

SCHEDULE 1: TERMS AND CONDITIONS OF HIRE

1. Definitions and Interpretation

1.1 Definitions

The terms in bold type have the following meaning:

- (a) The **“Contract Date”** is the date at which the last Party executes this Contract as shown on the execution page;
- (b) The term **“dry hire”** means the hire of the Mini Digger without an operator or driver;
- (c) The **“End Date of Hire”** means the hire expiry date mentioned in Schedule 3 of this Contract;
- (d) The **“End Time of Hire”** is the time at which the Mini Digger is to be returned to the Owner or the time at which the Owner is to collect it;
- (e) **“GMDH”** means Gosnells Mini Digger Hire.
- (f) **“Hire Charges”** means the amounts charged for the hire of the Mini Digger including GST (if applicable) as set out in the Schedule 3 to this Contract;
- (g) **“Hiring Period”** means the period of hire of the Mini Digger as mentioned in Schedule 3;
- (h) The **“Mini Digger”** means the mini digger and the trailer hired to the Customer by the Owner and includes the accessories and items of equipment affixed to or supplied with the Mini Digger as per Schedule 3;
- (i) **“Owner’s Premises”** is the premises situated at 47 Otterden Street, Gosnells, W.A., 6110;
- (j) The **“Parties”** means the Owner and the Customer;
- (k) **“PPSA”** means the *Personal Properties Securities Act 2009* (Cth) (as amended);
- (l) **“Schedule”** means a schedule to this Contract;
- (m) **“Terms and Conditions of Hire”** means the warranties, conditions, terms, and contractual provisions mentioned in this Schedule 1; and
- (n) The term **“wet hire”** means the machine/equipment comes with an operator supplied and all fuel usage costs included in the “Wet Hire Rate”.

1.2 Interpretation

In the interpretation of this Contract, except where the context otherwise implies:

- (a) a reference to any statute, act of parliament, legislation, regulation, code, by-law or local laws includes any modification, re-enactments or substitution of it;
- (b) time in this Contract will be of the essence;
- (c) the obligations imposed by the Terms and Conditions of Hire on or in favour of a party which is a company or other corporate entity includes its successors and assigns;
- (d) Words importing a singular meaning shall include the plural meaning and *vice versa*;
- (e) Words denoting one gender shall include all other genders;
- (f) Words denoting natural persons include bodies corporate and *vice versa*;

- (g) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Western Australia;
- (h) A reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (i) References to a Party are intended to bind their executors, administrators and permitted transferees; and
- (j) the word *“including”* is to be construed without limitation.

2. Hire of Mini Digger

2.1 The Owner hires out the Mini Digger to the Customer on a *“dry hire”* basis for the payment of the Hire Charges and other charges, and the Customer hereby hires the Mini Digger from the Owner on the Terms and Conditions of Hire set out in this Contract.

2.2 The Owner shall provide the fully maintained and insured Mini Digger for hire by the Customer.

3. Hiring Period and Return of Mini Digger

3.1 The period of hire (**the “Hiring Period”**) starts at the earlier of the following times:

- (a) If the Customer requires delivery and collection by the Owner of the Mini Digger, the time when the Owner delivers it to the nominated address as shown in the Schedule 3; or
- (b) When the Customer takes possession or control of the Mini Digger.

3.2 The Hiring Period shall be for a minimum period of four (4) hours (**the “Minimum Hiring Period”**) such that if the Customer returns the Mini Digger before the expiration of that period, the Customer must pay the total Hire Charges with respect to the Minimum Hiring Period.

3.3 If Clause 3.1(b) applies, the Mini Digger must be returned by the Customer to the Owner’s Premises on or before the End Time of Hire as set out in Schedule 3.

3.4 The Hiring Period ends when the Mini Digger is back in the Owner’s possession or control.

3.5 The Customer may hire the Mini Digger for a further Hiring Period with the Owner’s consent in writing at the further cost mentioned in Schedule 3 provided the Owner is given reasonable notification.

3.6 The Hiring Period includes business days, non-business days and public holidays and is irrespective of the time the Mini Digger is being operated.

4. Hire Charges

4.1 Payment for the Hire Charges as shown in Schedule 3 shall be made by the Customer prior to taking the Mini Digger from the Owner’s Premises.

4.2 The Customer must pay additional hire charges as mentioned in Schedule 3 if the Mini Digger is hired for more than ten (10) hours during a day.

4.3 The Customer shall be liable for further Hire Charges should the Mini Digger be sent away for

incidental repairs that are a result of an accident or incident whilst in the Customer's possession and irrespective of fault by the Customer or a third party.

4.4 The Customer shall pay a late payment charge as shown in Schedule 3 if:

- (a) the Mini Digger is not returned to the Owner's Premises by the End Time of Hire as stated in Schedule 3; or
- (b) the Customer has not made the Mini Digger available for collection at the nominated time of Collection as stated in Schedule 3.

5. Further Charges In Connection with Hire of Mini Digger

5.1 The Customer agrees to pay the following further charges in addition to the Hire Charges in connection with the hire of the Mini Digger:

- (a) Costs for the Owner to repair, clean, and/or decontaminate the Mini Digger if the Customer does not return it in good working order and/or in a clean and uncontaminated state;
- (b) Any fuels, oils and other consumables the Owner supplies to the Customer;
- (c) Costs of delivery and/or collection of the Mini Digger as shown in Schedule 3;
- (d) Credit card charges;
- (e) GST (if applicable) and other governmental charges or taxes levied in connection with the Contract such as stamp duty, carbon levies, any green renewable levies, ecosystem disposal levy, extraordinary site levy and pollution levies (if applicable).

6. Customer's Obligations Under This Contract in relation to Use of the Mini Digger

6.1 The Customer shall have the following obligations under this Contract:

- (a) Prior to taking delivery, the Customer shall satisfy itself as to the Mini Digger's condition and suitability.
- (b) The Customer shall use the "DIAL BEFORE YOU DIG" facility by telephoning the number "1100" and obtain access to the website: www.1100.com.au prior to digging.
- (c) The Customer shall use the Mini Digger in a safe and appropriate manner and shall comply with and conform with all state, national, municipal, and other laws, ordinances and regulations in any way relating to the possession and use of the Mini Digger.
- (d) The Customer shall operate the Mini Digger only in accordance with the purpose for which it is designed by the manufacturer, and shall ensure that the Mini Digger is used in accordance with the manufacturer's instructions. Except as mentioned in clause 9.2 the Owner gives no guarantee or warranty and makes no representations that the Mini Digger is appropriate for the Customer's intended use.

(e) The Customer and all of the Customer's staff operating the Mini Digger must hold a current and relevant Western Australian driver's licence.

(f) The Customer shall not permit any other person or legal entity to operate, drive, or have possession of the Mini Digger except where agreed to by the Owner in writing.

(g) The Customer (or any other persons employed or contracted by the Customer) shall not operate the Mini Digger under the influence of alcohol and/or drugs.

(h) The Customer shall ensure that any persons operating the Mini Digger:

- (i) have been appropriately trained in the proper and safe use of the Mini Digger;
- (ii) have a current high risk work licence (if applicable); and
- (iii) have any relevant qualifications to operate the Mini Digger where required by law.

(i) The Customer must wear personal protective equipment and suitable protective clothing when operating the Mini Digger.

(j) The Customer acknowledges that the seat belt should be worn when operating the Mini Digger.

(k) The Customer shall undertake all safety checks prior to operating the Mini Digger, and ensure that all safety signs and instructions are complied with by the operator of the Mini Digger.

(l) The Customer must not remove or obliterate any safety signs, instructions, decals, labels, licence plate or serial numbers on the Mini Digger.

(m) The Customer shall not tamper with, modify, or repair the Mini Digger, and shall inform the Owner immediately there is a problem with the operations of the Mini Digger.

(n) All servicing and repairs to the Mini Digger must be carried out by the Owner or his technicians at the Owner's Premises or otherwise at the premises of the Manufacturer of the Mini Digger (which place of service is to be determined by the Owner at his absolute discretion).

(o) The Customer shall NOT refuel the Mini Digger unless agreed in writing between the Owner and the Customer. The Owner shall refuel, and charge the cost of the fuel to the Customer as shown in Schedule 3.

(p) The Customer shall reimburse the Owner for the fuel upon receiving an invoice from the Owner.

- (q) The Customer must pay any fines and penalties, including but not limited to Road Law fines and parking fines, attributable to the operations of the Mini Digger whilst it is in possession of the Customer.
- (r) The Customer shall:
- (i) store the Mini Digger securely and safely in a stationary lock-down position at all times during the Hiring Period when not in use;
 - (ii) when transporting the Mini Digger, ensure that it is safely loaded, properly secured and transported in accordance with all of the manufacturer's specifications and the law; and
 - (iii) comply with all safety directions advised by the manufacturer and/or the Owner when operating and loading the Mini Digger.
- (s) The Customer shall:
- (i) Clean and keep the Mini Digger in good condition;
 - (ii) Not remove the Mini Digger from the State of Western Australia;
 - (iii) Ensure that the Mini Digger is not contaminated with any asbestos or hazardous chemicals or substances;
 - (iv) Comply with all environmental laws in relation to the use of the Mini Digger;
 - (v) Immediately inform the Owner of the risk of contamination of hazardous chemicals or asbestos to the Mini Digger, upon which the Customer will be charged for the costs incurred in de-contaminating it;
 - (vi) Not operate the Mini Digger over or in water, in a building, in a mine, in asbestos fibres or tailings, or in chemicals or soil which may denature the structure of the Mini Digger, except with the written authorisation of the Owner, which authorisation may be reasonably withheld; and
 - (vii) Keep the trailer attached to the tow vehicle or in a locked yard during the entire Hiring Period when not in use.
- (t) The Customer shall permit the Owner to enter the Customer's premises to inspect and/or maintain the Mini Digger during the Hiring Period from time to time during usual working hours provided that, if such inspection and/or maintenance cannot be done during usual working hours, then further hire charges will be payable by the Customer.
- 7. Payment of Hire Charges**
- 7.1** Where the Hiring Period is for a specific period of time, the Customer must pay the Hire Charges which are determinable at the time of entering into the Contract, prior to taking possession.
- 7.2** The Customer must also pay all other Hire Charges including late payment charges and further charges which are not determinable at the time of entering into the Contract within 7 days of the date of the invoice.
- 7.3** If the Customer doesn't pay the invoice by the due date as mentioned in Clause 7.2 above, the Owner may charge, in addition to all other charges under this Contract the following:
- (a) Any legal costs on an indemnity basis and mercantile agents' costs incurred by the Owner in recovering the debt owed by the Customer under this Contract; and
 - (b) Interest computed on a daily basis on the outstanding balance of the debt owed by the Customer at the interest rate based on the Owner's bank's overdraft rate plus 1%.
- 8. Familiarisation and Suitability of the Customer to Operate the Mini Digger**
- 8.1** The Customer acknowledges that he, she or it will possess and demonstrate prior operating experience and sound knowledge of the safety aspects of operating the Mini Digger.
- 8.2** If the Customer asks the Owner for familiarisation in relation to operating the Mini Digger, the Owner shall provide this at the costs mentioned in Schedule 3.
- 8.3** The Customer acknowledges that the laminated training cards and instructions can be found in the rear pocket of the Mini Digger seat cover.
- 8.4** The Owner makes no guarantee that the Customer will have the requisite level of achievement to operate the Mini Digger at the end of the familiarisation.
- 8.5** The Owner is not obliged to hire the Mini Digger to the Customer and may refuse to hire it to the Customer at his absolute discretion, including circumstances where the Customer does not provide adequate identification or where in the opinion of the Owner, the Customer's safety is put at risk by providing the Customer with the Mini Digger.
- 9. Exclusion of Liabilities and Indemnities**
- 9.1** Subject to clause 9.2 and except as expressly provided to the contrary in this Contract, all warranties, conditions, terms, representations, inducements or undertakings, whether express or implied, statutory or otherwise, relating to the Owner's obligations under this Contract are excluded from the Contract to the extent permissible by law.
- 9.2** No provision in this Contract excludes, modifies or restricts any guarantee, any right, any remedy, any term, any warranty, any condition, or any representation, implied or imposed by any legislation which cannot lawfully be limited or excluded. This may include the Consumer Guarantees imposed by the *Australian Consumer Law*. Where any Act of Parliament implies a condition, warranty or term in this Contract and

that Act prohibits provisions in an agreement or contract excluding or varying the application, exercise or liability under that condition, warranty or term, such condition, warranty or term will be deemed to be included in this Contract to the minimum extent permissible.

- 9.3** Where the Owner is not permitted to exclude a guarantee, right, remedy, term, warranty, condition, or representation, imposed by legislation with respect to this Contract (a “**Non-excludable Term**”) and the Owner is able to limit the Customer’s remedy for a breach of a Non-excludable Term, then the Owner’s liability for breach of the Non-excludable Term is limited to the supply of the hiring services again or the payment of the cost of having the hiring services supplied again, which decision shall be at the Owner’s absolute discretion.
- 9.4** Subject to sub-clause 9.2, the Owner will not be under any liability to the Customer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise arising in relation to the Mini Digger, including without limitation delay or inconvenience due to any breakdown, failure or defect in the Mini Digger.
- 9.5** The Customer is liable for and indemnifies the Owner against all liabilities, claims, losses, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Owner) and any environmental damage, cost, damage or expense arising from or incurred in connection with Customer’s hire or operation of the Mini Digger or its breach of this Contract.
- 9.6** Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Contract. It is not necessary for a party to incur expenses or make any payment before enforcing a right of indemnity conferred by this Contract. The Customer must pay on demand any amount it must pay under an indemnity in this Contract.
- 10. Insurance**
- 10.1** The Mini Digger is to be insured with comprehensive insurance by the Owner.
- 10.2** The Customer is responsible and liable for the loss and damage to the Mini Digger whilst on hire. The Customer will pay for any losses, damages, costs, and expenses suffered by the Owner not recovered through the insurance effected by the Owner.
- 10.3** The Customer acknowledges that they must pay for the risks that the insurance does not cover including theft, damage resulting from misuse or use violating statutory rules and regulations or over loading electric current or caused by contact with corrosive substances or caused by the negligence of

the Customer or any other person whilst under hire to the Customer or loss or damage whilst being transported or when the Mini Digger is wrongly converted to the Customer’s own use.

- 10.4** The Customer must not operate the Mini Digger in a manner which will void the insurance cover over it.
- 11. Registration under the *Personal Properties Securities Act 2009 (Cth)* (the “PPSA”)**
- 11.1** The Customer consents to the Owner effecting a registration on the Personal Property Securities Register (the “PPSR”) at the Owner’s discretion (in any manner the Owner considers appropriate) in relation to any Security Interest arising under or in connection with this Contract.
- 11.2** The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 11.3** The Customer acknowledges that, if the Owner’s interest under this Contract is a Security Interest for the purposes of the PPSA:
- (a) that Security Interest relates to the Mini Digger and all proceeds of any kind; and
 - (b) the Contract is a security agreement for the purposes of the PPSA.
- 12. Damage, Theft or Loss of the Mini Digger, Trailer or the attached accessories and tools**
- 12.1** The Customer is at all times liable and responsible for the Mini Digger (as defined in clause 1.1(g)) during the Hiring Period.
- 12.2** If the Mini Digger is damaged, stolen or lost during the Hiring Period, the Customer will be liable to the Owner for:
- (a) any costs incurred by the Owner in repairing the Mini Digger trailer or its attached accessories and tools or for the new replacement cost of the Mini Digger if it cannot be economically repaired;
 - (b) the new replacement cost if the Mini Digger is stolen or lost; and
 - (c) any other costs whatsoever incurred by the Owner as a result of the damage, theft, or loss to the Mini Digger, including the full hire charges as set out in Schedule 3 of the Contract.
- 12.3** The Customer will pay the Bond as mentioned in Schedule 3 prior to hiring the Mini Digger. Part or all of the Bond (as applicable) will be forfeited by the Customer where panel damage or machine damage is sustained during the Hiring Period (fair wear and tear excepted).
- 13. Notification of Damage Upon Collection or Receipt of the Mini Digger**
- 13.1** If, when the Customer collects or receives the Mini Digger, it is defective, damaged and/or broken in any way, the Customer must inform the Owner of this within 2 hours after the Customer collects or receives the Mini Digger.
- 13.2** If the Customer does not inform the Owner within that 2-hour time period, the Owner is entitled to

determine that the Mini Digger was in good working order and condition.

14. Default and break costs

14.1 If the Customer fails to pay any further Hire Charges or other amounts herein provided within 7 days after the amounts are due and payable by service of an invoice from the Owner, or if the Customer fails to observe or perform any other provision of this Contract required to be observed or performed by the Customer, then the Owner shall have the right to exercise one or more of the following remedies:

- (a) To declare the entire amount of Hire Charges from the date of the default to the date of expiration of this Contract immediately due and payable without notice or demand to the Customer;
- (b) To sue for and recover all Hire Charges, and other payments, then accrued or thereafter accruing;
- (c) To take possession of the Mini Digger, without demand or notice, wherever the same may be located, without any court order or other process of law. The Customer hereby waives any and all damages occasioned by such taking of possession;
- (d) To terminate this Contract; and
- (e) To pursue any other remedy at law or in equity.

14.2 Notwithstanding any repossession or any other action which the Owner may take, the Customer shall be and remain liable for the full performance of all obligations on the part of the Customer to be performed under this Contract. All of the Owner's remedies are cumulative, and may be exercised concurrently or separately.

15. Breakdown of the Mini Digger

15.1 If the Mini Digger breaks down or becomes unsafe to operate during the Hiring Period, the Customer must:

- (a) at once stop using the Mini Digger and notify the Owner;
- (b) straight away take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Mini Digger;
- (c) forthwith take all steps necessary to prevent any further damage to the Mini Digger; and
- (d) not repair or attempt to repair the Mini Digger without the Owner's consent in writing.

15.2 If the Mini Digger breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Owner will:

- (a) take all steps necessary to repair the Mini Digger as soon as reasonably possible after being notified by the Customer;
- (b) not impose a hire charge for that part of the Hiring Period during which the Mini Digger was broken down or unsafe, nor impose the costs associated with any repair or replacement of the Mini Digger; and

- (c) not be liable for any damages, loss, expenditure, or inconvenience incurred by the Customer or any Claim made against the Customer arising from or in any way connected with a breakdown of or a malfunction of the Mini Digger, no matter what the cause of the breakdown or malfunction.

16. Ownership and Security

16.1 The Mini Digger is, and shall at all times be and remain, the sole and exclusive property of the Owner, and the Customer shall have no right, title or interest therein except as a bailee.

16.2 The Customer shall not permit the Mini Digger to become a fixture to any land whatsoever.

16.3 The Customer shall not sell, transfer, assign, sublet, charge, mortgage, pledge or create any form of security over the Mini Digger.

16.4 Except where Clause 29 applies, the Customer hereby charges for the due payment and for the performance of his/her obligations under this Contract, all of his/her legal and equitable interest (present and future) held in any and all real property.

16.5 The Customer consents to the lodgement of an absolute caveat over the Customer's real property notifying the Owner's interest in the Charged Property, and shall indemnify the Owner for all costs incurred in preparing and registering such charge on an indemnity basis.

17. Termination of this Contract

17.1 The Customer or the Owner may terminate this Contract and any Hiring Period where:

- (a) The other party breaches any warranty or condition of this Contract and does not remedy the breach within 2 days of written notice of the breach; or
- (b) The other party becomes insolvent, bankrupt, goes into administration, receivership, liquidation, ceases to operate its business, enters into a personal insolvency agreement under the *Bankruptcy Act* (Cth).

17.2 The Owner may terminate the Contract and any Hiring Period for any other reason by giving twenty-four (24) hours' notice to the Customer.

17.3 These rights to termination are in addition to any other rights the parties have under this Contract, and do not exclude the parties' rights under equity or law.

18. Repossession of the Mini Digger and Entering the Customer's Premises

If the Contract or the Hiring Period has been terminated under Clause 17 or the Customer is in breach of the Contract, the Owner may at the Customer's cost initiate all legal steps to repossess the Mini Digger including entering the Customer's premises to recover the Mini Digger, and the Customer expressly authorises the Owner to enter the Customer's premises for the purpose of recovering the Mini Digger.

19. Delays Due To Causes Beyond Party's Control

19.1 Subject to Clause 19.2, neither party shall be liable for any delays in delivery of the Mini Digger arising as a result causes beyond their control, including but not limited to terrorism, war, government orders of lockdowns (such as covid lockdowns), acts of god, supply chain shortages, strikes, lockouts, fires, floods, and fuel embargoes.

19.2 Nothing mentioned in Clause 19.1 shall exclude or limit the Customer's liability under this Contract for when the Mini Digger is stolen, lost or damaged (beyond fair wear and tear) during the Hiring Period, or has become unsafe to operate or broken down due to the Customer's negligence or behaviour.

20. Privacy of Customer's Information

20.1 The Customer consents to the Owner collecting personal information about the Customer and using the Customer's personal information and/or corporate information including but not limited to, the Customer's credit history, PPSR information, name, address, driver's licence information, credit card details, date of birth, and business details, ABN, ACN, business name details and company search details for the following purposes:

- (a) To assist the Owner in performing all the objectives in hiring the Mini Digger to the Customer, including assessing the Customer's credit worthiness and enforcing the Owner's rights under the PPSA and in relation to security of the Mini Digger;
- (b) Avoiding theft of the Mini Digger; and
- (c) Providing the hire service to the Customer and engaging in contracts with the Customer.

20.2 The Customer may access the Owner's Privacy Policy upon requesting this from the Owner.

20.3 The Customer has the right to obtain access to the personal and/or corporate information the Owner holds in relation to the Customer.

20.4 The Owner shall comply with the Australian Privacy Principles in all transactions and dealings with the Customer.

20.5 The Customer consents to the Owner providing the Department of Transport or other relevant government authority the Customer's driver's licence details and all of the Customer's other details mentioned in Schedule 2 where there has been a breach of the road traffic laws or other laws.

21. Distant Area Hire Conditions

21.1 The following definitions in this clause apply:

"Distant Area" is a location which is more than 50 kilometres from Owner's premises.

"Maintenance Program" is the maintenance program operated by Owner (or his agent) in relation to the Mini Digger. The Maintenance Program involves attendance on site by Owner service personnel to conduct routine 1 monthly

Mini Digger servicing and general maintenance requirements.

21.2 Unless otherwise specified in the Contract the Maintenance Program for all Mini Diggers operating in the Distant Area will be subject to a per kilometre charge both to and from the site at the scheduled rate per kilometre plus labour costs at the scheduled rate, per person per hour (including travel time) plus any other direct travelling costs including airfares and accommodation (Distant Area Travel Charges).

21.3 Multiple Mini Diggers hired by the same Customer on the one site will only be charged on a *"one all out"* basis.

21.4 If the Mini Digger breaks down in a Distant Area, the Customer must also pay the Owner the Distant Area Travelling Charges relating to any attendance at the Location concerned.

21.5 It is the responsibility of the Customer to provide access to the site.

21.6 It is the responsibility of the Customer to provide accommodation at the Distant Areas if no accommodation is available within 20 kilometres of the Location or if requested by Owner.

22. Entire Contract and Representations

22.1 This Contract constitutes the entire Contract between the Parties and it shall not be amended, altered or changed except in writing signed by both the Parties.

22.2 The Customer acknowledges that he/she/it has not entered into this Contract relying on any representations, including statements made with respect to the use of the Mini Digger, other than those mentioned in this Contract.

23. Assignment

Except where the Customer is acquiring the hiring services wholly or predominantly for personal, domestic or household use, or where this Contract is a small business contract, the Owner may assign this Contract to any third party (including a related body corporate) without the Customer's consent.

24. Return of the Mini Digger

24.1 Upon the expiration or earlier termination of this Contract, the Customer will return the Mini Digger to the Owner in the same condition and good working order, ordinary wear and tear resulting from the proper use thereof excepted, by delivering the Mini Digger at the Customer's cost to the Owner's Premises during usual business hours.

24.2 If the Customer does not properly clean the Mini Digger or if it is not properly decontaminated, the Owner will charge the Customer the cleaning costs incurred and the Customer shall be responsible for continuing to pay the Hire Charges for the part of the Hiring Period during which the Mini Digger is being cleaned and/or decontaminated.

24.3 Save for when the Owner has agreed to collect the Mini Digger from the Customer, the Customer shall ensure it is kept secure and safe until it is collected.

25. Notices

25.1 A notice or other communication to a Party must be in writing and delivered to that Party or that Party's legal practitioner in one of the following ways:

- (a) Sent by e-mail to their e-mail address as stated in Schedule 2 or 3, when it is treated as received when it enters the recipient's information system and the sender receives a delivery receipt to that e-mail;
- (b) Delivered personally to the Party's place of address mentioned in the Schedule 2 or 3; or
- (c) Posted to their address by ordinary mail when it will be treated as having been received on the fourth business day after posting it.

26. Counterparts

26.1 This Contract may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Contract will be the date on which it is executed by the last Party.

27. Execution

27.1 The person signing this Contract for and on behalf of the Customer hereby covenants with the Owner that he or she has authority of the Customer to enter into this Contract on the Customer's behalf and is empowered by the Customer to bind the Customer to this Contract.

27.2 Except where clause 29 applies, the person signing this Contract hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this Contract not in fact having such power and/or authority to bind the Customer.

28. Governing Law and Jurisdiction

This Contract is governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia with respect to any actions brought in relation to this Contract.

29. Severance

If any part of this Contract becomes unenforceable or void for any reason, then that part shall be severed from the Contract with the intention that all of the remaining parts shall continue to be in full force and effect and be unaffected by the severance of any of the other parts.

30. Clauses in this Contract excluded from Consumer Contracts and Small Business Contracts Under Australian Consumer Law

The following clauses, namely, Clauses 16.4 (Security over land), Clause 17.2 (Termination of the Contract with 24 hours' notice), Clause 22 (Assignment of Contract) and Clause 26.2 (Execution of the Contract), will not be applicable if this Contract is a small business contract or a consumer contract.

31. No Waiver of rights

No delay or omission by the Owner to exercise any remedy, right, or power given to him upon any continuing breach or default under this Contract will impair any such remedy, right, or power, nor will it be construed to be a waiver of any right of the Owner to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.