

Trenchmen Earthmoving – Terms & Conditions

1. Application of Terms

- (a) These Terms, as amended or replaced from time to time, apply to any Services provided by the Owner to the Hirer.
 - (b) The Hirer is deemed to have read, understood, and accepted these Terms if at any time the Hirer makes a Booking, pays any Hire Fees, or accepts any Services.
 - (c) The Owner reserves the right to amend these Terms at any time at its sole discretion. Any subsequent Booking by a Hirer constitutes acceptance of the changes.
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2. Bookings and Orders

2.1 Bookings

- (a) The Hirer may submit a Booking for Services through the Website, by telephone, or any other means specified by the Owner.
- (b) By placing a Booking, the Hirer makes an offer to purchase the Services for the Hire Fee specified on the Website at the time they place the Booking.
- (c) The Owner may in its sole and absolute discretion accept or reject any Booking for any reason, including, without limitation, the unavailability of Equipment or Operators, an error in the Hire Fee or description of Services or Equipment posted on the Website, or any Unforeseen Event.

2.2 Orders

- (a) Each Order incorporates the Booking and these Terms.
 - (b) Any additional terms contained in any document (including hand amendments) provided by the Hirer will not form part of the Order unless agreed by the Owner in writing.
 - (c) All descriptive matter and/or specifications of Services or Equipment issued by the Owner and any descriptions or instructions contained on the Website, in catalogues or brochures, or any other media are issued or published for the sole purpose of giving an approximate idea of the Services or Equipment described in them. They will not form part of the Order unless expressly specified by the Owner.
 - (d) An Order may only be cancelled in accordance with these Terms.
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3. Services

3.1 Agreement for Services

The Owner shall provide the Services subject to these Terms.

3.2 Performance

The Owner will endeavour to provide the Services within the timeframes (if any) set out in the Booking.

3.3 Hirer to provide instructions and documentation

The Hirer must:

- (a) give the Owner (and where the Services include Wet Hire, the Operator) clear instructions in relation to the Services and respond to any questions the Owner or Operator has promptly and clearly;

- (b) provide any information or documents necessary for the Owner and/or Operator to provide Services; and
- (c) respond in a timely manner if the Owner and/or Operator brings an issue to the Hirer's attention that affects the Services.

3.4 Hirer to make enquiries before commencement of Services

- (a) Before the commencement of any Services that include excavation works, the Hirer must make all necessary enquiries to ensure that the proposed works will not cause any damage to infrastructure or other property.
- (b) Without limiting subclause 3.4(a), the Hirer must make an enquiry with Before You Dig. Enquiries may be made by calling 1100 during business hours, through the website <https://www.byda.com.au/> or through the Before You Dig mobile phone application.
- (c) The Hirer must present the Owner or Operator with evidence that it has made the necessary enquiries before the commencement of the Services. The Owner or Operator may request that the Hirer undertake additional enquiries where they
- (d) The Hirer agrees to indemnify the Owner, Operator, and their Representatives from any Claim, including but not limited to Claims relating to damage to any property or injury to persons, arising from the Hirer failing to comply with this clause 3.4.

3.5 Service Limitations

The Owner will use reasonable efforts in providing the Services, however other than as set out in these Terms, to the fullest extent permitted by law, the Owner does not warrant or guarantee that the Services will be uninterrupted or error-free, and the Owner does not take any responsibility for delays to the Services, or any Claim caused by any:

- (a) delays, action, operation, inaction, or failure of any third party;
- (b) failure by the Hirer to provide instructions, information, or documents in accordance with clause 3.3;
- (c) failure by the Hirer to provide evidence that it has made enquiries pursuant to clause 3.4 before commencement of the Services;
- (d) where the Services include Wet Hire, failure by the Hirer to comply with clause 5; and/or
- (e) any Unforeseen Event.

4. Title to Equipment

The Hirer acknowledges that title to the Equipment remains with the Owner at all times. The Hirer must not (and must ensure that its Representatives do not) agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part with possession or otherwise deal with the Equipment except as set out in these Terms.

5. Wet Hire

5.1 Application of clause

This clause 5 applies when the Services include Wet Hire.

5.2 Site

The Hirer must:

- (a) provide the Operator with access to the Site, amenities, and services as are reasonably required for the Operator to perform the Services;
- (b) notify the Owner and Operator of any Site-specific requirements in advance;

- (c) ensure that the Site is safe for the Operator; and
- (d) ensure that it and all of its Representatives comply with all laws with respect to the Site, including occupational health and safety laws.

5.3 Directions and Instructions

- (a) The Operator shall operate the Equipment in accordance with the Hirer's directions and instructions.
- (b) Notwithstanding subclause 5.3(a), the Operator shall not be required to comply with any direction or instruction from the Hirer if, in the opinion of the Operator or Owner, it is unsafe, unlawful or unreasonable to do so.

5.4 Operator

- (a) The Hirer acknowledges that engagement of Services does not create any employment or similar relationship between the Hirer and the Operator. The Hirer agrees to indemnify the Owner and its Representatives against any Claim that the Operator is an employee of the Hirer.
- (b) Subject to any applicable workplace, safety or other relevant laws, the Hirer Fees associated with the Operator shall be based on signed timesheets. Additional charges may apply if the Operator is required to operate the Equipment in addition to the hours in the Booking, on a weekend, or public holiday.
- (c) The Hirer will be responsible for ensuring that any required inductions are attended or completed by the Operator. The Hirer agrees that any time taken to attend such induction shall be charged as per the normal Hire Fee rates.

6. Delivery & Return of Equipment

6.1 Hirer to collect and return Equipment unless otherwise agreed

Unless otherwise agreed, the Hirer must collect the Equipment from the Owner's Premises at the beginning of the Hire Period and return the Equipment to the Owner's Premises at the end of the Hire Period.

6.2 Delivery

If requested by the Hirer, the Owner may, at its discretion agree to deliver the Equipment to the nominated Site and/or collect it from the Site. Where the Owner has agreed to deliver or collect Equipment:

- (a) the Hirer, in addition to the Hire Fee, must pay the Owner the cost of delivery or collection;
- (b) the Hirer must ensure that they (or one of their Representatives) are present at the Site at the agreed time to accept delivery or allow collection of the Equipment; and
- (c) if the Owner is unable to deliver the Equipment to the Hirer or collect it from the Site because of an act or omission of the Hirer or its Representatives, the Hirer shall be liable for any additional costs incurred by the Owner, including but not limited to the costs of redelivery, Operator wages and fuel.

7. Inspection

The Hirer acknowledges that they have had the opportunity to inspect the Equipment prior to commencement of the Services and warrants that they:

- (a) are satisfied that the Equipment is clean, in good repair, and safe working order;
- (b) are aware of the proper use for which the Equipment is designed and are satisfied that it is suitable for the Hirer's purpose; and

- (c) if the Services include Dry Hire, are satisfied with the instructions given in the proper and safe manner of using the Equipment.

8. Hire Period

- (a) The Hire Period commences when the Equipment is delivered to the Site (or where agreed, it is collected by the Hirer from the Owner's Premises).
- (b) The Hire Period ends when the Equipment is returned to the Owner's Premises within the Owner's regular business hours, in the condition required by these Terms, unless these Terms are terminated earlier.

9. Use of Equipment

- (a) The Hirer must ensure that the Equipment is only used:
 - (i) for the purpose and within the capacity for which it was designed;
 - (ii) for a legal purpose and in a legal manner and the Hirer will comply at its own expense with the requirements of all relevant local, state or government authorities; and
 - (iii) at the Site.
- (b) Where the Services include Wet Hire, the Hirer must ensure that the Equipment is only used by the Operator.
- (c) Where the Services include Dry Hire, the Hirer must ensure that the Equipment is only used by suitably qualified (and where applicable) licenced persons, with due care and skill.
- (d) The Hirer must ensure that while the Equipment is not in use, it is stored in a safe and secure manner.

10. Fees & Payment

10.1 Hire Fee

- (a) The Hirer must pay the Hire Fee for the Services for the Hire Period.
- (b) Where the Equipment is damaged during the Hire Period, the Hirer must also pay the Hire Fee for the period from the end of the Hire Period until the date the Equipment is repaired and available for hire by the Owner.
- (c) Where the Equipment is lost, destroyed, or becomes incapable of repair during the Hire Period, the Hirer must also pay the Hire Fee for the period from the end of the Hire Period until the date of receipt by the Owner of a replacement for that Equipment (or if the Owner elects not to replace the Equipment, the date that it could have received a replacement).

10.2 Payment

- (a) The Owner will invoice the Hirer directly and the Hirer must pay the amount due on the invoice in accordance with the Payment Terms as set out in an Order.
- (b) Without limitation, the Payment Terms may require the Hirer to pay for the Services:
 - (i) in full before delivery;
 - (ii) in instalments; or
 - (iii) with an initial deposit and the remainder on delivery, or within a specified time after delivery.
- (c) If the Hirer is required to make payment in instalments, and such instalments are not received by the Owner by their due date, the Owner reserves the right to:

- (i) halt any further delivery of Services until such time as the outstanding payment is made; and
- (ii) claim reimbursement from the Hirer for its reasonable costs incurred as a result of the delay.
- (d) If the Hirer is required to make payment in full or to pay a deposit, the Owner is under no obligation to supply any Services until the relevant amount is paid to the Owner.
- (e) Payment must be made in a manner approved by the Owner. Where payment is made by credit card, the Owner may charge a credit card surcharge of up to 2% of the total amount paid.

10.3 Usual Payment Terms

Unless otherwise specified, the Hirer must pay:

- (a) a deposit equal to 10% of the Hire Fee at the time of booking; and
- (b) the remaining 90% of the Hire Fee before collection or delivery of the Equipment.

10.4 Cancellation Fees

Where the Hirer has made a Booking and then informs the Owner that it wishes to cancel, the Owner reserves the right, at the Owner's absolute discretion and without any liability to the Hirer to:

- (a) invoice the Hirer for a cancellation fee of 10% of the total estimated Hire Fee in the Booking, and/or any expenses incurred by the Owner for the period up to cancellation and for up to 72 hours afterwards; and
- (b) deduct the costs from any amounts paid in advance before releasing the remainder to the Hirer.

10.5 Failure to Pay

If the Hirer fails to pay the Owner any amount under these Terms by the due date for payment, the Owner may immediately terminate all Services. In addition, the Owner may (without limiting its other rights) do any or all of the following, without any liability to the Hirer, until all overdue fees are paid:

- (a) charge the Hirer interest on the overdue amount at a rate of interest per annum equal to 2% above the standard contract default rate published by the Queensland Law Society from time to time;
- (b) terminate these Terms without any obligation to refund the Hirer any money in respect of the cancellation, even if the contractual term of these Terms has not expired;
- (c) initiate proceedings against the Hirer to recover the overdue amount (despite any dispute resolution clause in these Terms); and
- (d) recover all costs to recover overdue amounts, including but not limited to legal costs and outlays on a full indemnity basis.

10.6 GST

- (a) In this clause 10.6, **adjustment note**, **GST**, **tax invoice** and **taxable supply** have the meaning given to them in the GST Law.
- (b) For each taxable supply under or in connection with any Order:
 - (i) the Owner will be entitled to charge the Hirer for any GST payable by the Owner in respect of the taxable supply;
 - (ii) the Hirer must pay the Owner the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Order; and

- (iii) the Owner must provide a valid tax invoice or adjustment note to the Hirer in respect of the taxable supply.
- (c) The Hire Fee and all other costs are exclusive of GST unless expressly stated to be inclusive of GST.

10.7 Duties

The Hirer is responsible for paying all government charges or duties of any kind incurred in or in connection with these Terms. Such charges include without limitation all stamp duties, financial institution duties, and any other charges or duties of a like kind.

10.8 Penalties and Fines

The Hirer shall be responsible for all parking fines, traffic violations, tolls, or other penalties that are incurred due to the use of the Equipment by any person during the Hire Period.

11. Equipment Maintenance, Fuel & Cleaning

11.1 Daily Maintenance

- (a) The Hirer is responsible for daily maintenance and care of the Equipment in accordance with any directions or manuals provided by the Owner.
- (b) The Hirer must return the Equipment in the condition supplied, in compliance with these Terms.

11.2 Cleaning

- (a) The Hirer must clean the Equipment daily and before returning it to the Owner.
- (b) If the Equipment is returned in an unclean state, the Owner may claim reimbursement from the Hirer for its reasonable costs to clean the Equipment.

11.3 Fuel and Lubricants

- (a) All lubricating oils and engine fuel used by the Hirer must be in accordance with the directions and manuals provided by the Owner.
- (b) The Owner shall provide the Equipment with a full fuel tank. The Hirer must ensure that the Equipment is returned with a full tank. In the event that it is not, the Hirer must pay the Owner the additional cost required to refuel.

11.4 Hirer must not repair or modify Equipment

The Hirer must not repair, modify, alter, or tamper with the Equipment.

11.5 Inspection

If requested by the Owner, the Hirer must grant the Owner access to the Site for the purposes of inspecting the Equipment at a reasonable time.

12. Equipment Failure, Damage, and Loss

- (a) If the Equipment (including any part or accessory) becomes damaged, lost, stolen, inoperative or is otherwise in a state of disrepair, the Hirer must notify the Owner immediately.
- (b) The Hirer must reimburse the Owner for any additional costs incurred by the Owner due to the damage or loss, including any insurance excess and any costs associated with retrieving the Equipment.

13. Liability & Indemnity

13.1 Limitation of Liability and Non-Excludable Conditions

- (a) If the Hirer is a consumer within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law, which cannot by law be excluded (**Non-Excludable Condition**)). This clause 13 is subject to those Non-Excludable Conditions.
- (b) Subject to the application of any applicable Non-Excludable Condition and to the maximum extent permitted by law:
 - (i) the Hirer uses and possesses the Equipment at its own risk;
 - (ii) if the Services include Dry Hire, the Hirer operates the Equipment at its own risk;
 - (iii) the Owner excludes from these Terms all guarantees, conditions and warranties that might but for this clause be implied into these Terms;
 - (iv) excludes all liability for any Claim suffered or incurred directly or indirectly by the Hirer, its Representatives or any third parties in connection with these Terms, whether that liability arises under common law, equity or under statute; and
 - (v) will not, under any circumstances, be liable to the Hirer for any Consequential Loss.
- (c) If the Owner's liability under these Terms cannot be lawfully excluded, to the maximum extent permitted by law, the Owner's liability for breach of any Non-Excludable Condition is limited to (at the Owner's option) the supplying of the services again, or the payment of the cost of having the services supplied again.

13.2 Indemnity

To the extent permitted by law, the Hirer releases and indemnifies the Owner, its Representatives and the Operator against all liability arising from Claims:

- (a) by any third party arising directly or indirectly from the use of the Equipment by the Hirer or its Representatives;
- (b) by any third party arising directly or indirectly from any directions or instructions given by the Hirer to the Operator, or failure to provide such directions or instructions where reasonably required;
- (c) for any additional costs incurred by the Owner due to the breach of these Terms by the Hirer or its Representatives;
- (d) for any personal injury or death arising directly or indirectly out of the conduct of the Hirer or its Representatives;
- (e) for any damage to property arising directly or indirectly out of the conduct of the Hirer or its Representatives;
- (f) for any damage to trees, roots, or other vegetation arising directly or indirectly out of the conduct of the Hirer or its Representatives;
- (g) for any negligent or unlawful act or omission by the Hirer or its Representatives;
- (h) for any breach of these Terms by the Hirer or its Representatives;
- (i) related to the Owner, Operator, or a third party's reliance on an incorrect, incomplete, or misleading representation made by the Hirer or its Representatives;
- (j) related to any agreement in force between the Hirer and a third party;
- (k) for libel, slander, defamation, disparagement or false, misleading, or deceptive conduct by the Hirer or its Representatives; or

- (l) arising from the Owner being required under the *Privacy Act 1988* (Cth) or any other privacy law to correct any data, respond to any complaint, or address any other matter raised by a person.

13.3 Conditions of indemnity

- (a) The Owner may make a claim under indemnities in these Terms in relation to a cost before having incurred the cost, or before making a payment in relation to the cost.
- (b) The indemnities in these Terms shall be in addition to any damages for breach of contract to which the Owner may be entitled. Nothing in the indemnities in these Terms will be construed so as to prevent the Owner from claiming damages in relation to the Hirer's breach of any term of these Terms.
- (c) Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms for whatever reason.

14. Default & Termination

14.1 Default

The Hirer will be in default if the Hirer:

- (a) fails to pay any amount to the Owner by its due date;
- (b) fails to permit the Equipment to be collected by the Owner or Operator, or otherwise return the Equipment, by the agreed time in the condition required by these Terms;
- (c) provides the Owner or Operator information which it knows or has reasonable grounds to suspect is false, incomplete, or misleading;
- (d) gives the Operator any unlawful, unsafe, or unreasonable directions;
- (e) fails to provide a safe working environment for the Operator, or prevents the Operator from operating the Equipment;
- (f) undergoes an Insolvency Event; or
- (g) breaches any provision of these Terms and fails to remedy that breach within 5 Business Days.

14.2 Consequences of Default

If the Hirer is in default, then subject to any law (including requirements as to notice), the Owner may, without limiting its other rights:

- (a) immediately terminate these Terms and any Services without any obligation to refund the Hirer any money in respect of the cancellation;
- (b) demand immediate payment of all moneys owed by the Hirer to the Owner whether due for payment or not; and/or
- (c) withhold further performance of any obligations under any other agreement between the parties.

14.3 Termination not to affect obligation to pay

Termination of these Terms shall not affect the Hirer's obligation to pay any outstanding amounts or other amounts in relation to the hire of Equipment.

15. Set-off

- (a) The Owner, after having demanded payment of any amount overdue in accordance with clause 14.2, may apply any payment paid by the Hirer, against:

- (i) the Owner's costs and disbursements in recovering the amount due;
 - (ii) any interest accrued; and/or
 - (iii) the amount overdue.
- (b) The Owner may at any time set off any amount the Hirer owes to the Owner against any amount the Owner may then owe to the Hirer.
- (c) The Hirer may not set off or deduct any amounts from any payment to the Owner.

16. Unforeseen Events

The Owner shall have no liability to the Hirer in relation to any Claim relating to a delay in providing Services, or failure to comply with any of its other obligations under these Terms, because of an Unforeseen Event.

17. Privacy

- (a) The Hirer hereby authorises the Owner to collect, retain, record, use and disclose commercial and consumer information about the Hirer, in accordance with Privacy Law, to persons and/or legal entities, including a solicitor or any other professional adviser or consultant engaged by the Owner, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.
- (b) The Owner may give information about the Hirer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Hirer's credit file. This information may be given before, during or after the provision of credit to the Hirer and will be in accordance with Privacy Law.

18. General

18.1 Notices

- (a) Communications must be in writing, and may be sent by mail, hand delivery or by email. Where communications are sent by means other than by email, a copy must also be sent by email.
- (b) Notices must be sent to the addresses of the parties specified in the Order, or as otherwise notified to the other party in writing.
- (c) A communication by email will be taken to have been received by the addressee at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee.
- (d) A communication that is received after 5pm on a Business Day, or on a non-Business Day, shall be deemed to be received at 9am on the next Business Day.
- (a) For the purposes of the *Electronic Transactions Act 1999* (Cth) and the *Electronic Transactions (Queensland) Act 2001* (Qld), the parties agree to send, receive, and execute notices and documents electronically, and agree that any document signed electronically will be binding with the same effect as a physical signature.

18.2 Inconsistency with other documents

If these Terms are inconsistent with any other document between the parties, these Terms prevail to the extent of the inconsistency.

18.3 Counterparts

Orders may be executed in any number of counterparts including where they are exchanged by facsimile or by email containing these Terms as an unalterable attachment. All counterparts together will be taken to constitute one instrument.

18.4 Reliance

Neither party has entered into any agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in these Terms.

18.5 Relationship of parties

The relationship of the parties does not form a joint venture, partnership or agency, or create any form of employment relationship.

18.6 Severability

If any clause of these Terms is invalid or unenforceable then that clause will be deemed deleted and the remainder of this document will remain in full force and effect.

18.7 No waiver except in writing

No part of these Terms will be deemed waived and no breach excused unless such waiver or consent is provided expressly and in writing.

18.8 Governing Law and Jurisdiction

The laws of the State of Queensland, Australia govern these Terms. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction in Queensland.

18.9 Amendments in Writing

These Terms may only be amended in writing by the Owner.

18.10 Assignment

- (a) The Hirer cannot assign, novate, or otherwise transfer any of its rights or obligations under these terms without the prior written consent of the Owner.
- (b) The Owner may assign, novate or otherwise transfer any of its rights or obligations under these Terms to a third party without notice to, or the prior consent of the Hirer, but if the Owner requires, the Hirer will sign any documents to give effect to an assignment, novation or transfer by the Owner under this clause 18.10.

19. Definitions and Interpretation

19.1 Definitions

In this document:

- (a) **Booking** means a request for Services submitted by the Hirer through the Website, telephone, or such other method as specified by the Owner.
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
- (c) **Claim** means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether:
 - (i) ascertained or unascertained;
 - (ii) immediate, future, or contingent; or
 - (iii) subject of a dispute, litigation, arbitration, mediation, conciliation, or administrative proceedings.
- (d) **Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive, or exemplary loss or damages.

- (e) **Dry Hire** means hire of Equipment without an Operator supplied by the Owner.
- (f) **Equipment** means the equipment of the Owner nominated by the Hirer when making the Booking, including any keys, attachments, ground engaging tools, and accessories.
- (g) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (h) **Hire Fee** means the relevant hire fee specified on the Website, or as otherwise notified by the Owner to the Hirer before making a Booking.
- (i) **Hire Period** means the period specified in clause 8.
- (j) **Hirer** means the person or entity engaging the Owner to provide Services, and if this is not a natural person, also includes the person who makes a Booking on behalf of that entity in their personal capacity.
- (k) **Insolvency Event** means when a party:
 - (i) is insolvent under the definition in the *Corporations Act 2001* (Cth), or is in liquidation or provisional liquidation, under administration or external control, or becomes bankrupt or is affected by any analogous event;
 - (ii) enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
 - (iii) fails to comply with a statutory demand; or
 - (iv) ceases, suspends, or threatens to cease or suspend a material part of its business.
- (l) **Operator** means an operator of the Equipment provided by the Owner.
- (m) **Order** means a contract between the Owner and the Hirer for the provision of Services, incorporating a Booking and these Terms.
- (n) **Owner** means Trenchmen Earthmoving Pty Ltd ACN 650 003 259.
- (o) **Owner's Premises** means the Owner's business premises, or other location where Equipment is stored, as notified by the Owner.
- (p) **Payment Terms** means the terms and conditions in relation to the amount payable in respect of Services as included in an Order, or otherwise advised by the Owner to the Hirer.
- (q) **Privacy Law** means the *Privacy Act 1988* (Cth) and any other law that governs the use, disclosure or management of data or information relating to persons.
- (r) **Related Body Corporate** has the meaning given by the *Corporations Act 2001* (Cth).
- (s) **Representative** includes an employee, agent, officer, director, auditor, advisor, researcher, partner, contractor, sub-contractor, Related Body Corporate, or other related entity of a person.
- (t) **Services** means all services provided by the Owner to the Hirer, including but not limited to the hire of Equipment (whether Wet Hire or Dry Hire), works undertaken in accordance with that hire, associated and ancillary earthmoving and/or heavy machinery services, and where applicable also includes the sale of any goods.
- (u) **Site** means the location or locations nominated by the Hirer when making a Booking for the use of and/or storage of the Equipment.
- (v) **Terms** means these terms and conditions.
- (w) **Unforeseen Event** means pandemic or epidemic, fire, flood, tempest, earthquake, act of God, riot, civil disturbance, terrorism, theft, crime, strike, lockout, breakdown, war, government restriction, the inability of the Owner's normal suppliers to supply necessary products or materials or any other matter beyond the Owner's control.

- (x) **Website** means the Owner's website, located at <https://www.trenchmen.com.au/>.
- (y) **Wet Hire** means hire of Equipment with an Operator provided by the Owner.

19.2 Interpretation

In this document unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) if a party consists of more than one person, these Terms bind them jointly and each of them severally;
- (c) an obligation, representation, or warranty in favour of more than one person is for the benefit of them separately and jointly;
- (d) "person" includes an individual, the estate of an individual, a corporation, an authority, an association, or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns
- (f) a reference to a document (including these Terms) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender and no gender;
- (i) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this document, and a reference to this document includes all schedules, exhibits, attachments and annexures to it;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) no doctrine or rule of construction of documents will apply to the disadvantage of a party, on the basis that the party prepared these Terms;
- (l) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day;
- (m) "includes" in any form is not a word of limitation; and
- (n) a reference to "\$" or "dollar" is to Australian currency.