

Wally's Excavations Dry Hire Terms & Conditions ("Terms")

1. Definitions

- 1.1 "Minimum Hire Period" means the period from the Commencement Date until the Expected Completion Date.
- 1.2 "Plant and Equipment" means the items specified in the Schedule and includes but is not limited to any item of plant, machinery or vehicle, and any tools, accessories, parts, items of equipment and devices affixed to or supplied with such plant, equipment, machinery or vehicle let by the Owner to the Hirer; and
- 1.3 "Hire Price" means the price payable for the hire of the Plant and Equipment calculated in accordance with the Hire Rates set out in the Schedule. The period of hire the machinery is charged for will be calculated in accordance with the minimum charge period specified in the Schedule or having regard to the actual time the machinery is used, at the sole discretion of the Owner.
2. Hire of Plant and Equipment and Basis of Rates
- 2.1 The Owner will hire the Plant and Equipment to the Hirer for the Minimum Hire Period and the Hirer agrees to take the Plant and Equipment on hire and pay the Hire Price.
- 2.2 The hire period may be extended beyond the Minimum Hire Period by agreement between the parties.
- 2.3 The Hire Price is payable for the entire Minimum Hire Period, during any extension to this Agreement, during any period the Plant and Equipment remains in possession of the Hirer and during any period in which Hirer obligated repairs are being undertaken.
- 2.4 Without limiting clause 2.2 and 2.3 above, where the term of the hire is extended beyond the Minimum Hire Period the Owner reserves the right to review and alter the Hire Price.
- 2.5 The Owner may levy additional charges where the Hirer requires the use of the Owner's resources outside of chargeable plant hire time or requires the Owner to go beyond Wally's Excavations Company Integrated Management System standards. Additional costs may include, but are not limited to, charges for inductions, medicals, weed 'n' seed certificates, particular plant safety features, particular Personal Protective Equipment (PPE) and others.
- 2.6 Wally's Excavations retains title in all goods and materials forming part of the Works supplied to the Client under this Agreement until such time as the Works have been paid for in full. The Client must not seek to transfer, charge or otherwise deal with any goods or materials forming part of the Works until such time as the Works have been paid for in full.

3. Payment Terms

- 3.1 The Hirer must pay all amounts levied by the Owner either:
- (a) within 7 days of provision of a tax invoice for the hire; or
 - (b) in accordance with the terms of the tax invoice if longer terms are agreed; or
 - (c) in accordance with the payment terms set out in the Schedule.
- 3.2 Unless stated otherwise, all prices exclude GST. Any applicable GST, other tax or duty will be payable in addition to the price.
- 3.3 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2% per month, calculated daily.
- 3.4 If any tax invoice becomes overdue the Owner reserves the right to charge an administration fee of 500.00 per month.
- 3.5 The Hirer will pay the Owner's costs and disbursements incurred in pursuing any recovery action or any other claim or remedy against the Hirer including collection costs, debt recovery fees and legal costs, resulting from the Hirer's failure to make due payment.

4. Use of Plant and Equipment

- 4.1 The Hirer must not, without the prior consent of the Owner, make any alterations, additions or replacements to the Plant and Equipment.
- 4.2 The Hirer must:
- (a) comply with the Hirer's responsibilities outlined in the Schedule;
 - (b) keep and maintain the Plant and Equipment in proper working order and good and substantial repair;
 - (c) employ only persons who are properly trained and competent in the use of the Plant and Equipment and, where required by Workplace Health and Safety Standards, have all applicable licences, tickets or other approvals required to safely operate the Plant and Equipment.
 - (d) comply with all relevant laws, regulations, rules and by-laws governing or relating to the use and operation of the Plant and Equipment;
 - (e) safely operate the Plant and Equipment;
 - (f) notify the Owner of any accident resulting in injury to persons or damage to property (including damage to the Plant and Equipment) involving the Plant and Equipment within 24 hours of the date of the accident;

- (g) secure the Plant and Equipment when not in use and ensure that all reasonable measures are taken to protect the Plant and Equipment against acts of theft and vandalism; and
- (h) return the Plant and Equipment in the same condition as it was hired.

5. Title to Plant & Equipment, Risk and Insurance

- 5.1 The Plant and Equipment is and will at all time remain the absolute property of the Owner.
- 5.2 Without limiting clause 5.1 all risk for the Plant and Equipment passes to the Hirer on delivery and remains with the Hirer until the Plant and Equipment is returned to the Owners possession.
- 5.3 The Hirer is not authorized to create a lien over the Plant and Equipment.
- 5.4 The Hirer will insure the Owner's interest in the Plant and 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 any person or property arising out of the use of the Plant and Equipment. Further the Hirer will not use the Plant and Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 5.5 Without limiting clause 5.4 above and irrespective of whether the Hirer has effected adequate insurance cover the Hirer accepts full responsibility for and shall keep the Owner 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 Plant and Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.
- 5.6 Without limiting clause 5.4 above and irrespective of whether the Hirer has effected adequate insurance cover the Hirer accepts full responsibility for the safekeeping of the Plant and Equipment and indemnifies the Owner for all loss, theft or damage to the Plant and Equipment howsoever caused and whether or not such loss, theft or damage is attributable to any negligence failure or omission of the Hirer.

1. PPS Law

- 6.1 The Hirer acknowledges and agrees that to the extent this Agreement creates a PPS lease, as defined in the PPS Act, the Owner has a security interest in the Plant and Equipment for the purposes of the Personal Property Securities Act 2009 (Cth) as amended (the PPS Act), and to the extent applicable the PPS Act applies.
- 6.2 If the Owner does not have at the Commencement Date or otherwise obtain within 15 business days of the Commencement Date a PPS Law registration ensuring a perfected first priority security interest in the Plant and Equipment, the term of hire, (including any extension) may not, despite anything else in this document or Schedule, be longer than 90 days.
- 6.3 The Hirer acknowledges that the Owner may do anything reasonably necessary, including but not limited to registering any security interest which the Owner has over the Plant and Equipment on the Personal Property Securities Register in order to perfect the security interest and comply with the requirement of the PPS Act. The Hirer agrees to provide, without charge, all information and do all things reasonably necessary to assist the Owner to undertake the matters set out above.
- 6.4 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.