.5 On the termination of this Agreement, or when earlier directed:
- all Confidential Information must be returned to the Hirer, including copies of the Confidential Information or any extracts

of the Confidential Information and BK Civil Group will destroy or erase any copies of any software containing or comprising the Confidential Information;

- (b) all Confidential Information must be returned to BK Civil Group, including copies of the Confidential Information or any extracts of the Confidential Information and the Hirer will destroy or erase any copies of any software containing or comprising the Confidential Information.

10.6 The Confidential Information does not include information which:

- (a) Is generally available in the public domain other than as a result of a breach of clause 10.1 and 10.2 of this Agreement; or
- (b) was known by the Hirer or BK Civil Group prior to the disclosure of the information by the other party.

10.7 The obligations accepted by the parties under this clause 10 survive termination or expiry of this Agreement.

11 PRIVACY

11.1 BK Civil Group will ensure that its dealings with Personal Information acquired from the Hirer in connection with the Agreement will confirm to the statutory obligations under the Privacy Laws.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 The Customer and BK Civil Group agree that, other than as expressly provided in this clause, nothing in the Agreement transfers or grants the other party any right, title or interest in or to any Intellectual Property in any Background IP of a party.

12.2 BK Civil Group will retain all Contract IP created by or on behalf of the Customer during the Hire Period and the Customer agrees to absolutely and unconditionally assign to BK Civil Group, all rights title and interest in the Contract IP. The Customer agrees to undertake all acts as may be necessary to give effect to the assignment of the Contract IP, at the Customer's costs, including any design registrations or patents.

12.3 The Customer must not themselves or engage any third party to copy, decompile, modify, reverse engineer, disassemble or in any way create derivative works or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques, algorithms of the software or hardware of the Equipment, the Background IP, manuals or other resources provided by BK Civil Group for the purpose of this Agreement which is or may be considered Confidential Information of BK Civil Group.

13 WARRANTIES

13.1 The Hirer warrants that:

- (a) the Equipment will be used in accordance with the conditions outlined in the Agreement;
- (b) the particulars in the Hire Agreement Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
- (c) any individual that will be operating the Equipment holds a valid current driver's licence, operating licence or permit valid for the type of Equipment hired;
- (d) the Equipment will not be used for any illegal purpose;
- (e) the Equipment will not be tampered with, repaired or modified in any way;
- (f) the Equipment complies with its description, is in merchantable condition and is fit for the intended purpose; and
- (g) that the Equipment has been received in a clean and good working order.

14 LIABILITY & INDEMNITY

14.1 To the fullest extent permitted by law, BK Civil Group will not be liable to the Hirer for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including in relation to loss of income, loss of profits, loss of use or for any indirect or consequential loss or damage of any kind howsoever arising out of or in connection with the provision of or a failure to provide the Equipment, or otherwise arising out of the provision of the Equipment or this Agreement, whether based on terms of trade, by tort (including negligence), breach of Agreement, strict liability or otherwise. BK Civil Group's maximum aggregate liability for any Equipment supplied to the Hirer whether in Agreement, tort (including negligence), strict liability or otherwise shall in no circumstances exceed the amount payable by the Hirer to BK Civil Group in respect of the Equipment in question.

14.2 For the avoidance of doubt, nothing in this clause limits or restricts the Hirer's ability to make a claim that may be available to the Hirer for BK Civil Group's failure to comply with a guarantee under the Australian Consumer Law.

14.3 The Hirer indemnifies and keeps indemnified BK Civil Group, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Hirer)

against BK Civil Group or, for which BK Civil Group is liable, in connection with any Loss arising from the actions of the Hirer incidental to the provision of the Equipment, or the subject matter that this Agreement applies to. This includes, but is not limited to, any legal costs incurred by BK Civil Group in relation to meeting any claim or demand or any party or party legal costs for which BK Civil Group is liable in connection with any such claim or demand.

15 TERMINATION

15.1 Subject to clause 15.2, this Agreement will terminate when the Hirer delivers the Equipment to BK Civil Group during normal working hours at the end of the Hire Period, or, if BK Civil Group agrees, when the Equipment is collected by BK Civil Group. The Hirer irrevocably appoints BK Civil Group as its agent and authorises and licenses BK Civil Group to enter the Site and repossess the Equipment if the Hirer fails to deliver the Equipment upon termination of the Hire Agreement Schedule, or at the end of the Hire Period, whichever is the first to occur.

15.2 BK Civil Group may terminate the Agreement and repossess the Equipment at any time by written notice to the Hirer if the Hirer is in breach of the Agreement and fails to remedy that breach within seven (7) days of receiving notice requiring the Hirer to do so or the Hirer becomes insolvent, enters receivership or administration, or otherwise is unable to pay its debts as they fall due.

15.3 If the Hirer fails to return the Equipment when required by the Agreement or within 24 hours of oral or written demand to the Hirer, the Hirer will be deemed to be in unlawful possession of the Equipment without BK Civil Group's consent.

15.4 As soon as practicable after the end of the Hire Period, BK Civil Group and the Hirer will jointly inspect the Equipment to assess its condition. The percentage use of tyres, buckets, blades, tracks, undercarriage and ground engaging tools (as applicable to the Equipment) during the Hire Period will be established from the joint inspection and the Initial Condition Report. The Hirer will be charged for any reduction in life during the Hire Period and credited for any increase in life remaining on these items.

16 CLAIMS AND PROCEEDINGS

16.1 Where use of Equipment by the Hirer results in any accident, claim, damage or loss, the Hirer:

- (a) must as soon as practicable provide to BK Civil Group a report in writing setting out details of the accident, claim, damage or loss (as the case may be) and any statements, information or assistance (including meeting with the Company's legal advisers) which BK Civil Group or its insurer may reasonably require;
- (b) must not, without BK Civil Group's written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability; and
- (c) agrees that BK Civil Group or its insurer may at their own cost bring, defend, enforce, or settle any legal proceedings against third parties.
- (d) BK Civil Group is not in any circumstances liable to the Hirer for any consequential loss, loss of opportunity, revenue or profit arising in whole or in part from a breach of this Agreement by, or an intentional or negligent act or omission of, BK Civil Group.

17 PROPERTY SECURITIES ACT 2009 & RELATED REGULATIONS (PPS ACT)

17.1 In this clause 17, the terms "accession", "account", "amendment demand", "control", "financing change statement", "financing statement", "perfected", "proceeds", "purchase money security interest", "registration event", "security interest" and "verification statement" have the meanings given to them under the PPS Act.

17.2 The Hirer acknowledges and agrees that any security interest created by this Agreement or the transactions contemplated by it:

- (a) extends to, and acts as a security interest in respect of, any:
 - a) proceeds (including any account) derived from, or from a dealing with, the Equipment;
 - b) Accession to the Equipment; and
- (b) Continues in the Equipment if the Equipment becomes an accession.

17.3 The Hirer agrees to do anything which BK Civil Group may require from time to time to:

17.4 Enable BK Civil Group to register fully valid and effective financing statements or financing change statements with respect to any security interest over PPS Property created by this Agreement or the transactions contemplated by it; and

- (a) Ensure that any security interest which is purported to be reserved or created by this Agreement, or the transactions contemplated by it, is:

- a) A first ranking perfected security interest over all PPS Property;
 - b) Perfected by control to the extent possible under the PPS Act; and
 - c) If applicable, recorded as a purchase money security interest on the PPSR.
- 17.5 The Hirer undertakes and agrees:
- (a) To not, without first giving BK Civil Group fourteen (14) days written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any security interest created by this Agreement or any transaction contemplated by it;
 - (b) To pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement;
 - (c) To not, without the prior written consent of BK Civil Group, lodge or serve a financing change statement or an amendment demand in relation to any security interest created by this Agreement or any transaction contemplated by it;
 - (d) That the Equipment supplied by BK Civil Group to the Hirer under this Agreement is not intended, and shall not be used, for personal, household or domestic purposes.
- 17.6 The Hirer irrevocably waives its right to receive from BK Civil Group any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPS Act.
- 17.7 To the extent permitted at law, the Hirer and BK Civil Group Agreement out of, and the Hirer waives any rights it may have under, the provisions listed in sections 115(1) and 115(7) of the PPS Act (other than sections 96, 123, 126, 128, 129 and 134(l)).

- Group or any of its employees or agents relating to or in connection with the subject matter of the Agreement.
- 21.4 If any clause of the Agreement at any time is, or becomes wholly or partly invalid, illegal, void, voidable or unenforceable this Agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.
- 21.5 No failure or delay by BK Civil Group in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- 21.6 The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 21.7 The expiry or termination of the Agreement does not affect any rights of the parties which have accrued before that expiry or termination.

18 DISPUTE RESOLUTION

- 18.1 If a dispute arises between the Hirer and BK Civil Group the following procedure applies:
- (a) a party may give the other party notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - (b) a party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause.
- 18.2 If a dispute arises under this Agreement that cannot be resolved by the parties in good faith, either party may refer the matter to mediation.
- 18.3 The parties will attempt to agree on a mediator, and if no agreement can be reached within ten (10) days, either party may request the President of the Law Society of Queensland, Australia to appoint a mediator.
- 18.4 The costs of the mediation will be shared equally by the parties.
- 18.5 Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.

19 FORCE MAJEURE

- 19.1 Subject to clause 19.2, BK Civil Group will not be responsible for any delays in delivery, operation, or collection of the Equipment due to causes beyond its control including but not limited to a Force Majeure Event.
- 19.2 The Hirer remains responsible for the Hire Charges and all costs and expenses during a Force Majeure Event.
- 19.3 Nothing in clause 19.1 will limit or exclude the Hirer's responsibilities and liabilities under the Agreement for Equipment that is lost, stolen, destroyed or damaged during the Hire Period, or has broken down or become unsafe to use as a result of the Hirer's conduct or negligence or breach of the Agreement.

20 GOVERNING LAWS

- 20.1 The construction validity and performance of any Agreement incorporating these Terms and Conditions shall be governed by the laws of the State of Queensland, Australia and the Hirer shall submit to the jurisdiction of the Courts of that State.

21 GENERAL

- 21.1 This Agreement including the Hire Agreement Schedule represent the whole Agreement between the parties relating to the Equipment.
- 21.2 This Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.
- 21.3 In entering into the Agreement, the Hirer has not relied on any warranty, representation or statement, whether oral or written, made by BK Civil