



GSA EXCAVATIONS - TERMS AND CONDITIONS

INTRODUCTION

For the purposes of this Agreement, "GSA Excavations" is GSA EXCAVATIONS PTY LTD A.B.N. 67 632163378 and its successors and assigns or any person acting on behalf of and with the authority of GSA Excavations; is the earthmoving "contractor" and "the Hirer" is the customer receiving the earthmoving and associated services. In this Agreement "Work" means earthmoving and associated services supplied by GSA Excavations to the Hirer; "Site" means the place where the Hirer's work will be carried out and "Equipment" means plant and/or machinery used in the performance of the Work.

1. CONTRACTOR

GSA Excavations is the Contractor who has entered into a contract with the Hirer and whose name is on the front of the Job Docket/Invoice. GSA Excavations will not be responsible for delays, defaults or claims of any description.

2. HIRE PERIODS AND CHARGES

2.1 Hire Periods

2.1.1 The hire rate is based upon the Equipment being hired for a minimum period as specified in GSA Excavations current price list.

2.1.2 The hire shall commence from the time and date the Equipment arrives at the Hirer's site plus applicable travel and/or float charges as specified in clause 2.2 (c).

2.1.3 The Hirer shall pay GSA Excavations a surcharge to allow for overtime costs (rates on application) should the hire period and/or Work performed by the Contractor include night work after 6pm to 6am, weekends, statutory or gazetted public holidays.

2.2 Hire Charges

The Hirer shall pay GSA Excavations on completion of the Hire Period for the following:

(a) the rate/s specified in GSA Excavations current price list or Job Docket for the full Hire Period that the Equipment is at the Hirer's site plus applicable travel and/or float Charges. The Hirer must notify GSA Excavations of any cancellations 2 hours prior to hire commencement due to inclement weather or any unforeseen circumstances or a minimum fee of hire will be charged.

(b) All hiring charges and any other amounts payable in accordance with these Conditions of Hire within the time specified in the Job Docket, Tax Invoice, Credit Account Application and/or Work Authorisation;

(c) all charges including and not limited to all freight and other charges incurred by the Contractor in transporting the Equipment or loading and unloading the Equipment at the Site. Travel and/or float charges are also applicable.

(d) where the Hirer is responsible for the loss or damage to the Equipment the whole or part of the cost of replacement or repair of the Equipment which will be added to the invoice total;

(e) the amount of tolls, levies offences (traffic/parking) or like charges paid or payable by the Contractor to any Government body in respect of use of the Equipment; and

(f) tipping fees charged to the GSA Excavations tip account(s).

3. CREDIT CARD PAYMENTS

GSA Excavations will accept payments by MasterCard, Visa and Amex. MasterCard and Visa attract a 1% (one percent) surcharge; Amex attracts a 3% (three percent) surcharge.

4. MATERIAL SUPPLY

Supply of material including but not limited to: sand, soil, gravel etc. will be at GSA Excavations current price at the time of the order and subject to availability. All materials will remain the property of GSA Excavations until the client has paid outstanding amount of monies in full.



5. THE HIRER'S RESPONSIBILITIES

5.1 Prior to the use of the Equipment, it is recommended that the Hirer should:

(a) consult with GSA Excavations to determine the condition and suitability of the Equipment hired for the purpose required. Should this process not be followed, the Hirer shall indemnify GSA Excavations from any additional cost, expenses or losses incurred; and

(b) obtain all necessary permits and/or plans and pay any fees payable to any local or government authority in relation to the hire.

5.2 During the Hire Period the Hirer shall:

(a) clearly mark the exact location and identify all services above and below ground at the Site, including, but not limited to drains, pipes, sewers, water mains, electrical, telephone and data cables, to enable the Contractor's equipment operator to prevent damage to all such services. GSA Excavations does not accept any liability for damage caused to underground services. These plans can be requested from the Dial Before You Dig website at www.1100.com.au or phone 1100. The Hirer shall indemnify the Contractor (GSA Excavations) from any claim for costs, expenses or losses;

(b) be responsible for any loss or damage to the Equipment if such loss is caused by the negligence of the Hirer or any persons under his/her control;

(c) accept full responsibility for, and indemnify GSA Excavations against all claims in respect of any injury to persons, or loss or damage to property, arising out of the delivery, servicing, storage, possession or use of the Equipment by the Hirer, or any persons under his control during the Period of Hire;

(d) not alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;

(e) be liable for any costs should the Equipment, as a result of instructions given by the Hirer, become bogged/stuck or in a position where recovery vehicles/equipment is required. Costs referred to being the agreed hire and the additional hire of whatever equipment is necessary to recover the machine;

(f) keep all persons, including the Hirer, away from the Equipment, whilst in operation and;

(g) not repair or attempt to repair or cause any repair to be made to the Equipment without the prior consent of GSA Excavations.

6. INSURANCE

6.1 The Hirer shall at all times exercise due care that the Equipment is not driven or operated by any person not duly authorised under all relevant laws, by-laws and regulations to be driving or operating such Equipment for the purpose for which it is being used. The Hirer 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 as though the Hirer was the Contractor.

6.2 GSA Excavations reserves the right, that if it would be dangerous or detrimental to the Equipment, to refuse to operate the Equipment under such conditions.

7. BREAKDOWN

When Equipment is hired the hirer shall notify GSA Excavations immediately of any breakdown or the unsatisfactory working of any part of the Equipment by email. Any claim for breakdown time will only be considered from the time and date shown on such email.



8. DISPUTES

The Hirer shall, within seven (7) days from the completion of the Work, notify GSA Excavations in writing of any alleged dispute. If the Hirer fails to comply with this provision, the Work shall be conclusively presumed to have been completed satisfactorily and free from any disputes.

9. DAMAGES

9.1 Recoverable Costs

The Hirer must pay to GSA Excavations any costs, expenses or losses incurred by GSA Excavations as a result of the Hirer's failure to pay to GSA Excavations all sums outstanding as owed by the Hirer to GSA Excavations including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

9.2 Interest

GSA Excavations may charge interest at 7.5% (seven and a half percent) per month calculated on amounts not paid within the time frame specified on GSA Excavations invoice.

10. RETENTION OF TITLE

10.1 Title

The Equipment shall remain the property of the Contractor at all times. The Hirer is not entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor part with possession of the Equipment or assign the benefit of the Hire Agreement.

10.2 Repossession

If the Hirer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Agreement, then GSA Excavations may repossess any Equipment, without prejudice to any other remedies it may have, commence proceedings to recover the balance of any monies owing to GSA Excavations by the Hirer.

11. PRIVACY

11.1 The Hirer hereby authorises GSA Excavations to collect, retain, record, use and disclose commercial and/or consumer information about the Hirer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by GSA Excavations, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

11.2 GSA Excavations may give information about the Hirer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Hirer's credit file. This information may be given before, during or after the provision of credit to the Hirer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

12. LIABILITY

12.1 Non-excludable Rights

The parties acknowledge that, under the Australian Consumer Law (Cth), certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Hirer in relation to the provision of the Equipment or Work which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

12.2 Disclaimer of Liability

GSA Excavations disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Hirer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of GSA Excavations for a breach of a Non-Excludable Right is limited, at GSA Excavations option, to the supplying of the Equipment and/or any Work again



or payment of the cost of having the Equipment and/or Work supplied again.

12.3 Indirect Losses

Notwithstanding any other provision of these terms and conditions, GSA Excavations is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Hirer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by GSA Excavations failure to complete or delay in completing the Work.

12.4 Force Majeure

GSA Excavations will have no liability to the Hirer in relation to any loss, damage or expense caused by failure to complete the Work as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the contractors normal suppliers to supply necessary material or any other matter beyond GSA Excavations control.

13. SECURITY AND CHARGE

The Hirer hereby charges all property, both equitable and legal, present or future of the Hirer in respect of any monies that may be owing by the Hirer to GSA Excavations under the terms and conditions or otherwise and hereby authorises GSA Excavations or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Hirer at any time.

14. GENERAL MATTERS

14.1 Severability

Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

14.2 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Hirer and GSA Excavations will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.