

Definitions

"**Australian Consumer Law**" means the *Competition and Consumer Act 2010* (Cth) and the Fair Trading Acts within the states and territories of Australia.

"**BME**" means Brisbane Micro Excavations Pty Ltd ACN 634 489 964 as trustee for JZW Family Trust ABN 31 830 106 896;

"**Guarantor**" or "**Guarantor/s**" means any party executing a guarantee for the Hirer in favour of BME.

"**GST**" has the meaning given to that term by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"**Hirer**" means the person or entity renting or hiring the Machines with BME and any person acting with ostensible authority on behalf of the Hirer.

"**Job Address**" means the address named on the Order form.

"**Machines**" means the two excavation machines and one skid steer loader available for wet hire, or any part of them or equipment supplied by BME to the Hirer.

"**Rental Period**" means the period of time agreed between the Hirer and BME that the Hirer may hire the Machines for wet hire.

"**Order/s**" means the form at the front of these Terms which will include details of the Machines and the Hirers personal information.

"**PPSA**" means the *Personal Properties Securities Act 2009*.

"**PPSR**" means Personal Property Security Register.

"**Term**" or "**Terms**" means any one or more of the Terms of Trade contained in this document.

General

The Hirer's acceptance of work from BME indicates the Hirer's continuing acceptance of these Terms.

The Machines are strictly only available for wet hire only and are not available for any other kind of hire.

These Terms apply even if the Machines are not supplied to a Hirer or are later withdrawn.

These Terms do not constitute a Hire Purchase Agreement or an Agreement for the sale of goods. The Machines remain the absolute property of BME.

Maintenance and Repair

BME will, at its cost, carry out maintenance and repairs required due to normal use of the Machines. No abatement in payment, or suspension of the Rental Period, will apply while minor necessary maintenance work is being performed by BME.

All repair work to the Machines must be completed by BME or a repairer agreed in writing by BME.

Payment

The Hirer must make payment in full to BME for the Order plus GST shown on the tax invoice upon receipt of an invoice from BME. There will be no pro rata adjustment made for shorter periods. The Hirer agrees that all payments are to be made by direct deposit or credit card. The Hirer is liable to pay BME its costs in relation to the recovery of any monies not paid by the Hirer in the required time and in relation to the dishonour of any payments, including collection services costs and legal fees and disbursements (on an indemnity basis).

The granting of the Machines for hire to a Hirer is at the sole discretion of BME.

Risk and Indemnity

The Hirer acknowledges that BME will not be liable for any loss, damage or deterioration of the Machines caused by any act or omission of negligence by the Hirer and will pay these costs in full to BME. The Hirer shall notwithstanding any loss, damage or deterioration to the Machines remain liable to pay BME for the entire Rental Period.

The Hirer indemnifies BME and will keep it indemnified along with its employees and agents for all loss, damage, injury, costs, claims, demands and expenses (including legal costs) of any nature that the Hirer may incur or be liable for due to the Hirer causing any damage to the Machines or breaching these Terms.

The Hirer acknowledges that there is some risk when the Machines are moving through small spaces such as doorways and agrees that BME will not be liable for any minor damage caused by the Machines to access the property when BME is operating the Machines using due care and skill. BME will not be liable for any damage either to underground services not previously notified by the Hirer or incorrectly notified, or any damage as a result of the use of any earthmoving or other equipment under the direct control of the Hirer or the Hirer's employee or agent.

Warranties & Liability

Unless otherwise specified, BME gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Machines. Where applicable the manufacturer's warranties will attach to the Machines. Where the Machine supplied is defective in terms of any condition, warranty or guarantee or otherwise is not able to complete the Order, BME will at its discretion terminate the hire and give any refund at the sole discretion of BME.

Australian Consumer Law may imply warranties, conditions or terms on BME which cannot by law be excluded, limited or modified. BME's liability to the Hirer shall be limited to the value of the work supplied and shall, where it is allowed, be excluded or if not able to be excluded, only apply to the minimum extent required.

The Hirer is responsible for obtaining the permits required by any government authority in relation to completing the earthmoving detailed in the Order and BME is not liable for any stoppages due to the failure by the Hirer in obtaining such permits.

Delivery of Order

Any date quoted for delivery of the Order for the Machines is an estimate only and unless a guarantee is given by BME in writing, BME will not be liable to the Hirer for any loss or damage arising for failure to deliver the Machines on or before the quoted date.

BME reserves the right to refuse to operate any Machines if in the opinion of any employee or agent of BME it would be dangerous or detrimental to the Machines or any other property to operate them.

In the event of any dispute concerning such downtime due to the conditions of operation of the Machines then such dispute must be notified to BME and dealt with in accordance with the Dispute provisions of these Terms.

The Hirer must provide BME with access to the Job Address to enable BME to complete the Order.

Security and Charge

Where the Hirer and/or Guarantor/s (if any) is the owner of land, realty or any other asset capable of being charged, both the Hirer and/or Guarantor agree to mortgage and/or charge all their joint and/or several interest in the said land, realty, or other assets to BME to secure all monies owing to BME under these Terms. The Hirer and/or Guarantor/s acknowledge and agree that BME shall be entitled to lodge a caveat, which caveat shall be withdrawn once all monies owing and payable have been met.

Privacy / Personal Information

In relation to the Hirer's information provided by the Hirer to BME and as allowed by the *Privacy Act 1988* as amended, the Hirer and/or the Guarantor/s agree for BME to: (1) disclose personal information about a Hirer for the purpose of determining credit worthiness; (2) obtain from a credit reporting agency a credit report containing personal credit information about the Hirer; (3) search the PPSR for any information about the Hirer, Guarantor or parent or associated companies; (4) contact any spouse/partner, employer or referee given on the Order to verify the information provided by the Hirer; (5) disclose personal information of the Hirer for the purpose of debt collection.

Australian Consumer Law

Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of Australian Consumer Law, except to the extent permitted by that law where applicable.

Validity / Severability

If any provision of these Terms shall be unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of these Terms.

Waiver

Failure of BME to enforce any of these Terms shall not be deemed to be a waiver of any of the rights of BME under these Terms.

Other Agreements

If there is an inconsistency between these Terms and any Order submitted by the Hirer or any other arrangement between BME and the Hirer, these Terms prevail unless otherwise agreed in writing between the parties.

Termination

In the event of any breach by the Hirer of any provision of these Terms or the Hirer's death, bankruptcy, administration, receivership, liquidation or any other external administration, BME may call up any money owed by the Hirer, retain all money paid on account, or cease further deliveries and recover from the Hirer all loss of monies arising as a result, without prejudice to any other rights BME may have.

Any breach of these Terms will give BME the right to terminate and remove the Machines at its discretion. The Hirer is liable for payment of the entire Rental Period in the event of any breach by the Hirer of these Terms.

Disputes

If a dispute arises the Hirer agrees to comply with BME's dispute resolution process. To this end a party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required and the action believed necessary under the circumstances that will assist both in settling the dispute.

Each party will then in good faith attempt to resolve the dispute by negotiation, and if the dispute in some aspect involves payment of money, the party withholding payment is required immediately upon receipt of the notice to deposit the disputed amount into a separate account with instructions pertaining to the release of funds. Undisputed amounts must be paid forthwith.

If the dispute has not been resolved within 14 days of the first notice of the dispute, either party may refer the dispute to arbitration to an arbitrator approved by the Queensland Law Society.

Governing Law

These Terms are governed by and shall be construed in accordance with the laws of Queensland and the Hirer submits to the jurisdiction of the courts of that State.