

Following are the Terms and Conditions of Trade (“**Trading Terms**”) for **AUSSIE EXCAVATORS PLANT HIRE PTY LTD (ACN 164 004 148)** and each related body corporate, any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called (“**Aussie**”).

1. **Payment and Credit Terms:** Unless otherwise agreed in writing, the Customer must pay all amounts due and payable in accordance with the General Credit Terms annexed to the Application for a Commercial Trading Account (“**Credit Terms**”), a copy of which is available on Aussie’s website at www.aussieplanthire.com.au. The Customer hereby acknowledges and agrees that the Credit Terms are binding on it in respect of each and every supply of Products and/or Services by Aussie to the Customer, its nominee and/or agent.
2. **Supply of Equipment:** Equipment is supplied by Aussie based only on these Trading Terms to the exclusion of anything to the contrary in the terms of the Customer’s order, notwithstanding that any such order is placed on terms that purport to override these Trading Terms. Subject to these Trading Terms, Aussie shall supply all consumables necessary for the operation of the Equipment, the Equipment itself, and (in the event of wet hire) the operator(s) for the Equipment. Aussie is responsible for the repair and maintenance of the Equipment, and the Customer is not authorised to order or carry out any repair on the Equipment without the prior written consent of Aussie.
3. **Suspension or Ceasing of Supply:**
 - (a) Aussie may in Aussie’s complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Trading Terms.
 - (b) Without limiting these Trading Terms, if an Event of Default occurs, Aussie may, without prejudice to Aussie’s other rights, call up moneys owed to Aussie by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
4. **Liability of Aussie:** Aussie will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Aussie, its employees, contractors or agents.
5. **Effect of Other Terms:** These Trading Terms are supplemented by the Credit Terms on Aussie’s website at www.aussieplanthire.com.au and are in no way affected or amended by any other express or implied terms. No terms of the Customer apply to any agreement between the Customer and Aussie.
6. **Transactions:** The Customer will be liable for all transactions and expenses involving the Customer’s credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer’s employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer’s credit account which is directly or indirectly caused or contributed to by the Customer’s negligence.
7. **Indemnity:** The Customer will indemnify Aussie in relation to any direct or indirect loss, liability or damage suffered by Aussie or any other person as a result of the Customer’s negligence or breach of these Trading Terms.
8. **Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.
9. **Severance:** Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
10. **Waiver:** Any waiver by Aussie must be in writing signed by Aussie. In the event that Aussie elects not to exercise any of Aussie’s rights arising in connection with these Trading Terms, Aussie’s election will not constitute a waiver of any rights relating to any other breach of these Trading Terms.
11. **Amendments:** These Trading Terms may only be amended with Aussie’s express written agreement.
12. **Assignment:** The Customer may not assign any agreement under these Trading Terms without Aussie’s prior written consent.
13. **Engagement:** Any instructions received by Aussie from the Customer for the Works and/or the Customer’s acceptance of Equipment supplied on hire by Aussie and/or Products or Services supplied by Aussie shall constitute acceptance of these Trading Terms (“**Engagement**”). Where more than one Customer has entered into this agreement, they shall be jointly and severally liable under these Trading Terms. Upon Engagement, these Trading Terms are irrevocable and can only be amended with the written consent of Aussie.
14. **Price:**
 - (a) Unless otherwise confirmed in writing, the Price shall be in accordance with Aussie’s General Price List, as amended from time to time.
 - (b) In the alternative to 14(a) above, at Aussie’s sole discretion, the Price shall be either:
 - (i) As indicated on invoices provided by Aussie to the Customer in respect of Equipment supplied on hire; or
 - (ii) As indicated on the Job Docket(s) provided by Aussie to the Customer from time to time; or
 - (iii) Aussie’s price (subject to these Trading Terms) which shall be binding on Aussie unless otherwise agreed in writing;
 - (c) Aussie reserves the right to change the Price in the event of any variation to the scope of Works;
 - (d) In the event of Wet Hire, charges will be tracked using the Aussie Job Docket which is to be filled out by Aussie’s operator;
 - (e) At Aussie’s sole discretion, a bond may be required which shall be refunded upon the return of the Equipment in a condition acceptable to Aussie;
 - (f) At Aussie’s sole discretion, a deposit may be required, which amount will be non-refundable.
 - (g) Any variation from the Works including (but not limited to) any variation as a result of additional works required due to hidden, unidentifiable and/or unforeseen difficulties (such as concealed asbestos materials, hard rock barriers below the surface, iron reinforcing

rods in concrete or asbestos under slabs) will be made in writing and charged for on the basis of Aussie's hourly rates or otherwise (at Aussie's discretion) may be shown as variations on the invoice. Payment for all variations must be made in accordance with the ordinary terms of payment set out in these Trading Terms.

- (h) Aussie may submit invoices for Works from time to time at Aussie's absolute discretion. The value of the Works shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed;
- (i) Aussie reserves the right to charge the Customer any costs incurred by Aussie including, but not limited to consumables, dumping fees or other costs associated with the supply of Works and/or Equipment without set off or deduction for any reason.
- (j) The Price charged by Aussie allows for all salvageable building materials, contents, articles and/or objects to become the property of Aussie. In the event of the removal of such items by any person without Aussie's prior written consent, Aussie may, at its absolute discretion, terminate the Works and/or provide an amended Price for the works to the Customer prior to Works commencing or continuing.
- (k) Time for payment for the Products and/or Services shall be of the essence and in accordance with Aussie's Credit Terms, or otherwise as stated on the invoice, or any other order forms supplied by Aussie. If no time is stated then payment shall be on delivery of the Products and/or Services or otherwise within thirty (30) days of the end of the month in which the invoice is generated.
- (l) Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (subject to these Trading Terms), or by direct credit, or by any other method as agreed to between the Customer and Aussie.
- (m) The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in writing by Aussie.

15. Hire Period:

- (a) For Dry Hire Equipment the hire period shall be either on a daily or hourly rate (as determined by Aussie) for the entire period whilst the Equipment is in the Customer's possession unless otherwise agreed in writing.
- (b) Hire charges shall commence from the time the Equipment is floated/dropped to the customer's nominated site, and will continue until the return of the Equipment to Aussie's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- (c) In the event of Wet Hire of the Equipment, the hire period shall be tracked using the Aussie Job Docket.
- (d) No allowance whatsoever will be made for time during which the Equipment is not in use for any reason unless Aussie confirms special prior arrangements in writing.
- (e) In the event of Equipment breakdown, provided the Customer notifies Aussie immediately, Aussie may, at its discretion, waive hire fees during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

16. Title:

- (a) The Equipment is and will at all times remain the absolute property of Aussie.
- (b) Nothing in the Engagement entitles the Customer to retain or hold Equipment, or creates any proprietary interest in Equipment in favour of the Customer.

- (c) The Customer irrevocably grants to Aussie and/or any Agent or Subcontractor the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, to retrieve or recover possession of the Equipment at any time.
- (d) The Customer is not authorised to pledge Aussie's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs or for any reason whatsoever.

17. Access: prior to the Works, the Customer:

- (a) shall permit Aussie and/or any Agent or Subcontractor to attend at the Premises to determine the condition and suitability of the Premises and/or the Equipment for performance of the requested Works;
- (b) must obtain the necessary permits and/or plans for the completion of the requested Works and pay any fee(s) payable to any local government or other authority required for the performance of the Works;
- (c) must clearly mark the location of and identify all services above and below ground at the site including, but not limited to any electrical services, gas services, drains, pipes, sewers, mains, pumps, irrigation, telephone and/or data cables and/or any other services which may be on site.
- (d) Whilst Aussie will take all care to avoid damage to any services on the site, the Customer agrees to indemnify Aussie in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified in accordance with these Trading Terms.

18. Delivery of Equipment and/or Services:

- (a) At Aussie's sole discretion, delivery of the Equipment shall take place when:
 - (i) The Customer takes possession of the Equipment from Aussie's premises; or
 - (ii) The Customer takes possession of the Equipment at the Customer's address or premises;
- (b) At Aussie's sole discretion, the costs of delivery of Equipment are in addition to the Price of the Works;
- (c) A minimum of twenty-four (24) hours' notice must be given for standby. In the event of any standby, Aussie may, at its absolute discretion, charge fees in respect of the standby in an amount to be determined by Aussie which is not more than the equivalent to the hire charges which Aussie could have received but for the standby;
- (d) Aussie reserves the right to amend the delivery date and the completion date due to circumstances beyond its control (including, but not limited to) breakdowns, inclement weather, staffing issues or any other like matters;
- (e) The Customer shall make all arrangements necessary to take delivery of the Equipment whenever the Equipment is tendered for delivery. In the event that the Customer is not able to take delivery of the Equipment as arranged, Aussie will be entitled to charge a reasonable fee for redelivery;
- (f) Delivery of the Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of these Trading Terms;
- (g) The Customer shall be responsible for free access by Aussie to the site on which the Equipment is located and/or Products and/or Services are to be provided. If there are any delays due to free access not being available, then the Customer shall be responsible and shall reimburse Aussie for all lost hire fees associated with the equipment not being available. The Customer shall also be responsible for all other expenses and costs incurred by Aussie due to delays in access to the

Equipment and/or provision of the Products and/or Services.

- (h) Any failure or delay in delivering the Equipment shall not entitle either party to treat the Engagement as repudiated.
- (i) Aussie shall not be liable for any loss or damage whatsoever resulting from or related to a failure or delay by Aussie to deliver the Equipment and/or Products and/or Services (or any of them) promptly, or at all, where due to circumstances beyond the control of Aussie.

19. Duration of Works: During the period in which the Works are to be completed, the Customer shall:

- (a) immediately notify Aussie should any competent authority require the suspension or cessation of the Works;
- (b) immediately notify Aussie should it become aware of any fact, matter or thing that might reasonably endanger the performance of the Works;
- (c) allow Aussie and/or any Agent or Subcontractor to store the Equipment at the Premises;
- (d) take all reasonable precautions to keep all persons, including the Customer, its employees, agents and invitees, away from the Equipment while the Equipment is stored, and at a safe distance from the Equipment while it is in operation. Without limitation to this, the Customer shall take all reasonable precautions to prevent bodily injury or damage to property and to comply with all statutory obligations and by-laws and regulations imposed by any public authority for the safety of persons and property in relation to the Works;
- (e) comply with all reasonable safety requests of Aussie, and shall not at any time (and will ensure that no person having access to the Premises does not), operate, occupy or attempt to operate or occupy the Equipment.

20. Risk:

- (a) All risk for the Equipment passes to the Customer on Delivery of Equipment.
- (b) The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Aussie for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing, whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Customer.
- (c) If the Equipment is lost, stolen damaged or destroyed due whilst in the possession of the Customer, (including, for the avoidance of doubt its servants, agents, employees or invitees), including through failure to comply with these Trading Terms, the Customer shall make good that loss or damage at its expense immediately upon demand by Aussie;
- (d) The Customer accepts full responsibility for and shall keep Aussie indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- (e) The Customer agrees and acknowledges that it shall be solely responsible to remove from the site of the Works any materials, equipment or other items that it wishes to retain for its own purposes, or that it wishes to ensure are not damaged during the course of the Works. The Customer agrees and acknowledges that any materials that have not been removed from the site at the time that Aussie and/or its Agent and/or Subcontractor is given access to the site shall become

the property of Aussie (including, but not limited to, any salvageable building(s) articles, objects or materials or other items found inside walls, under slabs, on the site (etc). All such materials may be retained and/or disposed of by any method chosen at the sole discretion of Aussie.

21. Suspension by Aussie and/or Agent and/or Subcontractor:

Aussie and/or Aussie's Agent and/or Subcontractor in its discretion may suspend performance of the Works at any time if in its reasonable opinion the conditions at the Premises are such that it would be unsafe to any person or detrimental to the Equipment for the operation of the Equipment. In the event of Suspension Aussie may, at its absolute discretion, and without incurring any liability to the Customer, cease or suspend supply of Works, Products and Services to the Customer or amend these Trading Terms and/or the Job Docket setting out the Works.

22. Termination of Engagement: Aussie may, in its absolute discretion, terminate the Engagement at any time with immediate effect if the performance or completion of the Works would breach any law, regulation or directive of any competent authority by which Aussie and/or its Agent and/or Subcontractor is bound, or if the Customer:

- (a) hinders or impedes the performance of the Works;
- (b) fails to comply with an essential Term of these Trading Terms;
- (c) commits an Event of Default.

If the Engagement is terminated for any reason: the Customer must immediately pay any outstanding Price for Works completed. In the event that the Customer terminates the agreement, the date upon which the Customer advises of the termination shall in all cases be treated as a Full Day's Hire.

23. Warranties: Other than as set out in these Trading Terms (with the exception of the consumer guarantees provided by the ACL) all conditions, warranties and obligations, whether implied or imposed by statute or otherwise, in respect of the provision of any services provided by the Customer are excluded. No warranty is provided by Aussie in respect of the condition of the Equipment or its fitness for any particular purpose. The Customer shall indemnify and hold harmless Aussie in respect of all claims arising out of the use of the Equipment.

24. Liability for Works:

- (a) Subject to any liability under the ACL which cannot be excluded, Aussie does not accept Liability for any personal injury, death, direct loss, indirect loss, Consequential Loss or damage, however caused which the Customer may directly or indirectly suffer in connection with the hire of the Equipment.
- (b) For the avoidance of doubt, under no circumstances shall Aussie's liability exceed the Price.
- (c) If liability under the ACL cannot be excluded but can be limited in the case of services supplied by the Subcontractor that are NOT acquired for personal, domestic or household use or consumption, any personal injury, death, direct loss, indirect loss, Consequential Loss or other damage, however caused which the Customer may incur or suffer in connection with the services is limited to (at the election of Aussie) one or more of the following:
 - (i) provision of the services again; or
 - (ii) payment of the cost of having the services provided again.

25. Force Majeure: The Subcontractor shall not be obliged to complete or continue the performance of the Works where and to the extent that such performance is prevented or interrupted or delayed by reason of any requirement of any governmental authority or any war, public disorder, civil commotion or disturbance, acts of enemies, strike, lockout,

fire, act of terror, act of God, accident or any other cause beyond the control of the Subcontractor (“**Force Majeure Event**”). Where the Subcontractor fails or is delayed in the performance of the Works by a Force Majeure Event, other than any cause of action that cannot be excluded under the ACL or otherwise at law the Customer shall have no cause of action against the Subcontractor or Aussie for a breach of any Term or otherwise. If the Subcontractor is unable to complete the Works as a consequence of a Force Majeure Event, either Aussie or the Subcontractor may, subject to their obligations under the ACL (if any) and otherwise at law, terminate the Engagement.

26. Ongoing indemnity: Each indemnity of the Customer given herein is a liability of the Customer separate and independent of any other liability of the Customer under these Trading Terms, and survives and continues after performance of the Works and in the event of termination of the Engagement, that termination.

27. Dry Hire Insurance:

- (a) The Customer will insure, or self insure, Aussie’s interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further, the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim. The Customer must provide Aussie with copies of insurance covering Third Party Liability, Plant Equipment and Motor Vehicle Liability prior to delivery of the Equipment.
- (b) In the event that the Customer is unable to provide insurance cover, then Aussie may provide cover for theft, fire and accidental damage only at a cost of eight and a half percent (8.5%) of the Price. The greater of ten thousand dollars (\$10,000) or one point seven percent (1.7%) of the replacement value of the Equipment will be charged as an excess per claim if the Customer is to be covered by Aussie’s insurance policy, which amount will be payable by the Customer on demand. The Customer will also be responsible to pay Aussie for lost hire revenue whilst repairs are carried out and until the Equipment is returned to Aussie in the same rentable condition as when it was delivered.

28. Defects:

- (a) The Customer shall inspect the Equipment and/or Products and/or Services on delivery and shall within four (4) hours notify Aussie of any alleged defect, shortage in quantity, damage or failure to comply with the description provided. The Customer shall afford Aussie an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment and/or Products and/or Services are defective in any way. If the Customer fails to comply with these Trading Terms, the Equipment and/or Products and/or Services are deemed to be free from any defect or damage. For defective Equipment and/or Products and/or Services, which Aussie has agreed in writing that the Customer is entitled to reject, Aussie’s liability is limited to either repairing or replacing the Equipment and/or Product and/or Services, except where the Customer is a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer’s discretion, either a refund of the hire price of the Equipment and/or Products and/or Services, the repair or the

replacement of the Equipment and/or Products and/or Services.

29. Customer’s Responsibilities: Unless otherwise agreed in writing, the Customer shall:

- (a) be responsible for unloading and reloading the Equipment at the Premises, and Aussie and/or its Agent and/or Subcontractor shall be deemed to be under the Customer’s direct control and responsibility;
- (b) Notify Aussie immediately by telephone of the full circumstances of any mechanical breakdown, failure or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (c) Satisfy itself at commencement that the Equipment is suitable for its purposes;
- (d) Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with the manufacturer’s instructions whether supplied by Aussie or posted on the Equipment;
- (e) Ensure that all persons operating the Equipment are suitably instructed in its safe and proper use and where necessary, that they hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Aussie upon request. Aussie shall have the right to reject an operator nominated by the Customer provided the grounds for such rejection are reasonable in the view of the Customer, in which event the Customer will replace the nominated operator;
- (f) Comply with all occupational health and safety laws relating to the Equipment and its operation;
- (g) On termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Aussie;
- (h) Conduct a thorough hazard and risk assessment of the Premises before using the Equipment and/or requesting the Works;
- (i) Keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment to any third party or under any contract, nor shall any other person be entitled to any lien over the Equipment;
- (j) Not alter or make any additions to the Equipment including, without limitation, altering, making additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (k) Employ the Equipment solely for the purposes for which it is hired and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
- (l) Not exceed the recommended or legal load and/or any rated capacity limits of the Equipment;
- (m) Not use or carry any illegal, prohibited or dangerous substances in or on the Equipment;
- (n) Maintain the daily inspection book provided by Aussie and present it to Aussie on request;
- (o) Not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (p) Ensure the required Equipment servicing is completed in accordance with Aussie’s instructions. The servicing shall be at the Customer’s expense and shall include:
 - (i) Greasing, oiling and lubrication, including all adjustments of bolts, nuts, hoses etc; and
 - (ii) Replacement of filters, hoses etc to be provided by the original equipment manufacturer or Aussie at cost to the Customer and fitted by the Customer; and

- (iii) Daily and weekly service as specified in Aussie's Maintenance Schedule; and
 - (iv) Cleaning of Equipment on completion of the hire.
- 30. Customer's Obligations:** Unless otherwise agreed in writing, immediately on request by Aussie, the Customer must pay:
- (a) The new list price of any Equipment or part thereof that is for whatever reason destroyed, written off or not returned to Aussie;
 - (b) All costs incurred in cleaning the Equipment;
 - (c) All costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
 - (d) The cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
 - (e) The cost of repairing any damage to the Equipment caused by vandalism, or (in Aussie's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
 - (f) The cost of fuels and consumables provided by Aussie and used by the Customer. The Customer shall be responsible for the provision of transportation, storage and safe keeping of all fuels, oils and greases provided for use in the Equipment;
 - (g) Aussie for replacement of damaged tyres/tracks or any tyres/tracks with other than normal wear and tear at the end of the hire period; and
 - (h) The cost of repairing or replacement of any GET required during or at the end of the hire period (GET includes items such as cutting edges, bucket teeth, wear plates, ripper boots/shin guards, hammer moils/chisels, hammer bushes, scraper flights, header teeth/picks, compactor feet and labour to fit).
- 31. Wet Hire:** In the event of Wet Hire of the Equipment the operator of the Equipment remains an employee of Aussie and operates the Equipment in accordance with the Customer's instructions. As such, Aussie will not be liable for any actions of the operator in following the Customer's instructions.
- 32. Demolition:** Unless expressly stated otherwise in writing by Aussie:
- (a) Aussie will only demolish footing to a depth of one metre (1 m).
 - (b) Any demolition does not include:
 - (i) any footings that were in the ground from a prior building, not connected to the building currently being demolished but below the building or any footing on the site/block away from the building being demolished;
 - (ii) additional earthworks, levelling and/or compactions in preparation for new building works not expressly specified in writing;
 - (iii) the removal of any hazardous materials;
 - (iv) weather proofing, temporary propping, hoarding, silt control, and/or scaffolding;
 - (v) the removal of septic tanks and/or emptying of waste from septic tanks;
 - (vi) the removal of vegetation, retaining walls and/or fences;
 - (vii) the provision of air monitoring; and
 - (viii) the removal of friable asbestos (including Low Density Board) unless agreed in writing and specifically stated as "friable asbestos".
- 33. Loss of Equipment:** If the Equipment is lost, damaged or destroyed due to any fault of the Customer, its servants, agents, employees or invitees, including through failure to comply with these Trading Terms, the Customer shall make good that loss or damage at its expense immediately upon demand by Aussie.
- 34. Cancellation:**
- (a) Aussie may cancel these Trading Terms or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice, Aussie shall repay to the Customer any sums paid in respect of the Price. Aussie shall not be liable for any loss or damage whatsoever arising from or in connection with such cancellation.
 - (b) The Customer may cancel hire of the Equipment and/or Works by providing not less than two (2) hours' written notice of their intention to cancel directly to the offices of Aussie. In the event that the Customer cancels delivery of the Equipment without providing adequate notice or before delivery of the Equipment, the Customer shall be liable for any loss incurred by Aussie (including but not limited to any loss of profits) as a result of the cancellation, and the Minimum Hire charges will apply.
 - (c) It is the responsibility of the Customer to cancel the hire of Equipment and/or Works due to wet weather. In the event that the Customer fails or refuses to advise of any wet weather event which may delay, suspend or cancel the Works and/or the hire of Equipment not less than two (2) hours in advance directly to the offices of Aussie, the Minimum Hire Charges will apply, and Aussie may cancel, suspend or delay the hire of Equipment and/or the Works at its sole discretion.
- 35. Replacement of Subcontractor:** Aussie may replace any Subcontractor at any time where Aussie reasonably believes the Subcontractor is unable for any reason to complete the Work. If Aussie replaces the Subcontractor, the Customer will sign all paperwork as reasonably required by Aussie with respect to completion of the Works by that replacement.
- 36. Additional Charges:** The Customer agrees and acknowledges that:
- (a) The Customer is responsible for and agrees to pay for any float charges;
 - (b) A penalty rate of 30% will apply for all Works performed between the hours of 6pm and 6am (AEST), and/or on any Sunday or Public Holiday;
 - (c) Any disbursements incurred in the performance of the Works including, but not limited to toll fees, waste disposal fees and/or other outlays will be the responsibility of the Customer and may be charged to the Customer in addition to the price of the Works at Aussie's sole discretion;
 - (d) In the event that attachments are required, but not ordered with Equipment, a delivery fee of \$100.00 (plus GST) will apply to each supply of attachments;
 - (e) Attachments on Combos, Rippers, Rock Grabs, Brooms & Compaction Wheels (and/or such other Equipment as may be specified by Aussie from time to time) will incur a further charge of \$20.00 per hour (plus GST);
 - (f) the hire of Rock Augers may incur additional charges for wear and tear and/or replacement costs;
 - (g) Replacement of the costs of buckets and/or auger teeth and/or pilots will be charged at cost and will be the responsibility of the Customer.
- 37. Review of Trading Terms:** Aussie reserves the right to review these Trading Terms at any time. If, following any such review, there is to be any change to these Trading Terms, that change will take effect from the date on which Aussie notifies the Customer of such Change. Except where the client supplies further Equipment to the Customer, and the Customer shall be under no obligation to accept such changes. The Trading Terms as amended from time to time will be posted on Aussie's website at: www.aussieplanthire.com.au

38. Definitions & interpretation: In these Trading Terms unless the context requires otherwise:

- (a) **"ACL"** means the Australian Consumer Law as contained in the Competition and Consumer Act 2010 (Cth) as amended from time to time.
- (b) **"Aussie"** means Aussie Excavators Plant Hire Pty Ltd and any related body corporate, any subsidiary or associated trustee and as trustee of any trust from time to time, and any of its successors and assignees or any person acting on behalf of and with the authority of Aussie Excavators Plant Hire Pty Ltd including any Agent or Subcontractor thereof.
- (c) **"Consequential Loss"** means without limitation: damage to any third party's property; loss of profits; loss of revenue; lost production; loss of business; loss of the benefit of any contract or other agreement or arrangement; damage to reputation; and legal costs.
- (d) **"Credit Terms"** means the General Credit Terms attached to any Application for a Commercial Trading Account.
- (e) **"Customer"** means the customer whose details appear in the Application for a Commercial Trading Account and the Customer's subsidiaries, holding companies and other related entities.
- (f) **"Dry Hire"** means hire of Equipment without an operator supplied by Aussie.
- (g) **"Engagement"** Any instructions received by Aussie from the Customer for the Works and/or the Customer's acceptance of Equipment supplied on hire by Aussie and/or Products and/or Services supplied by Aussie shall constitute acceptance of these Trading Terms.
- (h) **"Equipment"** means any equipment or other tools, materials, resources or other items necessary to carry out the Works, including but not limited to earthmoving equipment and other heavy equipment, whether supplied by Aussie, a Subcontractor or any other person. Equipment may be specified in Aussie's Booking Information Checklist/Job Docket/Tax Invoice, Booklet and/or COD Work Order Form.
- (i) **"Event of Default"** means any of the following events:
 - (i) the Customer fails to pay for any Works, Equipment hire, Products and Services and/or the Customer breaches these Trading Terms; and/or
 - (ii) the Customer ceases or threatens to cease carrying on business.
- (j) **"Full Day's Hire"** means 8 machine hours or one day's hire.
- (k) **"General Price List"** means the document headed "General Price List" setting out the hourly price of Equipment per hour and applicable GST, as amended from time to time and available on Aussie's website at www.aussieplanthire.com.au
- (l) **"Job Docket"** means each and any job docket and/or tax invoice issued by Aussie with respect of the Works from time to time.
- (m) **"Minimum Hire Period"** means the minimum hire period described on the invoices, authority to hire or any other form provided by Aussie to the Customer. If not otherwise stated, the minimum hire period is:
 - (i) Machines 1-4 ton 2 hrs plus 1 hr travel
 - (ii) Machines 4-8 ton 3 hrs plus 1 hr travel
 - (iii) Machines 10-35 ton Min 6 hrs plus float fee
 - (iv) Trucks 3 hrs plus 1 hr travel each day.
- (n) **"Officer"** means each director, secretary, credit manager and authorised representative of Aussie.
- (o) **"Premises"** means the site or location at which the Works are to be provided, as set out in the Job Docket.

- (p) **"Products"** includes all Products and Services supplied by Aussie to the Customer including, but not limited to the Works, and the value attached to or the proceeds related to the provision of any Services, including, but not limited to products and services supplied by Aussie's Subcontractors and/or agents, and the works described in any Job Docket provided by or on behalf of Aussie to the Customer.
- (q) **"Services"** includes all Services supplied by Aussie to the Customer including, but not limited to the Works, Wet Hire, Dry Hire, earthmoving and/or heavy machinery services, or services associated therewith.
- (r) **"Subcontractor"** means each and any subcontractor engaged by Aussie for the completion of the Work at the discretion of Aussie from time to time.
- (s) **"Trading Terms"** means all the provisions of the Application for a Commercial Trading Account (including the General Credit Terms) plus Aussie's Terms and Conditions of Trade (as they appear herein) and/or any other conditions or facility agreement or member agreement as may be amended by Aussie from time to time.
- (t) **"Wet Hire"** means hire of the Equipment with an operator supplied by Aussie.
- (u) **"Works"** means all earthmoving and heavy machinery services provided by Aussie to the Customer (and/or at the request of the Customer) including (but not limited to) the provision of Products and/or Services, the hire of Equipment, whether Wet or Dry Hire including (but not limited to) the works undertaken in accordance with that hire, services provided in association with the hire and/or any items listed on the invoice and/or Job Docket arising out of or in connection to any supply of any kind by Aussie to the Customer and/or at the request of the Customer.

39. Interpretation:

- (a) In these Trading Terms, unless the context requires otherwise, all references to a party include the party's successors and permitted assignees.
- (b) No provision of these Trading Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.