

A1 EARTHMOVING & CONSTRUCTION PTY LTD
TERMS AND CONDITIONS

1 OPERATION AND APPLICATION

- 1.1 A1 agrees to provide the Client with the Works subject to these Terms and Conditions. These Terms and Conditions apply in respect of all Agreements, offers to sell, Quotes, and other commercial transactions for the supply of the Works by A1 to the Client.
- 1.2 The Agreement between the Client and A1 shall be upon these Terms and Conditions and shall be read in conjunction with these Terms and Conditions.
- 1.3 These Terms and Conditions shall operate to the exclusion of any terms and conditions to the contrary effect expressed in any of A1's quotations or other communication or documentation and shall supersede all prior Agreements.
- 1.4 From time to time, A1 may review and amend these Terms and Conditions of the Agreement and the Client shall be bound by any variation which shall apply to the supply of any of the Works following the effective date of the variation.

2 FORMATION OF AGREEMENT

- 2.1 Unless stated otherwise on the Quote, A1's written Quotes are valid for 30 days from the date of issue of the Quote, and thereafter are subject to confirmation in writing by A1 before acceptance.
- 2.2 The Client agrees that where a Quote has been based on dimensions, specifications, drawings, plans, designs, or other information supplied by the Client or any third party ("**Supplied Information**"), and any variance is established to the Supplied Information by A1 after the Quote has been issued, A1 shall be entitled to:
- 2.2.1 revise and amend the Price of the Works; and
2.2.2 an extension of time pursuant to clause 14.2 herein.

3 WET HIRE

- 3.1 If A1 is providing Wet Hire services to the Client under the Agreement, this clause 3 shall apply.
- 3.2 Subject to these Terms and Conditions, the Client will hire the Equipment for the Hire Period only.
- 3.3 The Client agrees that during the Hire Period the Client will:
- 3.3.1 comply with all relevant Laws relating to the operation of the Equipment, including obtaining any necessary permits or consents required;
- 3.3.2 not modify, permit the modification of, conceal, alter, make any addition or alteration to, tamper with, interfere with, repair or attempt to repair any Equipment;
- 3.3.3 take all steps to secure and protect the Equipment including from damage, vandalism and theft;
- 3.3.4 not part with possession of the Equipment;
- 3.3.5 be responsible for all damage or loss to the Equipment caused by accident, theft, malicious damage, or any unlawful act that occurs throughout the Hire Period;
- 3.3.6 in the case of bad weather, provide suitable protection of the Equipment;
- 3.3.7 not permit any person other than the Operator to use or operate the Equipment.
- 3.4 At the end of the Hire Period, the Client must make available for A1's collection or deliver up to A1 the Equipment.
- 3.5 In the event that the Equipment is lost, stolen, damaged, or vandalised during the Hire Period, the Client will be liable to A1 and will indemnify A1 for the full cost of replacing any lost or stolen Equipment, the repair of any damaged or vandalised Equipment, and the replacement of any Equipment that in the sole discretion of A1 is damaged or vandalised beyond repair.
- 3.6 In the event that the Equipment is not available for collection by A1 within 7 days of the expiry of the Hire Period then the Equipment will be deemed to have been lost, stolen, damaged, or vandalised, and the Client will be liable to A1 to pay the full amount of replacing the Equipment at retail value within 14 days of the expiry of the Hire Period.

4 PRICE AND PAYMENT

- 4.1 The Client shall pay to A1 the price specified for the Works as stated on the Quote, and all taxes, credit card fees, delivery fees, handling fees, and other charges in respect of the Works ("**Price**").
- 4.2 The Client agrees to pay the Price for the Works in accordance with these Terms and Conditions, including making payment of the Deposit prior to A1 commencing the Works if a Deposit is specified as payable in the Quote.
- 4.3 The Client acknowledges and agrees that, if a Deposit is payable, the Deposit is non-refundable.
- 4.4 A1 will render Invoices to the Client for the Price and the Client agrees to pay the Price on or before the Date for Payment.
- 4.5 The Client warrants that its nominated payment method has sufficient clear funds available to pay the Price.
- 4.6 Time of payment is of the essence of the Agreement.
- 4.7 Where the Client has provided details of a debit or credit card for payment to A1 in the Agreement, the Client agrees and authorises A1 to charge or make deductions from the debit or credit card to satisfy the Price or any part of the Price at any time without notice to the Client.
- 4.8 A1 may charge an additional 1.2% to the Client where the Client has provided details of a debit or credit card for payment to A1.
- 4.9 A1 shall be entitled to charge the Client interest calculated at 12% per annum, on the balance of all overdue accounts and invoices from the due date for payment until the date of actual payment.

5 COSTS RECOVERABLE

- 5.1 Should the Client default in the payment of any monies due under any Agreement, then all monies due to A1 shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand.
- 5.2 The Client shall pay on an indemnity basis all expenses, costs and disbursements, including debt collection agency fees, commission and any fees paid to A1's solicitors (on an indemnity basis) incurred by A1 or its appointed agents in recovering payment of any outstanding monies, enforcing its rights under the Agreement, or in investigating or defending any action or threatened actions.

6 SECURITY

- 6.1 The Client hereby charges and mortgages in favour of A1 to secure the repayment of any debt and any monies which may become owed by the Client to A1 hereunder and under any Agreement all of the Client's present and future estate and interest in all real property and personal property.
- 6.2 A term or expression which is used in this clause 6 (but not defined in this document) and which is defined in the PPSA has the meaning given to that term or expression in the PPSA.
- 6.3 A1 and the Client acknowledge and agree that the Agreement, including these Terms and Conditions, constitutes a Security Agreement and entitles A1 to claim:
- 6.3.1 a security interest in favour of A1 over the Goods supplied or to be supplied to the Client as Grantor pursuant to the Agreement ("**Collateral**");
- 6.3.2 a security interest over the proceeds of disposal of or the granting of a right in the Collateral referred to in clause 6.3.1 as original collateral ("**Proceeds**"); and
- 6.3.3 a security interest over all of the personal property of the Client pursuant to clause 6.6.2.
- 6.4 The Goods supplied or to be supplied under the Agreement fall within the PPSA classification of "Motor Vehicle" or "Other Goods" acquired by the Client pursuant to the Agreement.

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- 6.5 The Proceeds of the Collateral referred to in clause 6.3.2 falls within the PPSA classification of "Account".
- 6.6 A1 and the Client acknowledge that A1, as Secured Party, is entitled to register its Security Interest in:
- 6.6.1 the Collateral supplied or to be supplied to the Client pursuant to this Agreement and in the relevant Proceeds; and
- 6.6.2 All Present and After Acquired Property of the Client.
- 6.7 To the extent permissible at law:
- 6.7.1 the Client waives its rights to receive any notice required by:
- (a) any provision of the PPSA (including a notice of a verification statement); or
- (b) any other Law before A1 exercises a right, power or remedy;
- 6.7.2 the Client agrees to indemnify A1 on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the registration or amendment or discharge of any Financing Statement registered by or on behalf of A1 and enforcement or attempted enforcement of any Security Interest granted to A1 by the Client;
- 6.7.3 the Parties agree sections 130, 142 and 143 of the PPSA are excluded;
- 6.7.4 the Client agrees that A1 need not comply with sections 95, 123, 129, 130, 132(3)(d), 132(4) or 135 of the PPSA; and
- 6.7.5 the Client waives any time period that must otherwise lapse under any Law before A1 exercises a right, power or remedy. If the Law which requires a period of notice or a lapse of time cannot be excluded, but the Law provides that the period of notice or lapse of time may be agreed, that period or lapse is 1 day or the minimum period the Law allows to be agreed (whichever is the longer).
- 6.8 For the avoidance of doubt, nothing in this clause 6 prohibits A1 giving a notice under the PPSA or any other Law.
- 7 FORCE MAJEURE**
- 7.1 A1 will not be liable for any breach of the Agreement due to any matter or thing beyond A1's control. Furthermore, A1 is excused from performing any term, covenant or condition required by the Agreement during the time and to the extent that performance is prevented when such performance is prevented wholly or in part by circumstances beyond A1's control.
- 8 DEFECTS**
- 8.1 If the Client believes that the Works are not in accordance with the Agreement the Client must give notice of the alleged defective Works to A1 within 7 days of delivery of the Works.
- 8.2 A1 shall not be responsible or liable for any alleged defect in the Works unless it is reported in accordance with clause 8.1.
- 9 NO WARRANTY**
- 9.1 A1 makes no express warranties to the Client including as to the condition, quality or suitability of the Works or the fitness of the Works for the Client's purpose or use, except those expressly set out in the Agreement and these Terms and Conditions.
- 9.2 Any time or date named and accepted by A1, including on the Quote, for completion, delivery, dispatch, or arrival of the Works is an estimate only and does not constitute a condition of the Agreement or part of the description of the Works and is not of the essence of the Agreement. A1 will not be liable for any damages, loss, costs or charges incurred by the Client due to late delivery ensuing from any circumstances whatsoever, either within or beyond the control of A1.
- 9.3 A1 will not be liable in any circumstances for any loss or damage whatsoever allegedly incurred and arising out of any:
- 9.3.1 Conditions, warranties and terms implied by statute or general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void;
- 9.3.2 Alleged liability to the Client in contract for consequential or indirect damages arising out of or in connection with the provision of the Works or the Agreement, even if A1 knew they were possible or they were otherwise unforeseeable; and
- 9.3.3 Claims by the Client in negligence for acts or omissions of A1 or its employees, agents, or contractors arising out of or in connection with the Agreement.
- 9.4 The Parties acknowledge and agree that:
- 9.4.1 any prior representations, agreements and arrangements, including representations as to the suitability of the Works;
- 9.4.2 any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure; and
- 9.4.3 all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Works for any purpose or as to design, assembly, installation, material or workmanship or otherwise, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void;
- are expressly excluded from, and do not form part of, the Agreement unless specifically stated in the Agreement to the contrary.
- 9.5 If clause 9.3, 9.4 and/or 12.1 herein is held by a court to be unlawful, invalid or unenforceable for any reason, the Client agrees that A1's total liability to the Client for any loss or damage suffered by the Client in relation to the Works or the Agreement is limited, in A1's sole discretion, to a refund of the relevant Price of the Works.
- 9.6 If clause 9.5 herein is held by a court to be unlawful, invalid or unenforceable for any reason, the Client agrees that A1's total liability to the Client for any loss or damage suffered by the Client in relation to the Works or the Agreement shall not exceed the amount that is the lower of:
- 9.6.1 The amount covered by A1's insurer specifically for that loss or damage; and
- 9.6.2 The actual amount received by A1 from its insurer specifically for that loss or damage.
- 10 THE CLIENT'S WARRANTIES**
- 10.1 The Client warrants that it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by A1 or anyone on its behalf in respect of the Works, other than those that are expressly contained in the Agreement.
- 10.2 The Client warrants that:
- 10.2.1 all dimensions, specifications, drawings, plans, designs, or other information supplied by the Client to A1 are accurate;
- 10.2.2 the Client is entitled to have the Works carried out at the Site;
- 10.2.3 the Site will support the Works and the Site is prepared and ready for A1 to carry out the Works;
- 10.2.4 the Client has obtained any licences or approvals required by Law, including any necessary Council, planning or building approvals;
- 10.2.5 A1 shall have uninhibited access to the Site for the purposes of carrying out the Works;
- 10.2.6 the Site is not subject to any encumbrances or easements save for any encumbrances or easements the Client gives notice to A1 of prior to entering into the Agreement;
- 10.2.7 no other tradesman or workers will interfere with the Works;
- 10.2.8 the Client will provide A1 with access to any facilities necessary for A1 to carry out the Works;
- 10.2.9 the Client will comply with all safety directions from A1;
- 10.2.10 the Client will ensure that no person other than the Operator uses or operates the Equipment;
- 10.2.11 the Client will take all reasonable steps to ensure that all persons on the Site, including the Client's employees,

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agents, contractors, or invitees, maintain a safe distance from the Equipment while it is in operation.

10.3 In the event the Client breaches any of the warranties in clause 10.2, A1 shall be entitled to, in its sole discretion, an extension of time pursuant to clause 14.2 herein and to review and amend the Price of the Works or to terminate the Agreement pursuant to clause 15 herein.

10.4 The Client warrants it has documented and provided prior notice to A1 in writing of:

10.4.1 all foreseeable hazards at the Site, including but not limited to Hazardous Materials; and

10.4.2 the location of all underground or other hidden services at the Site, including but not limited to electrical services, gas services, sewer services, pumping services, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, and oil pumping mains.

10.5 In the event that A1 discovers Hazardous Materials or any other matter at the Site during the provision of the Works which, in A1's sole discretion, poses a safety concern then A1 may terminate the Agreement pursuant to clause 15 and the Client shall pay A1 in accordance with clause 15.3.

10.6 The Client agrees that it will be liable for, and indemnifies and agrees to keep A1 indemnified from, any and all costs incurred as a result of the Client's breach of the warranties in this clause 10.

11 NO LIABILITY FOR THIRD PARTIES

11.1 The Client acknowledges and agrees that A1 is not liable for:

11.1.1 any damage or defects attributable to the provision of services by a third party, including a third party engaged by A1; or

11.1.2 any defects attributable to the manufacture of any goods that are manufactured by third parties.

12 LIABILITY AND INDEMNITY

12.1 A1 shall not be liable to the Client or any other party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits, and the Client agrees that A1 may plead these Terms and Conditions as a bar to any such claims whether they arise at law, in equity, under any statute, regulation, or other legislative instrument, or under any contract, deed, or any other instrument made or approved under any law.

12.2 The Client hereby releases and indemnifies and agrees to keep A1 indemnified from any and all costs (including all legal fees and costs) and any other legal or other expenses incurred by it in investigating or defending any action or threatened actions (on an indemnity basis), damages, liabilities, penalties, fines, expenses or losses including indirect, incidental, consequential, punitive or exemplary loss or damage (including but not limited to loss of profit), whether resulting from breach of contract, tort, warranty, strict liability, statute or any other legal theory or otherwise that A1 may incur in relation to the Client or any third party, including where the cost, damage, liability, penalty, fine, expense or loss is caused by or contributed to by A1 in any way or for any reason whatsoever.

12.3 The Client acknowledges and agrees that:

12.3.1 the Client shall be solely liable and responsible for repairing any damage that may occur to any property or surrounding surface as a result of the Works, including but not limited to damage to adjacent or existing structures from vibrations or noise levels; and

12.3.2 without prejudice to any other right A1 has under these Terms and Conditions, A1 shall not be liable or responsible for repairing any damage that may occur to any property or surrounding surface as a result of the Works.

12.4 The Client acknowledges and agrees that A1 makes no warranty in respect of the noise levels or vibrations of the Works and shall not be liable or responsible for any damages, loss, costs or charges incurred by the Client as a result of or in connection with the noise levels or vibrations of the Works.

13 VARIATIONS

13.1 Any variation to the Works or the Agreement must be agreed to in writing between a representative of A1 and of the Client, confirming the:

13.1.1 precise scope of the variation; and

13.1.2 any change to the Price as a result of the variation.

13.2 The Client agrees that A1 may revise and amend the Price of the Works if there are any such variations.

13.3 Where any variation to the Works or the Agreement is necessary:

13.3.1 To comply with any written direction lawfully given by a person acting under a written law; or

13.3.2 By virtue of circumstances that could not reasonably have been foreseen by A1 at the time when the Agreement was entered into,

then A1 shall be entitled to payment for such variation provided that before carrying out the Works in relation to the variation, A1 gives to the Client a statement setting out the reason for, and the cost to be incurred on account of the variation, together with a copy of any written direction referred to in clause 13.3.1.

14 COMPLETION, DELAYS AND EXTENSION OF TIME

14.1 Any time or date named and accepted by A1, including on the Quote, for completion, delivery, dispatch, or arrival of the Works is an estimate only and does not constitute a condition of the Agreement or part of the description of the Works and is not of the essence of the Agreement.

14.2 Should the Works or the progress of the Works be delayed by any of the following causes or conditions resulting therefrom:

14.2.1 A1 not having uninhibited access to carry out the Works;

14.2.2 The Site not being suitable or prepared for the Works;

14.2.3 On account of variations;

14.2.4 By inclement weather or conditions resulting from inclement weather;

14.2.5 By reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works;

14.2.6 Any act, default or omission on the part of the Client;

14.2.7 Delay on the part of any third party (including a third party engaged by A1);

14.2.8 If any matter or thing is discovered by A1 that it was not aware of or that was not reasonably foreseeable at the time of providing the Quote, including building defects, hard rock barriers, or hidden pipes, cables or wiring;

14.2.9 By any other matter, cause or thing whatsoever beyond the control of A1 including but not limited to unavailability of labour or materials, technical or mechanical issues, or pandemic,

then in any such case A1 shall be entitled to:

14.2.10 a fair and reasonable extension of time in which to complete the Works; and

14.2.11 revise and amend the Price of the Works.

14.3 When the Client becomes aware of any matter that may be likely to result in a delay to the Works, the Client is to notify A1 in writing of the nature and estimated extent of the delay.

14.4 Upon receipt of the Client's notice in clause 14.3 above, A1 will notify the Client of the estimated impact of the delay on:

14.4.1 The time for completion of the Works; and

14.4.2 The estimated extra costs associated with the delay.

14.5 The Client shall pay for A1's extra costs and fees necessarily incurred by reason of any delay or extension.

15 TERMINATION

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15.1 If the Client defaults in the due and punctual observe of all or any of its obligations, warranties or covenants under the Agreement or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then A1 may without prejudice to any other right or remedies it has:

- 15.1.1 treat as discharged all or any obligation arising from any Agreement;
- 15.1.2 retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to A1; and
- 15.1.3 take such steps as A1 may deem necessary in its sole discretion to mitigate its damages suffered including the putting to use, sale, hire, or disposal of any goods under the Agreement.

15.2 In addition to any other rights under the Agreement, A1 may terminate the Agreement by notice in writing to the Client immediately upon any one of the following events:

- 15.2.1 Any deliberate and substantial prevention of or interference with the provision of the Works or progress thereof caused by the Client whether directly or indirectly;
- 15.2.2 Substantial interference with the Works by any cause beyond the control of A1 including (but without limiting in any way the generality thereof) inclement weather conditions, mechanical issues, water, flood, fire, rioting, pandemic, civil commotion or industrial action;
- 15.2.3 Any substantial breach of the Agreement or these Terms and Conditions by the Client;
- 15.2.4 If the Client shall make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Client's estate;
- 15.2.5 Any failure by the Client to pay any part of the Price in accordance with clause 4 herein.

15.3 If the Agreement is terminated:

- 15.3.1 the Client shall pay A1 for all Goods and/or Services provided by A1, all work done by A1, and all goods or materials used or procured by A1 and properly chargeable to the date of termination; and
- 15.3.2 A1 may retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to A1.

16 REPOSSESSION

16.1 If the Client fails to pay the whole or any part of the Price when due in accordance with the Agreement, defaults in the due and punctual observance of all or any of its obligations, warranties or covenants under an Agreement or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then A1 may without notice enter the Site and retake possession of the Equipment and the Client hereby authorises and allows A1 and/or its representatives, servants, agents or employees to enter the premises upon which the Equipment is situated for the purpose of retaking possession of the Equipment.

16.2 The Client indemnifies A1 against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which A1 suffers, incurs, or is liable for in respect of A1's exercise of its rights under clause 16.1.

17 RETENTION OF TITLE

17.1 The Client acknowledges and agrees that the Equipment will at all times remain the property of A1.

17.2 The Client is not entitled to and agrees not to agree, offer or purport to sell, assign, sub-let, lend, assign, pledge, mortgage, hire, or otherwise part with or attempt to part with personal possession of or deal with the Equipment.

18 NOTICES

18.1 A party must give any notice required under these Terms and Conditions or the Agreement in accordance with this clause 18.

18.2 A notice must be served at the address or electronic mail address of the party set out in the Agreement.

18.3 A party may deliver a notice by hand, post, or by electronic mail.

18.4 If before 4.00pm local time in the place of delivery, a party delivers a notice by hand or by electronic mail and the sending party completes the transmission the notice will be taken to be given on the day of delivery or transmission, and in any other case on the next day. If the party gives notice by post the notice will be taken as given on the 7th day in the place of delivery after the notice is posted.

18.5 A party may give notice of another address (within Australia) or an electronic mail address for service to the other party, and the new address or the electronic mail address shall be the address for service of the party for the purposes of this clause.

19 MISCELLANEOUS

19.1 A1 may assign, sub-contract or sub-let the whole or any part of the Works or A1's obligations under an Agreement, without seeking the consent of the Client.

19.2 The Client may not assign, sub-contract or sub-let any part of the Works, or any of its rights, liabilities, or obligations under any Agreement, without the prior written consent of A1.

19.3 The covenants, agreements and obligations contained in any Agreement and these Terms and Conditions will not merge or terminate upon the repudiation or termination of the Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

19.4 Any waiver by A1 must be in writing signed by A1. Failure by A1 to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.

19.5 If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms and Conditions are not affected.

19.6 These Terms and Conditions and the Agreement are governed and are to be construed in accordance with the laws in force in the State of Western Australia.

19.7 These Terms and Conditions and the Agreement are subject to the exclusive jurisdiction of the Courts of Western Australia.

20 DEFINITIONS AND INTERPRETATION

In this document:

20.1 "**A1**" means A1 Earthmoving & Construction Pty Ltd (ACN 632 170 079) and each related entity as defined in the *Corporations Act 2001* (Cth) of A1 Earthmoving & Construction Pty Ltd (ACN 632 170 079) now or at any time Goods or Services are supplied to the Client in the future.

20.2 "**Agreement**" means any contract or agreement, whether formal or informal, written, oral or partly written and partly oral, formed between the Client and A1, including but not limited to by way of the Client's acceptance of a Quote issued by A1.

20.3 "**Client**" means the individual, business, partnership or company entering into an Agreement with A1 and includes the Client's successors and assigns.

20.4 "**Date for Payment**" means the date for payment of the Price specified in A1's Invoice and, if no date for payment is specified in A1's Invoice, the date for payment shall be 7 days after the date that A1 renders an Invoice to the Client.

20.5 "**Deposit**" means the amount of the Price payable by the Client prior to A1 commencing the Works as specified on the Quote, if applicable.

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- 20.6 **"Equipment"** means the plant, equipment or machinery described in the Quote and includes any tools, accessories, manuals, logbooks or equipment in or attached to the plant, equipment or machinery.
- 20.7 **"Goods"** means the provision of any goods by A1 to the Client pursuant to an Agreement including the Equipment or any materials necessary to carry out the Services.
- 20.8 **"Hazardous Materials"** means any substance, chemical or material that poses a risk to the health and safety of a person including but not limited to asbestos.
- 20.9 **"Hire Period"** means the period for which the Equipment is hired by the Client under an Agreement.
- 20.10 **"Invoice"** means an invoice issued to the Client by A1.
- 20.11 **"Law"** means an Act of Parliament, statute, regulation, proclamation, ordinance or by-law, including all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing one or more of them.
- 20.12 **"Notice"** means a notice in accordance with clause 18.
- 20.13 **"Operator"** means a person employed or contracted by A1 to operate the Equipment for the Hire Period.
- 20.14 **"Party"** means each party to an Agreement, including A1 and the Client, and **"Parties"** has a corresponding meaning.
- 20.15 **"Price"** has the meaning stated in clause 4 and is subject to clause 13.
- 20.16 **"Quote"** means a quote issued to the Client by A1.
- 20.17 **"PPSA"** means the *Personal Property Securities Act 2009*.
- 20.18 **"Service"** means the provision of services by A1 to the Client pursuant to an Agreement including site works, land and block clearing, sand removal, rubbish removal, dig outs, preparation work for brickwork, compacting, earthmoving and Wet Hire.
- 20.19 **"Site"** means the site nominated by the Client for the provision of the Works.
- 20.20 **"Terms and Conditions"** means the terms and conditions set out herein subject to any amendments expressly made by A1 pursuant to clause 1.4.
- 20.21 **"Wet Hire"** means the hire of the Equipment with an Operator by A1 to the Client for the Hire Period.
- 20.22 **"Works"** means A1's provision of Goods and/or Services pursuant to the Agreement.
- 20.23 Unless context requires otherwise:
- 20.23.1 the singular includes the plural and vice versa;
- 20.23.2 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- 20.23.3 a reference to any gender includes all genders;
- 20.23.4 a reference to a recital, clause or schedule is to a recital, clause or schedule of or to these Terms and Conditions;
- 20.23.5 a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
- 20.23.6 a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 20.23.7 a reference to a body, other than a Party to the Agreement (including, without limitation, an institute, association or authority), whether statutory or not:
- (a) which ceases to exist; or
- (b) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- 20.23.8 If a party comprises two or more persons, the covenants and Agreements on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- 20.23.9 A reference to a party includes its executors, administrators, successors and permitted assigns;
- 20.23.10 No provision of these Terms and Conditions will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms and Conditions or that provision;
- 20.23.11 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 20.23.12 All references to A\$, \$, dollar, or to currency are references to Australian dollars;
- 20.23.13 "Including" and similar expressions are not and must not be treated as words of limitation; and
- 20.23.14 Headings are for ease of reference only and do not affect the meaning of these Terms and Conditions.

21 RECEIPT AND ADVICE

- 21.1 The Client hereby acknowledges receipt of these Terms and Conditions and agrees to be bound by them. The Client accepts these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Client further acknowledges that it has had the opportunity of obtaining independent legal advice and that the Client understands the Terms and Conditions outlined above.