

TERMS AND CONDITIONS OF HIRE

1. Definitions

- 1.1. for the purposes of this agreement:
 - 1.1.1. "Foley" means Foley's Earthmoving Pty Ltd ACN 123 627 056 as trustee for the Foley's Earthmoving Discretionary Family Trust.
 - 1.1.2. "the Contractor" means the earthmoving contractor described in the Booking Form.
 - 1.1.3. "the Booking Form" means the booking form attached hereto.
 - 1.1.4. "the Hirer" means the client receiving the earthmoving and associated services as described in the Booking Form.
 - 1.1.5. "Site" means the place where the work will be carried out as described in the Booking Form.
 - 1.1.6. "Work" means the earthmoving and associated services to be performed for the Hirer as described in the Booking Form.
 - 1.1.7. "Equipment" means the plant and/or machinery to be used in performance of the Work by the Contractor as described in the Booking Form.
 - 1.1.8. "Employee" and "Employees" shall mean any employees servants or agents of the Contractor engaged by the Contractor for the purpose of carrying out the Assignment including but not limited to any equipment operator, digger, rigger, spotter, foreman, supervisor or mechanic.
 - 1.1.9. "the Guarantor" means the person or persons listed in the Application Form as guarantors of the Hirer.

2. Agent Only

- 2.1. Foley acts only as an agent for the Contractor. Whilst Foley has made reasonable enquiries as to the competency of the Contractor and its Employees and the suitability and condition of the Equipment, Foley gives no warranty in respect thereto.
- 2.2. Foley will provide information concerning the Contractor and the Equipment to the Hirer that is accurate to the best of its knowledge and belief. The Hirer acknowledges that neither Foley or its servants or agents will be responsible for any inaccuracy in such information.
- 2.3. The Hirer acknowledges that Foley will not be performing the Work and will not be responsible for the work performed by the Contractor. From the time the Contractor reports to the Hirer the Contractor and its Employees are under the care, control and supervision of the Hirer for the duration of performing the Work. In these circumstances the Hirer agrees that Foley will not be liable to the Hirer in respect of any damage, loss or injury of whatsoever nature and kind, however caused, whether by negligence of Foley or the Contractor, their directors, Employees, servants or agents or otherwise which may be suffered or incurred whether directly or indirectly in respect of the services provided under these terms and the Hirer indemnifies Foley against any claim made against Foley by others as a result of any such actions errors and omissions of Foley and or the Contractor and its Employees.

3. **Hirer's Responsibilities**

- 3.1. Prior to the Contractor commencing the Work the Hirer shall satisfy itself that the Contractor and the Equipment are suitable to perform the Work and agrees that it has not relied on the skill, judgment or representations made by Foley.
- 3.2. The Hirer shall provide a safe working environment relating to health, safety and welfare of the Contractor and comply at all times with all laws relating to occupational health, safety, antidiscrimination and Environmental policies.
- 3.3. The Hirer shall obtain and provide all necessary plans, directions and instructions to conduct the Work and shall be responsible to pay any fees to any local or government authority in respect to the Work.
- 3.4. The Hirer shall be responsible to ensure that all persons are kept at a safe distance from the Equipment whilst it is in use and the safety of any other persons on site during the use of the Equipment.
- 3.5. The Hirer shall supply any materials required by the Contractor to perform the Work.
- 3.6. It is the Hirer's responsibility to contact all appropriate authorities and verify the existence of any underground cables, pipes or other services and advise the Contractor thereof. The Hirer will indemnify Foley and the Contractor against any claim for loss or damage (consequential or otherwise) to any person or property arising out of or connected with damage to or interference with any underground cables, pipes or other services.
- 3.7. The Hirer will take all necessary steps to ensure the safety of the Contractor and its Employees whilst on site including the Equipment and any of their personal property.
- 3.8. The Hirer will communicate all safety requirements to the Contractor and shall ensure that the Contractor and its Employees perform the Assignment in accordance with all safety requirements.

4. **Unsafe Conditions**

- 4.1. Should the Contractor discover asbestos or any other contaminants at the Site which pose a serious health risk then the Hirer shall be responsible for any costs losses or expenses incurred by Foley or the Contractor should the Contractor need to suspend the Work until such time as licensed contractors of the Hirer have cleared such contaminants from the site.
- 4.2. Should the Contractor be directed to operate the Equipment when in the Contractor's opinion it is unsafe to do so, then, the Contractor shall be entitled to refuse such direction. Should the Work be suspended because of such refusal and the Contractor is delayed in performing the Work or does not recommence the Work then the Hirer shall be responsible for any such costs losses or expenses incurred by Foley or the Contractor as a result of the suspension of the Work and the Hirer shall indemnify Foley and the Contractor against any claim for costs, losses or expenses incurred by any person as a result of the suspension of the Work.

- 4.3. Should the Contractor be required to wear any special protective clothing as a result of the condition of the Site then such clothing will be supplied by the Hirer.

5. Hire Period and Charges

- 5.1. The hire shall commence from the time and date the Contractor and the Equipment arrive at site and shall conclude on the completion of the Work plus applicable travel and/or float periods.

- 5.2. The Hirer shall pay Foley the fees as set out in the Booking Form including the following:-

- a) all hiring charges at the rate specified in the Booking Form for the full hire period plus applicable travel and/or float charges.
- b) all freight and other charges incurred by the Contractor in transporting the Equipment to and from the Site and between Sites and/or loading and unloading the Equipment at the Site and any insurance payable during the transport or floating of the Equipment
- c) where the Hirer is responsible for any loss or damage to the Equipment including but not limited to directing the Hirer to carry out Work which is the cause of such damage the Hirer shall pay the cost of the replacement or repair of the Equipment.
- d) the amount of any tolls, levies, parking or like charges paid or payable by the Contractor in respect to the movement or transport of the Equipment.
- e) the cost of recovering the Equipment should it become bogged or damaged as a result of instructions given by the Hirer.
- f) the cost of cleaning the Equipment prior to entering and leaving the Site where required.
- g) credit card charges on any payment made by credit card.
- h) the cost of time spent by the Contractor and its Employees in undergoing any required Site induction course or other training required by the Hirer.
- i) the amount of any damage sustained by the Equipment as a result of any failure by the Hirer to correctly and accurately declare the weight, dimensions and/or description of any goods or material to be handled, lifted, transported, moved or otherwise worked on with or by the Equipment and any additional cost or charges incurred by the Contractor which arise out of such failure.
- j) the cost of transporting the Contractor and its Employees to and from the Site and between Sites.

- 5.3 In the event that the work is completed in less than the period specified in the Booking Form then the Hirer shall pay the minimum daily rate to Foley for the balance of the period of the booking.

- 5.4 In the event that the Work is delayed and is not completed within the time specified in the Booking Form Foley does not warrant that the Contractor, the Equipment or the Employees will be available to continue after the time specified in the Booking Form.

- 5.5 If the Hirer determines that the Contractor is not required to Work due to inclement weather/conditions then the Hirer shall notify the Contractor and Foley at least one and a half hours before the normal start time for the Contractor. In the event that such notification is not given by the Hirer within the time specified the Hirer shall pay to Foley the minimum hire rate per day for the day.
- 5.6 If the Hirer determines that the Contractor is not required to work due to any reason other than inclement weather/conditions the Hirer will pay to Foley the higher of either the stand down rate or the minimum daily hire rate for the period that the Contractor is not required to work.
- 5.7 If the Assignment is for a period in excess of one month the fees set out in the Booking Form shall be reviewed at the end of each month.

6. **Payment**

- 6.1. Where a deposit is set out in the Booking Form the Deposit shall be paid by the Hirer to Foley within 24 hours. No action will be taken by Foley or the Contractor to commence the Work until the deposit has been paid.
- 6.2. If the term of the Hire is less than one month the Hirer will pay the balance of the hire charge to Foley within 7 days of the completion of the Work.
- 6.3. If the term of the hire is more than one month then Foley shall provide a tax invoice to the Hirer at the end of each month setting out the hire charges for that month and the Hirer shall pay the amount of such tax invoice to Foley within 7 days of receipt of such tax invoice.
- 6.4. If the Hirer fails to pay Foley in full within the prescribed time the Hirer will pay:
 - 6.4.1. interest calculated on the portion of the invoiced amount overdue at the rate of 15% per annum calculated, compounded and accrued daily from the date the payment was due until paid in full.
 - 6.4.2. all collection costs and legal costs (calculated on a solicitor and own client basis) arising from any failure to pay when payment is due or breach of any term of this agreement.

7. **Site Access**

- 7.1. The Hirer shall ensure that the Contractor has clear and uninterrupted access to the Site until the Work has been completed.
- 7.2. The Hirer shall pay to Foley any additional costs or penalties if the completion of the Work is delayed due to interrupted site access.
- 7.3. The Hirer grants to the Contractor an irrevocable licence to enter the Site at any reasonable time to remove the Equipment.

8. **Contractor's Duties**

- 8.1. The Contractor will provide the Equipment and a duly qualified person to operate the Equipment to perform the Work.
- 8.2. The Contractor will ensure that the Equipment will during the term of the hire meet all necessary machinery compliance requirements.
- 8.3. The Contractor will maintain appropriate log books and time sheets and the Hirer shall sign all time sheets at the end of each day's work to

signify the Hirer's acceptance of the work carried out including scope quality and in accordance with the necessary requirements.

- 8.4. The Contractor will during the hire term maintain public liability insurance to the sum of \$5,000,000.00 and WorkCover Insurance in accordance with the requirements of the applicable law.

9. **Further Employment of Contractor**

- 9.1. The Hirer agrees not to directly engage or employ or use the Contractor or any Employee or the Equipment of the Contractor during the hire term or for a period of 6 months from the end of the hire term without the prior written approval of Foley who shall be entitled to be paid a placement fee for such consent.
- 9.2. The placement fee shall be an amount equal to 10% of all payments paid to the Contractor or Employee by the Hirer during the 6 months following such agreement, employment or use.

10. **Formation of Contract**

- 10.1. Execution of the Booking Form by the Hirer shall be deemed to be an acceptance of the prices referred to in the Booking Form and the terms and conditions herein contained.
- 10.2. Foley shall be entitled to withdraw the offer contained in the Booking Form at any time until it receives a signed acceptance from the Hirer.

11. **Breakdown of the Equipment**

- 11.1. In the event of the Equipment breaking down the Hirer will not be charged for the time that the Equipment was unable to be used except as provided in clauses 5.2(c), 5.2(e) and 5.2(i).
- 11.2. Foley will make every effort to see that the Contractor makes good the repair of the Equipment but gives no guarantee to a time frame. In the event that the Equipment cannot be repaired in a reasonable time frame Foley will endeavour to find replacement equipment or another Contractor to complete the Work.
- 11.3. Foley and the Contractor shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer or any other person arising out of a breakdown of the Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of the Contractor or any other reason whatsoever.

12. **Termination of Hire**

- 12.1. Without prejudice to any other remedies available to the Company and notwithstanding any period of hire specified, Foley may terminate this hire agreement:-
 - 12.1.1. At any time by giving the Hirer eight (8) hours' notice of its intention to so terminate, such termination to be effective as of the expiry of the 8 hours.
 - 12.1.2. Without notice, if the Hirer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby Foley or the Contractor's rights in or to the Equipment may be prejudiced, or have a winding up petition presented against it, or be wound up, or go into voluntary liquidation or commit an

act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if creditors or if its business is placed under administration or official management or if it ceases to carry on business.

13. **Privacy**

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

14. **Liability**

14.1. **Non-excludable Rights**

The parties acknowledge that, under applicable State and Commonwealth law, 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 this agreement ("Non-excludable Rights").

14.2. **Disclaimer of Liability**

Foley 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 Foley for a breach of a Non-Excludable Right is limited, at Foley's 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.

14.3. **Indirect Losses**

Notwithstanding any other provision of these terms and conditions, Foley 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 the Contractor's failure to complete or delay in completing the Work.

14.4. **Force Majeure**

Foley will have no liability to the Hirer in relation to any loss, damage or expense caused by the Contractor's 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 Hirer's normal suppliers to supply the necessary material the breakdown or unavailability of the Equipment, the Contractor or its Employees or any other matter beyond the control of Foley.

15. **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 Foley under the terms and conditions or otherwise and hereby authorises Foley 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 or to register this charge over assets of the Hirer with the Australian Securities and Investments Commission

NOTE: This clause shall not apply where the Work is for a consumer within the meaning contained in the Competition and Consumer Act 2010.

16. **Miscellaneous**

16.1. The Hirer acknowledges its obligation to verify the work conducted and certify its satisfaction by providing a suitably competent and authorised representative, to sign and accept work on the Contractor's timesheet. Where the Hirer fails to provide such suitable representative then the Work will be taken as accepted and complete once the Equipment departs the Site.

16.2. The person signing any document for and on behalf of the Hirer hereby covenants with Foley that he or she has the authority of the Hirer to sign such document on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the contents of such document and hereby indemnifies Foley against all losses, costs and claims incurred by Foley arising out of the person so signing such document not in fact having such power and/or authority.

16.3. If any of these Conditions of Hire are found to be void, voidable or unenforceable the validity and enforceability for the remaining provisions shall not in any way be affected or impaired.

16.4. No amendment or variation of this agreement is valid or binding unless made in writing and executed by the parties.

16.5. No failure to exercise nor any delay in exercising any right, power of remedy by Foley operates as a waiver. A single or partial exercise of any right, power of remedy does not preclude any other or further exercise of that or any other right, power of remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

16.6. The right, powers and remedies of a party under this agreement are in addition to, and do not exclude limit, any right, power of remedy provided by law or equity or by any agreement.

16.7. This Agreement is governed by the laws of the State of Queensland and all disputes arising therefrom shall be submitted to the Brisbane registry of any Court that is competent to hear the matter.

17. **Guarantee and Indemnity**

In consideration of Foley entering into this Agreement at the request of the Guarantor Foley may require the Guarantor to execute a form of guarantee to guarantee the performance and observance of these terms and conditions by the Hirer.

18. **Confidentiality**

Any information or documentation relating to the terms and conditions and rates of pay between the Hirer and Foley is confidential information and must not be disclosed to the Contractor or any other third party except with the written consent of Foley or for the purpose of obtaining professional advice or as required by law.